

# Revising the EWC Directive



‘EWCs – in Europe and Beyond’  
Barcelona, 29 June – 1 July 2004

**This Publication was produced by:  
The Social Development Agency (SDA)**

The SDA was created in 2004 on the initiative of the ETUC member organizations to support Europe's social dimension in a globalised world. The board consists of John Monks (President) and Reiner Hoffmann (Vice President). The Managing Director is Claudio Stanzani.

It is composed of three main departments:

1. **Social Dialogue and Information and consultation rights** - is responsible for studies and research as well as networking with experts in social dialogue and industrial relations in Europe. The department maintains a database on the content of EWC agreements and can provide expertise to workers' representatives in EWCs and SEs.
2. **Projects on European budget headings** - takes the lead in selecting budget line opportunities and in the preparation and management of SDA projects. The department also provides information and assistance on budget lines for affiliates of the SDA, in collaboration with the ETUCO Library department.
3. **Common services** - focuses its activities on internal legal and fiscal services, external services for the ETUC and SDA affiliates as well as tenders and contracts. This department deals with translation services, editing and interpretation of documents and the organization of events.

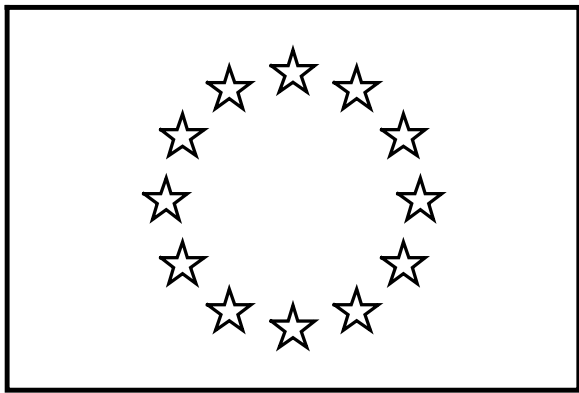
**Email : [sda-asbl@etuc.org](mailto:sda-asbl@etuc.org)**

**[www.sda-asbl.org](http://www.sda-asbl.org)**

# Revising the EWC Directive

## Contents

Forward .....	5
Introduction.....	6
Key Dates.....	7
European Commission First stage consultation document.....	11
ETUC Response .....	25
ETUC Resolution .....	29
Annex to ETUC Resolution .....	34
UNICE Response.....	45
What happens next? .....	49
Annex 1: EWC Directive.....	51
Annex 2: SE Directive.....	63
Annex 3: Social provisions of the Treaty establishing the European Community.....	76
Annex 4: Web addresses of other relevant documents.....	81



This publication has been produced with support from the European Commission

The revision of the European Works Councils Directive is four years overdue, despite the ETUC having argued for years that Directive 94/95/EC needs adapting without delay. Its application so far has had a positive impact, not just in terms of the number of European Works Councils set up, but also and especially in terms of acting as a benchmark and incitement to the spread and new development of rights as well as information and consultation practices in companies and labour relations systems in Member States and the new member countries. European Works Councils are the only company-level supranational trade union bodies in existence.



With the EU about to enlarge to 25 countries, and an economic context marked by restructuring, mergers and relocations, the ETUC wants the mechanics of revising the directive to be speeded up.

The revision is essential from a legal standpoint, because both the procedures and content of the right to information are dealt with differently by three different directives. Unless it goes through quickly, there will be no alternative but to resort to the courts, because the right to information and consultation is a compelling right, as the European Court of Justice has said.

The ETUC is ready to engage in the second stage of the consultation procedure and is disappointed that UNICE, has once again opposed the revision of the directive in its response to the Commission. We will continue to press for a speedy revision, in order that employees of multinational companies in all the 25 member states of the European Union can be ensured more effective information and consultation bodies.

**Walter Cerfeda - ETUC Confederal Secretary**  
Brussels, June 2004

Recently, there has been significant demand from EWC members for more information on the revision of the EWC Directive. So, it was an obvious choice to make a publication on the topic for this Barcelona conference. However, once that decision had been made we were faced with both problems and opportunities in terms of what to put in it. At time of writing, the consultation process for revision is still underway. This does give us the advantage of topicality but it also means that any serious analysis of the situation would be premature and that any overviews will soon be out of date. So, we decided to simply put together a collection of documents that should be useful for those who wish to follow the debate on revision of the EWC Directive - and this publication claims to do no more than that. The fact that, for the moment, we can only offer an incomplete picture of what is still an ongoing process has also limited the amount of money we could justify spending on this book. For that reason, it is only being made available in English. It is always unfortunate when one cannot make translations available for publications of a pan-European nature. However, we hope you will agree that it will be more productive to focus the limited resources we have to have available for translation and printing to benefit less ephemeral publications later on.

Most of the content consists of reproductions of official public documents, such as the Commission's first phase consultation paper or those already available online from the social partners, such as the ETUC resolution. As such, they will remain as valid points of reference in the future. I have also made two modest contributions myself: the list of 'key dates' and the document entitled 'what happens next'. I am aware that both will soon be out of date and, even at time of writing, I make no claim that they are anything like definitive. I only hope that they will prove of some use in providing context to the other documents and to the future debate.

In the annex you will find the text of the EWC Directive and the text of the SE Directive. The latter is particularly important to the issue of improved definitions of information and consultation. As has been pointed out by the ETUC, it is clearly ridiculous to maintain that European law should see the right to information and consultation at transnational company level differently depending on whether the company is registered as European or in individual member states. We have also included some articles from the Treaty which are, or could be, relevant to the revision procedure and, finally, a list of other significant documents which we have not reproduced here for reasons of space, but for which we have provided web addresses so that you can find them online.

Simon Cox  
Brussels, June 2004

When considering the future revision of the EWC Directive, it is worth remembering some of the history that has led us to the point we find ourselves in now. It is important to remember the lengthy process of getting the Directive into law and just how long overdue the revision really is. Looking back can also remind us of some of the developments in Community law that are relevant to the revision and how the legislative context has changed.

It was with this in mind that the list of key dates, set out below, was put together. It is not claimed as exhaustive or definitive. It places more emphasis on recent events and does not incorporate anything that happened before 1983, although strong arguments could be made for doing so. Neither does it seek to list the important innovations that have been made in terms of EWCs agreements themselves, either where they have established good practice or where certain numerical barriers have been reached. The choice of listing specific events has also meant that the list does not take note the progressive (or perhaps regressive) changes to the economic and industrial climate that are so key to the revision, particularly the vast increases in company restructuring that have been seen since the Directive was adopted. However, with that list of caveats established, I do hope that the list of key dates will be useful in giving some historical background to the debate:

### **1983**

- Possibly the first informal EWC -Saint Gobain *Comité de group* is enlarged to include representatives of workers outside France.

### **1985**

- October - First EWC Agreement signed (between Thompson & European Metal Workers Federation)

### **1986**

- First Commission proposal to create a financial mechanism that would support s pan-European meetings between workers' representatives in European transnational companies

### **1990**

- December - The European Commission launched the first proposal for EWC Directive (unanimity not possible).

### **1992**

- February - Maastricht Treaty signed
- Spring - Launch of EC Budget line to support EWCs in anticipation of the European Works Council Directive (later superseded by B3-4003 and lore recently 04040403)

### **1993**

- November- Maastricht Treaty entered into force
- European social partners negotiate under the terms of the Treaty . No agreement reached - Commission proceeds with own proposals

### **1994**

- September - The EWC Directive adopted (QMV)

### **1996**

- September - Directive transposed into national law (end of article 13 agreements)

## **1997**

- December - Directive extended to include the UK

## **1999**

- September - deadline for review in the EWC Directive (Art. 15)
- December - ETUC adopt 1<sup>st</sup> resolution on revision of Directive

## **2000**

- April - Commission publishes report on the Directive (no process was initiated with the social partners as set out in the Treaty)

## **2001**

- September - EU Parliament adopt a resolution calling for a review of the Directive.
- October - SE Directive adopted

## **2002**

- March - 'National' information and consultation framework Directive adopted
- June - Commission publishes communication on European Social Dialogue - Commission ask European Economic and Social Committee to draw up an opinion on the Directive
- November - Fernando Vasquez (DG Employment and Social Affairs) says 'The Commission will initiate the review process in Autumn 2003'

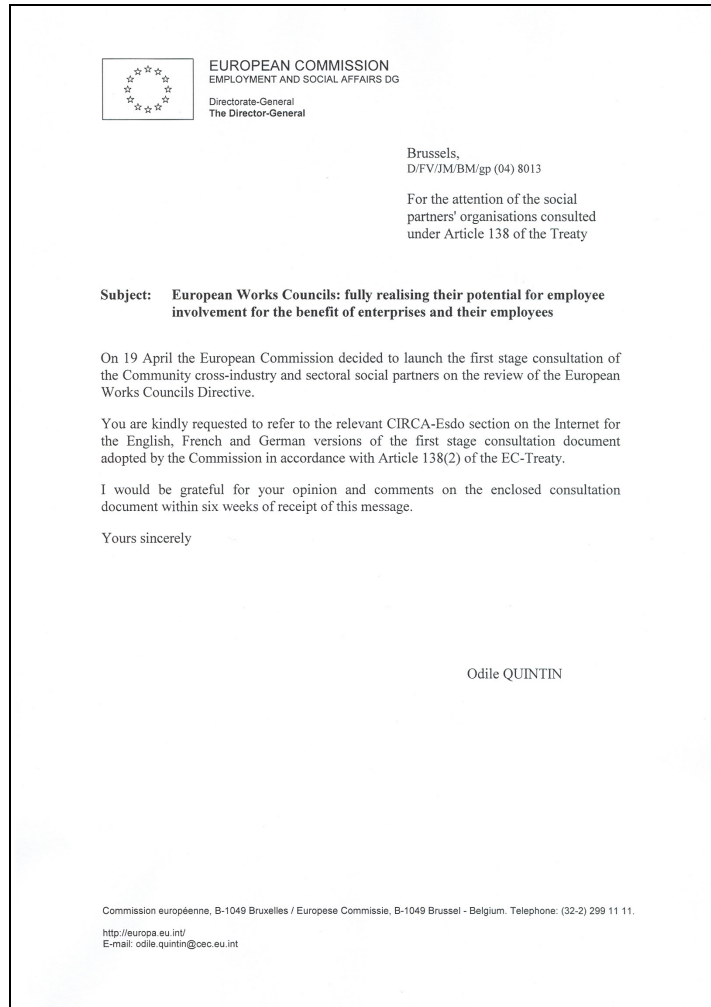
## **2003**

- July - Directive on European Cooperative Society adopted
- September - European Economic and Social Committee publish exploratory opinion on the Directive
- December - ETUC Executive adopt new resolution on revision of Directive

## **2004**

- February - ETUC Steering Committee give final approval to resolution (including annex)
  - April - EU Commission begin 1<sup>st</sup> stage consultation of the European social partners on the possible revision of the Directive.
  - May - 10 new EU Member States are brought within the scope of the Directive
  - May - ETUC respond to first stage
  - June - UNICE respond
  - June – ETUC Conference ‘EWCs – in Europe and Beyond’ held in Barcelona
- CEEP have asked for an extension and have still not responded two weeks after the deadline.

# European Commission First stage consultation document



“For the attention of the social partners' organisations consulted under Article 138 of the Treaty

**Subject: European Works Councils: fully realising their potential for employee involvement for the benefit of enterprises and their employees**

On 19 April the European Commission decided to launch the first stage consultation of the Community cross-industry and sectoral social partners on the review of the European Works Councils Directive.

You are kindly requested to refer to the relevant CIRCA-Esdo section on the Internet for the English, French and German versions of the first stage consultation document adopted by the Commission in accordance with Article 138(2) of the EC-Treaty.

I would be grateful for your opinion and comments on the enclosed consultation document within six weeks of receipt of this message.  
Yours sincerely

Odile QUINTIN”

# **European Works Councils: fully realising their potential for employee involvement for the benefit of enterprises and their employees**

*First stage consultation of the Community cross-industry and sectoral social partners on the review of the European Works Councils Directive*

## **1. Introduction**

**It is not yet ten years since the Directive providing for the establishment of European works councils was adopted; and only eight years since the deadline for its transposition in the Member States and for the conclusion of transnational information and consultation agreements outside its ambit.**

**However, European works councils have clearly demonstrated their value, not only in meeting the objective of providing access to information and consultation for employees at the relevant level of decision making but, equally significantly, in providing a mechanism through which effective transnational employee involvement can make a significant positive contribution to company development, particularly to the successful management of change.**

**The challenge now is to ensure that the undoubted potential of European works councils is fully realised in the years ahead. The purpose of this paper is to consult the social partners on how best to achieve this objective.**

### **1.1 Overview**

The European works councils Directive was adopted to give employees access to information and consultation at the transnational level at which key decisions affecting their enterprises were increasingly being taken. It was a new departure which posed challenges for both employers and employees. Impressive progress has been made in meeting those challenges, notwithstanding that shortcomings have been identified. The foundation for the development of genuine transnational social dialogue at the enterprise level has been laid.

Since the Commission reported on the implementation of the Directive in April 2000<sup>1</sup> the landscape has changed considerably. The Lisbon Summit has given the Union a new strategy for economic and social renewal; a strategy based on economic dynamism, on embracing change to take advantage of the opportunities and possibilities it presents. How change is managed will be crucial for the success of the strategy. The changed economic situation since 2001 has pushed the issue of change management further to the fore.

These developments underscore the importance of European works councils (EWCs) and of fully realising their potential. Change can be managed most successfully if employees are fully involved in the life of the enterprises in which they work. European works councils have proved their value as a vehicle for ensuring such involvement. Where both sides have shown a willingness to embrace the potential of EWCs there have been cases where management and employee representatives have reached agreement on the general principles of how large scale transnational restructuring should be implemented.

Conversely, it is instances where the information and consultation process has been seen to be absent or ineffective in restructuring situations that have given rise to the greatest concern and anger among employees. Calls for the revision of the Directive have essentially been aimed at ensuring its effectiveness in all situations.

Other significant developments in the period since 2000 include: the advances in Community legislation on employee involvement; valuable input from the Community institutions on the Directive; significant developments in the conduct of social dialogue at European level; and, not least, advances within European works councils themselves. Adapting to the impact of enlargement on EWCs is a challenge that must be faced.

In the light of these new circumstances it is now opportune to formally consult the Community social partners on the Directive, on how best to secure the continued functioning and development of transnational social dialogue at enterprise level.

---

<sup>1</sup> See 2.2 below

## 2. Progress under the Directive

### 2.1 The legislative and institutional background

Directive 94/45/EC on the establishment of a European works council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees was adopted by the Council on 22 September 1994<sup>2</sup>. On 15 December 1997 the Council adopted Directive 97/74/EC extending the application of Directive 94/45/EC to the United Kingdom.<sup>3</sup>

Under Article 15 of the 94 Directive the Commission was required, in consultation with Member States and with management and labour at European level, to review the operation of the Directive with a view to proposing any amendments that might be necessary to the Council. In April 2000 the Commission submitted to the European Parliament and to the Council a Report on the legal and practical application of the Directive<sup>4</sup>.

In September, 2001 the European Parliament adopted a Resolution on the Commission report<sup>5</sup>. The Resolution, while acknowledging the positive impact of the Directive, identified a number of weaknesses and called on the Commission to submit a proposal to revise the Directive to address these. It highlighted, in particular, the challenges posed by industrial restructuring and the positive contribution that employee involvement through the EWC can make in smoothing the adjustment process.

Most recently, the European Economic and Social Committee (EESC), at the request of the Commission, adopted an exploratory opinion on the Directive<sup>6</sup> in September 2003. It is primarily meant to be a corpus of information to take stock of the experience acquired following the implementation of the Directive. It is particularly useful in that it draws on a wide range of studies and analyses, from both the employers' and employees' perspectives, in presenting the Committee's view of experience to date.

---

<sup>2</sup> OJ L 254/64 of 30.9.1994

<sup>3</sup> OJ L 10/22 of 16.1.1998

<sup>4</sup> COM(2000) 188 final

<sup>5</sup> A5-0282/2001 PE 308.750/28

<sup>6</sup> Opinion of the European Economic and Social Committee on the practical application of the European Works Council Directive and on any aspects of the Directive that might need to be revised CESE 1164/2003

## **2.2 The success in developing European works councils**

Consideration of future policy regarding EWCs must begin by fully recognising the very significant progress that has already been achieved. As the European Parliament Resolution notes, the impact of the Directive can be seen in the sheer numbers of EWCs established. We now have some 650 companies or groups with European works councils' agreements. It is estimated that these agreements cover some 11 million employees with some 10,000 employee representatives directly involved.

The basis has been laid for the development of a genuine transnational social dialogue at the enterprise level. The EESC opinion outlines the considerable benefits that European works councils have brought: to employees directly and also with beneficial effects for the development of social dialogue at both the transnational and national levels; to companies in terms of their effects on internal decision making processes and the potential to facilitate change management; and also in terms of the contribution European works councils can make to wider European objectives such as those set at Lisbon.

The commitment and effort of those directly involved in achieving this progress should be explicitly acknowledged. The Directive was a completely novel development posing new challenges for both employers and employees. Agreeing the establishment of EWCs and making them operational has required re-focussing perspectives to the transnational level; developing new relationships and learning new ways of working together; becoming familiar with and accommodating different industrial relations practices and traditions; and, not least, it has involved developing communications across different cultures and languages.

This has required considerable effort and resource commitment on the part of both management and employee representatives. The part played by European level trade unions, especially the European sectoral federations should be mentioned in particular. Their involvement has brought a coherence to the practical process of establishing EWCs; a fact acknowledged also by employers and evidenced by the involvement of European level federations as joint signatories in so many agreements.

It should also be mentioned that the Community has, through its funding mechanisms, actively supported the process of securing the successful implementation of the Directive. Reflecting the importance that has been attached to the issue at Community level, a significant amount of funding has been allocated each year to the budget line which

specifically supports transnational co-operation between employee and employer representatives on employee involvement issues<sup>7</sup>.

### **2.3 Key aspects of the Directive's underlying success**

There are also solid grounds for believing that, alongside the energy and commitment of those directly involved and the support from Community funding, the manner in which the Directive itself has been formulated has contributed significantly to its successful implementation. Two aspects in particular are worth highlighting.

Firstly, the Directive provides maximum flexibility to the social partners themselves at enterprise level to agree solutions best suited to their own circumstances. Article 13 of the Directive provided complete flexibility in this regard and its success is evident by the willingness of both trade unions and employers to make use of it; the majority of agreements under the Directive have been concluded on this basis. But within the Directive itself the priority remains focussed on achieving agreed solutions; the subsidiary requirements set out in the Annex come into play only if agreed solutions cannot be arrived at: they have hardly ever been applied in practice.

The success of this principle of giving priority to social partner negotiations, and the fact that it has been replicated as a key feature of subsequent Community instruments on employee involvement, serves to establish it as a cornerstone of the Community approach in this field which should persist in the future operation of the Directive.

Secondly, the Directive does not seek to determine the manner in which employee representatives are selected. This is left to be determined at Member State level in accordance with national law and practice. Thus it has been possible for the Directive to be smoothly integrated into the industrial relations systems of the different Member States. Once again this principle has been preserved in subsequent Community instruments on employee involvement.

The view that the overall approach of the Directive has been broadly correct is supported by the relative lack of recourse to the courts to adjudicate issues. Three cases referred to the European Court of Justice<sup>8</sup> have involved issues concerning the extent of the obligation on management to provide employee representatives with information necessary for the initiation of the process of establishing a European works council. The judgements of the Court and

---

<sup>7</sup> Budget Heading 04030303 " Information, consultation and participation

<sup>8</sup> Cases C-62/99 Bofrost, C-440/00 Kuhne & Nagel and C-349/01 ADS Anker GmbH.

Opinion of the Advocate General in these cases have held that the obligations on management should be read expansively. There have also been a number of relevant cases at Member State level, most notably concerning breaches of the information and consultation requirements under European works councils' agreements but also concerning the applicable procedures for appointing employee representatives and questions of legal jurisdiction. However it is clear that, particularly having regard to the novelty of the Directive, the number of occasions on which the parties have been obliged to have recourse to the courts has been relatively few.

## **2.4 Issues identified with the operation of the Directive**

To acknowledge the success of the Directive does not mean, of course, that one is not alive to the weaknesses that have been identified in its operation. Indeed the Commission's report of April 2000 already outlined some problems that had been identified. European-level trade unions have been active in seeking to improve the basis for the successful operation of EWCs. A range of issues that have arisen and proposals to address them have also been comprehensively set out in the Resolution of the European Parliament referred to at 2.1, above.

It is clear that the primary concern of the criticisms levelled at the operation of the Directive has been to ensure the effectiveness of information and consultation procedures. A particular concern has been the way in which information and consultation functions in restructuring situations. It is in such situations that employees feel most at risk and most in need of the security provided by being genuinely involved in the process. There is an anxiety to ensure that the real advantages for both sides stemming from genuine engagement are realised in all situations. Much of the concern and criticism derives from instances where this has clearly, and sometimes dramatically, not been the case.

Other issues raised relate to the prerogatives of, and facilities available to, European works council members and the role played by trade unionists as representatives of workers. While a further set of concerns could be said to relate, on the one hand, to facilitating the more timely and widespread creation of European works councils and, on the other, to dealing with practical issues that have arisen regarding their operation in situations not explicitly provided for in the Directive.

### 3. The changing context

Since 2000 there have been significant changes on a number of fronts that affect consideration of the future of the Directive and of the role and importance of EWCs: developments in Community legislation, in the economic environment facing businesses and their employees, and significant advances in the conduct of social partner relations at European level. Indeed it is apparent that European works councils themselves are a dynamic rather than a static process and that both agreements and practices within EWCs have developed during the period.

#### 3.1 Developments in Community legislation on employee involvement

Within the last three years the legislative *acquis* on employee involvement has developed very considerably with the adoption of three significant new instruments: the Directive dealing with employee involvement in the European Company<sup>9</sup>, the Directive providing a general framework for information and consultation at national level<sup>10</sup> and the Directive dealing with employee involvement in the European Co-operative Society<sup>11</sup>. The Charter of Fundamental Rights of the European Union of December 2000<sup>12</sup> has also endorsed the right of workers to information and consultation at appropriate levels.

The need for efficient information and consultation systems at national level to enable the different levels of worker representation within undertakings to be linked was identified as an issue in the Commission's report of 2000. The adoption of the Directive setting a general framework for information and consultation now allows for the establishment of such systems throughout the Union. The new provisions dealing with employee involvement in the European Company and the European Co-operative Society open up the potential for the expansion and deepening of transnational employee involvement in these new legal entities.

This development of the Community *acquis* is significant in two respects. Firstly because some of the issues that have been addressed and dealt with in the recently adopted Directives are relevant to the issues that have been raised

---

<sup>9</sup> Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees - OJ L294 of 16.11.2001

<sup>10</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community - OJ L 80 of 23.3.2002

<sup>11</sup> Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees - OJ L207 of 18.8.2003

<sup>12</sup> OJ C364 of 18.12.2000

regarding the application of the EWC Directive. Secondly there is the consideration that, with the deadlines for transposition of the new texts into national law falling within a period of about two years commencing in October 2004, there will be a considerable challenge over that period for social partners, both at Member State and transnational levels, in preparing themselves for the practical implementation of the new legislative provisions.

### **3.2 Dynamism in agreements and in European works councils**

The recent EESC opinion points to a dynamic process of development giving rise to a wider recognition of the positive role played by EWCs in promoting social dialogue within enterprises. This dynamism can be seen in the manner in which EWC agreements appear to be developing and in the actual functioning of European works councils themselves.

As regards EWC agreements, one of the issues raised in the Commission's report of April 2000 was the fact that some of the agreements negotiated seemed to provide for only a very low level of transnational information and consultation. It appears, however, that as agreements fall to be renewed their content is being fleshed out more fully. This may result from the incorporation of experience and best practice from outside the EWC in question. It can also reflect the overcoming of reservations which may have existed at the outset and the development of a greater degree of comfort and confidence among the parties. Such renegotiated agreements often result in the strengthening of the operation of the European works councils in terms of issues such as the frequency of meetings and the prerogatives and facilities afforded to employee representatives.

The developing scope of EWC agreements is also evident in the extension of the range of issues being dealt with within European works councils. In many agreements the range of issues has been extended far beyond the 'core' issues referred to in the Annex to the Directive. Issues with a strong European dimension such as health and safety, equal opportunities policy, training and mobility and environmental policy are now the subject of employee/management consultation. The range of issues finding their way onto the agenda of EWCs is being extended in many cases through actual practice rather than through any formal extension of the agreement to comprehend new issues. The importance of practical operation of the EWC, as opposed to formal extension of agreements, as a determinant of the ability on an EWC to play active role has been highlighted in the EESC opinion. There is potential for issues where there could be a strong group-wide interest, such as employee financial participation, to come onto EWC agenda's in this way.

This process of dynamic development within European works councils has reached its fullest expression to date with the emergence of a negotiating role within some EWCs. This has led to the conclusion of agreements on joint texts that go far beyond the basic information and consultation requirements of the Directive. In addition to agreements in the areas mentioned above, the issues addressed in such joint texts include the consequences of restructuring, trade union rights and fundamental social rights. As regards restructuring, the EWC has functioned, in some instances, as a forum in which management and employees have reached agreement on how the restructuring of their European operations should be implemented.

### **3.3 The number of European works councils' agreements**

While dynamism can be observed in EWC agreements and in the actual functioning of EWCs, it must be conceded that there is less sense of continuing dynamic development as regards the numbers of EWCs: there are issues regarding the pace of creation of new European works councils and the total number of councils now in place.

Agreements have been concluded in some 650 transnational companies or groups. The majority of these agreements, some 400 in all, were adopted before the deadline for transposition of the Directive in 1996. Since then the pace of adoption of new agreements has slackened with an average of perhaps 40 to 50 new European works councils being created in each of the intervening years. The early peak in the number of agreements concluded can be attributed to the desire to take advantage of Article 13 of the Directive. The subsequent tapering off has resulted in a situation where, of the 1800 or so companies or groups estimated to fall with the scope of the Directive, less than 40% have an EWC agreement in place. Coverage of employees is higher; with some 11 million, or about 65% of the 17 million estimated to fall within the scope of the Directive, employed in the companies having EWC agreements.

Several reasons have been advanced as to why EWCs have been established in only 40% of relevant cases. Company size is a factor, with more European works councils having been created in the larger companies and groups. It has been suggested that in smaller entities transnational operations may be fewer and smaller, with the vast bulk of operations located in one Member State, and thus EWCs seen as of less significance and interest to employees. Difficulties for employee representatives in initiating the procedures provided for in the Directive have also been advanced as a reason why more EWCs have not been established.

Whatever the reasons, the absence of EWC agreements in such a large proportion of companies falling within the scope of the Directive represents a challenge for the further development of transnational information and consultation structures.

### **3.4 The economic and business environment**

The developments mentioned above have taken place against a background where the greatest challenge facing transnational enterprises and their employees over the last two to three years has been the issue of large scale corporate restructuring. The pace of restructuring has quickened as industry responded to the economic downturn. Restructuring situations have been a very particular focus for the concerns of employees regarding the functioning of information and consultation mechanisms.

It was because of the widespread concerns about restructuring and its social consequences that the Commission adopted, in January 2002, the first stage consultation of the social partners *Anticipating and managing change: a dynamic approach to the social aspects of corporate restructuring*. The paper advocated a positive approach to corporate restructuring balancing the interests of businesses faced with changes in the conditions governing their activity and those of employees threatened with the loss of their jobs. Proper information and consultation in restructuring situations was a key issue raised in the paper.

The social partners agreed to explore the possibilities of social dialogue on this issue and included it as a key element of their joint work programme adopted in November 2002. Following a number of seminars exploring practical experience on restructuring, the social partners submitted to the Commission in October 2003 a joint text *'Orientations for reference in managing change and its social consequences'*. The text addresses, inter alia, the issue of information and consultation in restructuring situations saying that obligations arising from the legislative and contractual framework on information and consultation must be met. It also states that existing European bodies are the appropriate level when changes concern the strategy of a group and affect sites in several Member States. It is further noted that all the cases studied underlined the importance of continuous quality communication with workers and/or their representatives.

This social partner activity in the context of restructuring could have a bearing on their approach to the issues raised in the present consultation document.

### 3.5 Development in EU-level social partner relations

Consideration of the future operation of the European works councils Directive arises against a background of significant development in social partner relations at EU level over the past two years. In June 2002 the Commission presented its views on the further development of the European social dialogue *The European Social Dialogue, a force for innovation and change*<sup>13</sup>. The Communication highlighted, inter alia, the role of the European social dialogue as an important instrument for economic and social modernisation and expressed the Commission's wish to stimulate a more autonomous dialogue of the social partners. As regards dialogue at the enterprise level, the Communication noted that the link between company level and more centralised levels of dialogue is crucial.

At the Social Dialogue Summit in November 2002 the social partners presented their joint multi-annual work programme for 2003 to 2005. The adoption of such a joint work programme must be seen as a significant positive development in social partner relations at European level, demonstrating their willingness to adopt a more proactive approach to setting the agenda for social dialogue. This new approach has already enabled the social partners to include the important and difficult issue of corporate restructuring on their agenda and to develop a joint approach to the issue.

The social partners' role at the European level was further strengthened with the Council's Decision in March 2003 to formalise the arrangement for annual meetings before the spring European Council through the establishment of a Tripartite Social Summit for Growth and Employment. The intention is to strengthen contacts between the social partners and the European institutions on economic and social policies and to send a strong political signal about the importance of tripartite concertation in boosting the involvement of the social partners in the pursuit of the Lisbon objectives.

---

<sup>13</sup> COM(2002) 341 final

## **4. Enlargement**

The imminent enlargement of the Union presents a particular challenge for the application of the European works councils Directive and for the operation of EWCs in practice; the issues it raises must be faced irrespective of any changes that arise from the current process of consultation regarding the operation of the Directive.

Almost all acceding countries have already adopted legislation transposing the Directive into national law and all will have done so before the accession date. But, while critically important, the adoption of the legislation is only an initial step in process of securing the practical application of the Directive.

The Directive and EWCs will be affected in two ways. On the one hand the inclusion of activities in the new Member States will swell the number of undertakings or groups falling within the scope of the Directive. Companies headquartered in the existing Member States and in the new Member States will be affected. The possibility of forming new European works councils in these entities will thus be opened up. Secondly, where undertakings or groups with subsidiaries in the new Member States already have European works councils, these will need to be extended to ensure representation of the newly included subsidiaries.

Preparing representatives from the acceding countries to assume the new responsibilities that will fall to them is a major task. The EESC stressed the need to recognise the specific characteristics of industrial relations systems in the new Member States and the learning process necessary to comprehend features that are the product of different economic, social and cultural traditions. The Commission has endeavoured to provide practical assistance in preparing for the extension of the Directive to the new Member States as well as monitoring the formal implementation of the *acquis*. The social partners themselves have, of course, also been actively engaged in this work. It is encouraging to note that, in many cases, European works councils have already been enlarged to include representatives from operations in the acceding countries, either as full members or as observers, in advance of the legal obligation to do so. Nevertheless, making transnational information and consultation fully effective in an enlarged Union remains a major challenge that will require sustained energy and commitment from the social partners in the short to medium term.

## **5. Aim of the consultation**

The Directive providing for the establishment of European works councils has had very substantial success in meeting its objectives. EWCs have already demonstrated their value as a mechanism for effective transnational employee

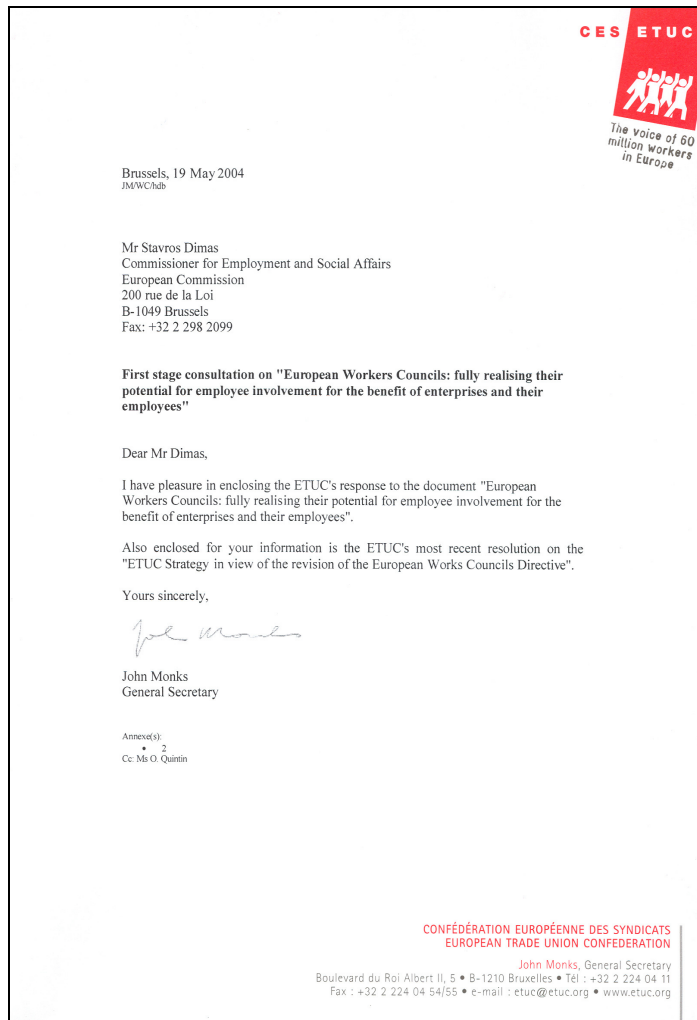
involvement which can make a significant positive contribution, particularly to the successful management of change, for the benefit of both companies and their employees. It is now opportune to consult the social partners on how best to ensure that the potential of EWCs is fully realised so as to maximise their contribution to meeting the objectives set at the Lisbon European Council.

The European social dialogue, through its ability to develop appropriate responses to formidable challenges and to mobilise a range of tools, is a force which promotes change through its positive management. Its crucial role has been recognised by successive European Councils. With the adoption of their joint work programme for the period 2003-05 the social partners have taken a decisive step to act, in full autonomy, in support of the implementation of the Lisbon strategy. This approach has already yielded significant results.

In its Communication *The European social dialogue, a force for innovation and change* the Commission held that reinforcing transnational dialogue within firms has become a fundamental challenge for tomorrow's Europe and stressed that the link between the company level and more centralised levels of dialogue. The views of the social partners on how the continued development of European works councils can best be facilitated will be crucial. They are best placed to address the issue.

In accordance with Article 138 of the EC Treaty and in the light of the considerations outlined above the social partners are called upon to give their opinion on:

1. How best to ensure that the potential of European works councils to promote constructive and fruitful transnational social dialogue at the level of the undertaking, which will benefit both companies and their employees, is fully realised in the years ahead.
2. The possible direction of Community action in this regard, including, as the case may be, the revision of the European works councils Directive.
3. The role they believe the social partners themselves can play in addressing the issues that arise having regard, as appropriate, to their recent reflections on related issues in the context of managing change and its social consequences.



## "First stage consultation on "European Workers Councils: fully realising their potential for employee involvement for the benefit of enterprises and their employees"

Dear Mr Dimas,

I have pleasure in enclosing the ETUC's response to the document "European Works Councils: fully realising their potential for employee involvement for the benefit of enterprises and their employees".

Also enclosed for your information is the ETUC's most recent resolution on the "ETUC Strategy in view of the revision of the European Works Councils Directive".

Yours sincerely,  
John Monks  
General Secretary"

## ***ETUC response to the document "European Works Councils: fully realising their potential for employee involvement for the benefit of enterprises and their employees"***

In response to the document "European Works Councils: fully realising their potential for employee involvement for the benefit of enterprises and their employees" offering the Commission's thoughts on the first phase of consultation for review of the EWC Directive, the ETUC has made a careful analysis of the document and has carried out a consultation of all its member organisations in order to canvas opinion on the matter. It should come as no surprise that the ETUC welcomes the Commission's document.

European works councils have become important instruments of the European Union's social pillar and the ETUC shares the Commission's view that they have clearly demonstrated their value. It is especially gratifying to see that the document acknowledges the important role played by European level trade unions, especially the European sectoral federations, in this success; a role that has not only been in the setting up of EWCs but also their successful operation. The ETUC also acknowledges the Commission's important role in supporting these efforts, particularly through the budget line promoting transnational co-operation between employee and employer representatives on employee involvement issues.

However, as has been pointed out in the document, in order to ensure that the "undoubted potential of European works councils is fully realised in the years ahead" some of the weaknesses that have been identified in the Directive must also be addressed. The ETUC agrees that "the greatest challenge facing transnational enterprises and their employees over the last two to three years has been the issue of large scale corporate restructuring" and it is "in such situations that employees feel most at risk and most in need of the security provided by being genuinely involved in the process". Unfortunately, as stated in the document, it is true that in some situations "this has clearly, and sometimes dramatically, not been the case". For this reason it is imperative that improvements to the Directive are made, so as to better ensure that information and consultation takes place in a serious and timely manner in all European works councils.

It is to be welcomed that the bases for a number of the solutions envisaged by the ETUC to resolve these weaknesses have been outlined in the document. As well as acknowledging the role of European sectoral federations, the importance to this review of "the advances in Community legislation on employee involvement" is clearly noted:

specifically the Directive setting a general framework for information and consultation and the new provisions dealing with employee involvement in the European Company and the European Co-operative Society. The ETUC shares this view and feels that it is especially important that the improved definitions of 'information and consultation' in these more recent legislative instruments are reflected in a revised directive.

The current EWC Directive does not clearly define either the content or means of exercising information and consultation rights. Community legislation is thus inconsistent, since it defines information and consultation rights in different ways in several separate Directives. It is vital that information and consultation should be provided by companies in good time, in other words before any decisions are taken. Moreover, their content should provide workforce representatives with everything they need to proceed with an accurate assessment of the information received. By the same token, EWCs must have the right to a consultation procedure that enables them to draw up their own proposals in time for them, potentially, to be taken on board before the end of the decision-making process.

Equally, with regard to the role of trade unions in EWCs, a revised directive must ensure the right to trade union coordination and support for workforce representatives, both in EWC negotiations and in their general duties. The participation of a member or representative of the sectoral federations in both Special Negotiating Bodies and EWCs must therefore be guaranteed in the legislation. Naturally, this demand is no substitute for either the presence of or services provided by experts.

It is also absolutely essential to have a more closely specified procedure for renegotiating agreements. The current procedure set out in the Directive is unclear. This is particularly the case when EWCs are involved in restructuring or merger processes. It is vitally important that EWCs are fully able to carry out their important role while restructuring is taking place until any legitimate replacement is up and running.

In annex to the letter of 3 March 2004 sent to Commissioner Wallström was a copy of the ETUC's latest resolution on this matter, which clearly outlines the specific changes that the ETUC would like to see made to the Directive. The annex to the resolution lists 26 points, which in the ETUC's view would improve the functioning of the Directive, making it more effective in realising the goals set out in its preamble. Particular attention should be drawn to the importance of bringing in training provisions, shortening the period for negotiations, introducing effective sanctions, preventing abuses of confidentiality, improving recourse to experts, guaranteeing access to sites and introducing the right to preparatory and follow-up meetings (a copy of the resolution is attached).

Finally, the ETUC's readiness and eagerness to enter into the next stage of the consultation process should be underlined. It is however essential that the revision procedure be accelerated in order that employees of multinational companies in all the 25 member states of the European Union can be ensured more effective information and consultation bodies at the European level as quickly as possible

## ETUC strategy in view of the revision of the European Works Councils Directive

***"Resolution adopted by the Executive Committee, 4-5 December 2003 and final agreement given by the Steering Committee on 13 February 2004".***

1. The European Commission is due to launch the revision procedure for Directive 94/45/EC on "the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees" (Directive complemented by Directive 97/74/EC extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 94/45/EC).
2. This revision is already four years overdue despite precise proposals for amendments made by the ETUC in its December 1999 Executive Committee resolution for this revision and a number of other trade union initiatives and actions to speed up its realisation. The European Parliament has also called for such a revision on several occasions and, more recently, even the Economic and Social Committee (EESC) almost unanimously adopted an Opinion confirming the urgent need for the revision and offering a positive framework of reference regarding its contents (23 September 2003). A number of legal judgements - most recently on 13 January 2004 the European Court of Justice (ECJ) handed down its judgement on the Kühne & Nagel AG case - have also confirmed the importance and value of accurate, detailed information and consultation for Special Negotiating Bodies (SNBs) and for EWCs.
3. It is therefore vital that Directive 94/45/EC be revised. Its application so far has had a positive impact, not just in terms of the number of European Works Councils established, but also - indeed, above all - in the light of its reference function and the incitement it has provided to spread and innovate information and consultation practices and rights within both companies and systems of professional relations in the EU Member States and candidate countries. Nonetheless, the experience gained in implementing and running EWCs underlines the need for an urgent review of the

Directive to make it more effective with respect to actually seeing rights exercised and enabling EWCs to function effectively.

4. Furthermore, the revision is needed to lend coherence to the new legislative and economic measures that have come about since:

a) the adoption in October 2001 of Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees, and in March 2002 of Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community, which calls for the harmonisation of Directive 94/45/EC and the subsequent Directives;

b) the intensification of the process of restructuring, mergers, relocations, etc. affecting all sectors of activity and bringing about changes in the structure of companies, in production and employment. For we end up being forced to cope with the consequences of such changes instead of being properly informed and consulted.

In our view, the launch of the revision process must entail the European Commission presenting a specific, detailed document on the contents to be covered, so that we can respond by submitting our comments and proposals.

5. The main changes we want to see take place are as follows:

a) Definition of the notions of information and consultation

The Directive has to be tailored to the legislative context arising from the adoption of new Community standards relating to the information and consultation of workers, such as Directive 2001/86/EC and Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community. By contrast, the present EWC Directive does not clearly define either the content or means of exercising such rights. So Community legislation is inconsistent, since it defines information and consultation rights in different ways in several separate Directives. We should reiterate that in our view, in accordance with Directive 2001/86/EC, information and consultation should be provided by companies in good time, in other words before any decisions are taken. Moreover, we believe that their content should provide workforce representatives with everything they need to proceed with an accurate assessment of the information received. By the same token, we are demanding

the right to a consultation procedure that enables EWCs to draw up their own proposals in time for them, potentially, to be taken on board before the end of the decision-making process.

b) Recognition of the union's role

To guarantee the right to trade union coordination and support for workforce representatives, both in EWC negotiations and in their general duties, the participation of a member or of a representative of the sectoral federations in both Special Negotiating Bodies and EWCs must be guaranteed. This demand is justified by the observation that analyses of the agreements implemented to date confirm that in more than 75% of concluded negotiations the respective sectoral federations played an important coordinating role and/or co-signed the agreements. Naturally, this demand is no substitute for either the presence of or services provided by experts.

c) The procedure for renegotiating agreements

It is absolutely essential to have a more closely specified procedure for renegotiating agreements. The current procedure set out in the Directive is unclear. In particular, we are demanding that EWCs involved in restructuring processes or mergers between two or more companies should expressly have the right to legitimately take any initiatives they deem necessary in the light of such developments until such time as the resulting, new EWC is formed.

d) A clearer definition of the notion of 'controlling undertaking'

Article 3 of the EWC Directive defines the notion of controlling undertaking, in other words it stipulates how to ascertain whether a company is to be treated as a subsidiary of another company within the meaning of legislation governing EWCs. At the moment, this relationship is defined as being the ability of a company to "exercise a dominant influence over another undertaking ('the controlled undertaking') by virtue, for example, of ownership, financial participation or the rules which govern it.". Even though this definition isn't exclusive, it does not clearly stipulate that this includes companies which are controlled by another company via the establishment of a guaranteed monopsony (creating a market on which the buyer has a monopoly). Consequently, the definition of "control" in the Directive should be altered to explicitly include such subsidiaries controlled by monopsony, a situation that is becoming increasingly frequent in all sectors.

#### e) Training

Experience shows that one of the major difficulties faced by EWCs is communication, due to the many different languages involved and the knowledge, including technical know-how, required in a range of areas - economics, finance and social affairs - if the information received is to be analysed correctly. For this reason it would be a good idea to shore up the right to language training and step up the implementation of specific training programmes aimed at enabling workforce representatives to exercise their duties within EWCs efficiently.

#### f) Shortening the period for negotiations

The present version of the Directive provides for a period of three years, which has proven far too long. Most agreements concluded so far have taken no longer than a year to reach. Consequently, it would seem reasonable to reduce the deadline for negotiating agreements from three years to one.

#### g) Sanctions

We are demanding that in the event of companies violating the provisions of the Directive, they are sanctioned in the manner set out in the European Parliament's proposal regarding infringements of Directive 2002/14 on establishing a general framework for informing and consulting employees in the European Community, namely via the non-applicability of decisions taken - even before they are fleshed out in full - in the event that the respective information and consultation procedures are not respected or that false or deliberately imprecise information is circulated. EWCs must also be able to take legal action if the provisions of the Directive or of an agreement are violated.

#### h) Confidentiality

We are calling for a clearer definition of this notion, fully respecting the need to withhold information received on financial or business policies or information of a personal nature, but preventing any abusive application of the term by the company management designed to prevent the members of EWCs from communicating with each other or with the unions.

i) Recourse to experts

We are calling for the amendment of the provision in the Directive limiting the right to cover the funding of one expert only. Experience in more complex cases of restructuring in particular shows that EWCs often need to call on more than one expert, e.g. people with legal, scientific or technical know-how. The provisions currently in force have prevented them from doing this. For this reason, we are demanding the right to call on a second expert in the circumstances outlined above and guarantee sufficient financial cover.

j) Access to sites

The current Directive makes no provision for an EWC representative to gain access to all the sites within a company. It goes without saying that members of EWCs cannot fully discharge their duties as representatives if they are not even allowed to acquaint themselves with the workplaces falling within their remit or given the right and the necessary facilities to engage in direct contact with workforce representatives and/or the workers themselves.

k) The right to preparatory and follow-up meetings

We are asking for the right to hold preparatory meetings to give the members of EWCs an opportunity to discuss their views before meeting their employers. We are also demanding the right to hold follow-up meetings to perform an initial evaluation of the information received. There should further be a possibility to set up a smaller EWC Select Committee to liaise between one meeting and the next. The necessary funding must be set aside to guarantee this.

## Annex to ETUC Resolution

The following list outlines all the points on which the ETUC would like to see changes to the Directive and which should be covered by any forthcoming negotiation with between the European Social partners and addressed by the European Commission. They are all made in the knowledge that the structures and physiognomy of the European Union will change in May, when 10 new countries become members. We consider that the expansion of Europe further underlines the importance of an improved legal basis for European works councils:

### 1. Definitions of 'information' and 'consultation'

The concepts of 'information and consultation' which are central to the EWC Directive have been developed in subsequent community legislation (notably 2002/14/EC of 11 March 2002, establishing a general framework for informing and consulting employees in the European Community and, at the European level, in Directive 2001/86/EC of October 2001, supplementing the Statute for a European company and Directive). These definitions have further concretised the intentions of the existing EWC Directive and have clearly been developed in the context of the experiences of EWCs. However, the current EWC Directive does not for its part include precise definitions of either the content of these rights or the procedures for exercising them. This has in some cases led to EWCs not being informed and consulted within the spirit of the Directive.

We therefore reiterate that the EWC Directive must clarify the need for information and consultation to be provided with such content and within such a timescale as to make them a meaningful part of the decision-making processes of the undertakings concerned. As it seems logically incoherent to define the right to 'information and consultation' at European level differently in different directives, we consider that it would be reasonable to incorporate the following definitions of information and consultation, taken from Article 2 of Directive 2001/86/EC (the SE Directive), into the EWC Directive:

"information" means the informing of the EWC on questions which concern the undertaking ... in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the undertaking;

"consultation" means the establishment of dialogue and exchange of views between the EWC and the competent organ of the undertaking, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the undertaking;

## 2. The role of the trade unions

In order to ensure a good level of support and coordination for workers representatives from the trade unions involved in EWCs and their creation, at least one seat should be set aside for the trade unions to be represented as full participants in all special negotiation body (SNB) and EWC meetings.

In more than three quarters of the negotiations concluded, the European Industry Federations have already played an important role in coordination and/or were co-signatories of the agreement. The benefits of involving their representatives at all stages of EWCs development can not only be seen through our own experience and the deliberations in ECOSOC but also through a number of independent academic studies that have stressed the advantages to all concerned of bringing the experience and pan-European understanding of European Industry Federation representatives to the table.

This seat reserved for trade unions should therefore be allocated to the relevant sectoral European Trade Union Federation(s) to nominate a representative of their choice. This right should not affect the wholly separate provision for paid experts who may or may not be trade union officials.

## 3. The maximum number of persons in SNBs and EWCs (in the subsidiary requirements)

The maximum number of members for the SNB and (in the case of the subsidiary requirements) the EWC will have to be changed. This is a matter of some urgency because article 5 of the Directive currently stipulates that these bodies

must comprise no more than 17 members and equally that each member state in which the undertaking is based must be ensured at least one member.

In May this year the EU will have 25 Member States and the Directive will cover 28 states (including Norway, Iceland and Liechtenstein). A number of companies will be then be operating in 18 or more member states and it will therefore be impossible for them to have no more than 17 members and to give one seat to each country: the Directive will be contradicting itself. We thus propose that the limit be increased to 28.

#### 4. The procedure for renegotiating agreements

A more precise procedure for the renegotiation of agreements is needed. The current procedure described in the Directive is not very clear. This is particularly the case when EWCs are involved in restructuring or merger processes. This is also true when an EWC wants to renegotiate an 'article 13' agreement under 'article 6' to benefit from the subsidiary requirements.

It is vitally important that EWCs are fully able to carry out their important role while restructuring is taking place. Above all, they must not be disbanded leaving workers without European information and consultation rights, during periods when it is most needed. It must therefore be made totally clear that EWCs have the right to remain in place until any legitimate replacement is up and running.

It should also be made clear that existing EWCs in which include trade union's are represented have the right to renegotiate their own agreements rather than having to disband or set up a new SNB for the process. This must be the case even when negotiating under the rules in Article 6 of the EWC Directive. Currently an EWC established under 'article 13' and wishing to negotiate a new agreement under 'article 6' would, according to the Directive, have to request that a new SNB be set up, no matter what the circumstances. This can only cause unnecessary confusion and delay.

## 5. Provision for a second exceptional meeting

Provisions for exceptional meetings are extremely important when there is restructuring in an undertaking. The subsidiary requirements of the EWC Directive already state that EWCs established under those arrangements have the right for their select committee and representatives of countries directly effected to have an exceptional meeting with management representatives concerned "where there are exceptional circumstances effecting employees interests to a considerable extent". It is important, if consultation is to be effective, that the parties to such meetings can reconsider their positions in the light of the discussions when they are unable to come to a agreement in the first instance. The Directive should therefore make provision for a second exceptional meeting in such circumstances.

## 6. One-year negotiating period

The current Directive provides for a period of three years to complete negotiations. This has proved to be excessively long. While negotiations have generally not lasted more than a year, in some cases this over lengthy period has served to encourage obfuscation and has undermined negotiations. The negotiating period should therefore be reduced from three years to a maximum of one year.

## 7. Better definition of "controlling undertaking"

Article 3 of the EWC Directive deals with the definition of a 'controlling undertaking': in other words how to establish whether a company should be treated as the subsidiary of another for the purposes of EWC legislation. Currently this relationship is defined as one where an undertaking "can exercise a dominant influence over another undertaking by virtue, for example, of ownership, financial participation or the rules which govern it". Although the definition is not exclusive, it does not make it clear that it includes companies which are controlled by another through a guaranteed monopsony (the creation of a market in which they are the only buyer).

The definition of control in the Directive should thus be changed so that it clearly includes such monopsony controlled subsidiaries, which are becoming increasingly common in all sectors.

## 8. Access to workforce and workplaces

The right of EWC members to meet the workers they represent and to have access to all the sites in the company where they represent workers is not guaranteed at present. It is clear that an EWC member cannot fully exercise her or his representative tasks without the being able to talk to those they represent and to assess the conditions in which they work. We therefore call for these rights and for appropriate financial measures to permit such functions to be properly exercised.

## 9. Confidentiality

We call for a clearer definition of confidentiality, properly defining it so as to limit its use to information that is of clear commercial or personal sensitivity. While we fully respect the need for an obligation of confidentiality as regards genuinely and necessarily confidential information, misuse of the concept must be prevented. This is particularly the case where it is wrongly utilised in order to block communication between EWC representatives and/or between them and their trade union organisations. The burden of proof should thus rest with the undertaking when it comes to showing that information must be kept confidential. Undertakings should also not have the right to veto any expert requested by the EWC on grounds of confidentiality when that expert is prepared to sign a confidentiality agreement in good faith.

## 10. Penalties

Currently, the Directive does not ensure adequate penalties in the event of violation of its provisions and/or resulting agreements by undertakings. The European Parliament approved provisions for the first draft of Directive 2002/14 (National I & C Framework Directive) that would have avoided this problem for that legislation. However they were, unfortunately, later withdrawn at the behest of UNICE and some member states. We continue to support the original decision of the Parliament and call for this text concerning sanctions to be inserted into the EWC Directive:

1. The member States shall provide for adequate sanctions to be applicable, in the case of infringement of the dispositions laid down in this Directive by the employer or employees' representatives. These sanctions must be effective, proportionate and dissuasive

2. The member States shall establish provisions according to which, in the case of non-compliance by the employer with the obligations to inform and consult with employees regarding decisions as described under article 1 and the agreements signed for the setting up of a EWC, which may have direct and immediate consequences in the sense of substantial changes or termination of working contracts of the concerned groups of employees, such decisions shall not have any legal effects on the contracts and terms of employment of the concerned employees. Legal effects shall not enter into force until the employer has fulfilled all obligations, or, should compliance have become impossible, an adequate compensation be determined, according to procedures and modalities to be established by the member States.

3. with reference to the commas above, non-compliance is considered such:

- a) In the complete absence of information to and/or consultation of employee representatives prior to the adoption of decisions or the publication of such decision;
- b) In case of withholding important information or the release of inexact information with the result of making the exercise of information and consultation ineffective.

## 11. Legal challenges

Without the possibility of some sort of legal challenge, the legislation becomes unenforceable, no matter what the penalties might be. It is therefore very important that workers representatives in the EWC are ensured of the ultimate possibility to legally challenge breaches of the agreement by management. EWCs that are chaired by management have been told they cannot challenge the actions of management in the UK courts because that management is part of the EWC. Furthermore, a number of EWCs have found it difficult to get the resources from management to mount a legal challenge. The law should be clarified on this issue to ensure that the workers' side of any mixed EWC have the right to challenge management breaches and that there are financial provisions for the EWC to take legal action if necessary.

## 12. Information on eligibility

In some cases it has been very difficult to establish whether an undertaking is covered by the Directive and whether the workforce in that undertaking are aware of the possibility to request that an EWC be established. The European Industry Federations should therefore be able to request relevant information to allow them to ascertain whether or not a company is covered by the EWC Directive. This should include employee numbers in Europe broken down by subsidiary as well as the location and NACE sector(s) of those subsidiaries.

## 13. Preparatory and follow-up meetings for SNBs and EWCs (in the subsidiary requirements)

Pre-meetings and follow-up meetings for the workers representatives in SNBs and EWCs have become fairly common in agreements and could now be considered a standard indicator of good practice. To operate effectively, members of these bodies must be able to hold preparatory meetings before and follow-up meetings after each meeting with central management. They allow the employee representatives time to discuss their position before and after talking to management and to go over action points so as to follow up what has been discussed. As such they add an important contribution to the creation of effective EWCs and efficiency of operating EWCs. We therefore call for the facility to hold such meetings with appropriate financial provision and language resources to be incorporated into the Directive.

## 14. Training

Experience demonstrates that a major obstacle to the good functioning of EWCs is lack of training in languages as well as in economic/accounting and other technical and social matters. EWCs are multi-lingual bodies at the heart of large and complex corporations bringing together highly different industrial relations cultures. The SE Directive and even the National I & C Framework Directive (where linguistic and cultural differences are less of an issue) have both recognised the importance of this issue and made provisions for the training of representatives on the bodies to which they apply. It is thus clear that the EWC Directive should also ensure that workers' representatives under its provisions are given the skills to carry out their tasks correctly. This means asserting the right of the EWC to determine a training programme at EWC level and the right to appropriate time off.

## 15. Experts (EWCs)

The current subsidiary requirements of the Directive state that only one expert per meeting need be funded by the employer. Practice has shown that in times of radical change and uncertainty, such as the more complex cases of restructuring, the EWCs often require the benefit of expertise in more than one field: for example, in both legal and economic/accounting matters. This should be recognised by the Directive. We therefore call for provisions in the Directive to entitle EWCs to at least one paid expert at all meetings and a second when necessary.

## 16. Experts (SNBs)

While the Directive gives special negotiating bodies the right to be assisted in negotiations by experts of its choice, this right is often disregarded or only partially met. The Directive must make it clear that the experts requested by the SNBs can participate in the negotiations with central management.

## 17. Select committees

It was noted by ECOSOC and is borne out by our own experience that select committees are crucial to the smooth running of all but the smallest EWCs. However, currently the subsidiary requirements of the Directive are very vague as to when an EWC established under those provisions should have one, stating only "where it so warrants". Experience shows that all EWCs with more than 9 or 10 members need a select committee in order to function properly and the Directive should be clear about that and the need to provide the Select Committee with appropriate time and resources to carry out their work.

## 18. Two meetings a year for EWCs

At the moment the subsidiary requirements stipulate one meeting a year with the possibility of a second meeting in exceptional circumstances. Many of the better agreements already allow for two meetings a year which has significantly

improved the functioning of those bodies. The subsidiary requirements should therefore be altered so that they prescribe two meetings a year with the possibility of further meetings in exceptional circumstances.

The SE Directive already recognises this need. We therefore call for the following phrase from Part 2 of the Annex to that Directive to be inserted into the part of the EWC Directive dealing with exceptional meetings:

“Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, this body shall have the right to a further meeting with the competent organ of the [undertaking] with a view to seeking agreement.”

#### 19. Interpretation and translation of documents

As stated above, the content of information must enable employees’ representatives to examine in detail the possible repercussions of a proposed measure, properly and in good time. The Directive must therefore provide that information given in writing should be in all necessary languages and that there is adequate interpretation provided for all meetings including preparatory and follow-up meetings.

#### 20. The topics of ‘health and safety policy’, ‘training and education policy’, ‘environmental policy’ and ‘equal opportunity policy’

The issues of health and safety, training and education, environment and equal opportunities are important for both employers and workers representatives and are of clear relevance at the European level as all are covered by European legislation. EWCs can play a useful role in the development and monitoring of policies on these matters. These topics should therefore be included among those listed in the subsidiary requirements of the Directive as of particular relevance for EWC meetings.

## 21. Gender balance in EWCs

Women are still under-represented in SNBs, EWCs and their select committees. While we are aware that the ETUC itself and its member organisations still have much work to do on this issue, we also call for the preamble to the Directive to mention the importance of the promoting gender democracy in EWCs.

## 22. “Ideological guidance” undertakings

The Directive currently allows a limited exemption for “ideological guidance” undertakings. This has prevented employees in media groups registered in some member states from benefiting from the Directive. This provision should be completely removed. Workers in this sector have experienced a lot of company restructuring since the Directive came into force and these processes are not helped by denying their right to be informed and consulted at European level.

## 23. Commercial shipping

Merchant navy crews are also subject to an exemption from the scope of the Directive. This provision should also be removed.

## 24. The ‘transnational’ criterion

It is not always easy to distinguish whether any one issue meets the ‘transnational’ criterion, thus making it a legitimate topic for information and consultation in the EWC. In order to prevent the misuse of this argument in order to frustrate and delay legitimate information and consultation procedures from taking place, the burden to prove that an issue affects only one country should rest with the management of the undertaking.

## 25. Reducing the threshold

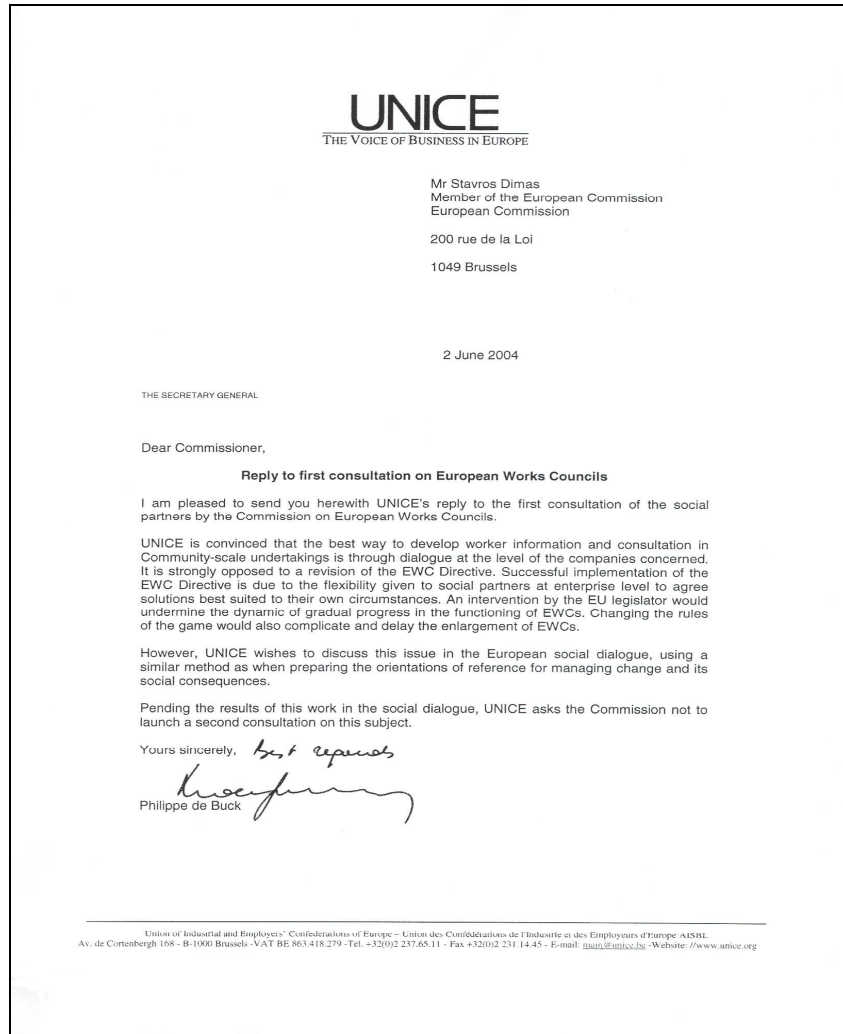
The Directive’s stated aim is to strengthen employees’ rights to information and consultation in undertakings and groups of undertakings operating on a Community-scale. A number of companies with somewhat fewer than 1000

employees clearly operate on a Community-scale but are not covered by the Directive because of this threshold. Representatives from some of these companies have expressed their view that they would benefit from the existence of a European works council. As they too are employees in undertakings operating on a Community-scale and the current threshold is preventing them from benefiting from its provisions, we suggest that the threshold should be reduced to 500 employees with at least 100 employees in 2 different member states.

#### 26. Registering agreements

At present a number of organisations, including those supported by the European Commission and the ETUC and its member organisations, spend a great deal of time and money trying to gather all the latest EWC agreements so that they can be analysed for research and we can see the trends that are occurring. We suggest that undertakings should be obliged to send a copy of their latest EWC agreement to a neutral and mutually acceptable body, such as ECOSOC or the Dublin Foundation, where they would be made publicly available. This would avoid a lot of unnecessary work and ensure a more complete picture of how EWCs are developing.

WC/SC



"Dear Commissioner

## Reply to first consultation document

I am pleased to send you herewith a copy of UNICE's reply to the first consultation of the Commission on European Works Councils.

UNICE believes that the best way to develop worker information and consultation in Community-scale undertakings is through social dialogue at the level of the companies concerned. An intervention by the EU legislator would be counter-productive as it could undermine the dynamic of gradual progress in the functioning of EWCs. UNICE is therefore opposed to a revision of the EWC Directive.

However, convinced of the value of learning from practical experiences, UNICE wishes to discuss this issue in the European Social Dialogue. Building on the agreed work programme for the social dialogue 2003-2005, which foresees seminars on the enlargement of EWCs, The European social partners should examine what lessons can be drawn from practical case studies on the overall functioning of EWCs, using a similar method as when preparing the orientations of reference for managing change and its social consequences.

Pending the results of this work in the social dialogue, UNICE asks the Commission not to launch a second consultation on this subject.

Yours sincerely

Philippe de Buck"

## ***First-Stage Consultation of the European Social Partners on the Review of the European Works Councils Directive - UNICE Answer***

1. On 19 April 2004, the European Commission launched a first-stage consultation of the European social partners on the review of the European Works Council Directive.
2. The Commission asks the social partners to give their opinion on:
  - how best to ensure that the potential of European Works Councils (EWCs) to promote constructive and fruitful transnational social dialogue at the level of the undertaking is fully realised in the years ahead;
  - the possible direction of Community action in this regard, including, as the case may be, the revision of the EWC Directive;
  - the role they believe the social partners themselves can play in addressing the issues that arise having regard, as appropriate, to their recent reflections on related issues in the context of managing change and its social consequences.
3. UNICE is strongly opposed to a revision of the EWC Directive. European employers are convinced that the best way to develop worker information and consultation in Community-scale undertakings is through dialogue at the level of the companies concerned. However, convinced of the value of exchanging and learning from experience at the EU level, UNICE wishes to discuss this issue in the European social dialogue, using a similar method as when preparing the orientations of reference for managing change and its social consequences.
4. UNICE fully agrees that, eight years after the deadline for transposition of 94/45/EC, EWCs or equivalent procedures are beginning to demonstrate their value in informing and consulting workers at transnational level on relevant matters, and have generally helped companies in communicating change. However, at the same time, enquiries among companies from different EU countries also highlight the complexity of
  - organising good communication flows and discussions at transnational company level,
  - finding the right articulation and division of tasks between EWCs or equivalent procedures and information and consultation processes at national or establishment level in a way which respects the variety of legislative and collectively agreed obligations in this field.

5. In UNICE's view, these complex realities are not sufficiently reflected in the Commission consultation paper. The challenges for employers and possible difficulties from a company perspective do not seem to be properly integrated in the reasoning. Moreover, by focusing excessively on the functioning of EWCs in restructuring situations, the analysis misses out on the broader tasks and less publicised but equally important activities of EWCs.
6. The consultation document argues that the landscape has considerably changed since the Commission reported on the implementation of directive 94/45 in April 2000. Without diminishing the importance of the strategy for economic and social renewal agreed in Lisbon, in UNICE's view, the main change of context and much more direct challenge for the future operation of EWCs is the enlargement of Europe to ten new Member States.
7. As the Commission points out, "the inclusion of activities in the new Member States will swell the number of undertakings falling within the scope of the Directive" and "where undertakings or groups with subsidiaries in the new Member States already have EWCs, these will need to be extended to ensure representation of the newly included subsidiaries." As a result, the application of the EWC directive after 1 May 2004 will involve more and new representatives from the new Member States with different economic conditions, social traditions, cultures and languages and the associated increased complexity and costs. Trying to extrapolate lessons from experience of the application of the EWC directive before 1 May 2004 for enlarged Europe would be misleading. Time must be given to companies and workers concerned to learn how to use the procedures put in place, as they did when the directive was adopted for EU-15, before trying to draw conclusions on whether or not to revise the Directive.
8. The Commission rightly acknowledges that successful implementation of the EWC Directive is due to the flexibility given to social partners at enterprise level to agree solutions best suited to their own circumstances. They, and not the legislator, can take forward the operation of EWCs in the future. Furthermore, an intervention by the EU legislator would be counter-productive as it could undermine the dynamic of gradual progress in the functioning of EWCs. Last but not least, changing the rules of the game when Directive 94/45 is not yet transposed in all new Member States would complicate and delay the enlargement of EWCs.
9. Instead, Community actions related to Directive 94/45 should focus on:
  - monitoring the transposition and implementation of the Directive in the new Member States, and
  - exchanging and learning from experiences of EWCs and other procedures of workers information and consultation in Community-scale undertakings, notably against the background of enlargement of the EU

10. With regard to the role of the EU social partners, in 2003 they jointly prepared orientations of reference for managing change and its social consequences based on the analysis of ten practical case studies, looking in particular at the respective roles of various levels of worker information and consultation (transnational, national or local levels). UNICE is convinced that a similar exercise on the overall functioning of EWCs could bring a useful contribution to the debate launched by the Commission. Building on the agreed work programme for the social dialogue 2003-2005, which foresees seminars on the enlargement of EWCs, the European social partners should examine what lessons can be drawn from practical case studies on the overall functioning of EWCs and other procedures of worker information and consultation in Community-scale undertakings.

## What happens next?

According to the EU Treaty, “before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Community action” (article 138). At the time of writing the European Commission has already launched this ‘first phase’ of review concerning the EWC Directive. The ETUC, UNICE have all responded to the Commission’s document (see documents above). CEEP have asked the Commission for an extension of the deadline and we are still waiting for their response at time of going to press (two weeks after the deadline).

The Treaty dictates that the Commission should now be considering the responses of the social partners. “If, after such consultation, the Commission considers Community action advisable, it shall consult management and labour on the content of the envisaged proposal” (article 138).

In the following scenarios I make the assumption that the Commission will launch such a ‘second phase consultation’. If this is correct, we would expect them to open this phase in the near future. When this happens a second stage document will be sent out and, as with the first phase, the social partners will be given six weeks to respond to the Commission’s document. For example, if the second phase of consultation is announced in mid-late July, we would have a deadline for the beginning of September for social partners to send contributions to the Commission.

From that position there are a number of possible directions in which the processes could go forward:

If the social partners decide that they wish to negotiate on the issue, they can trigger negotiations under article 139 of the Treaty. We could then see negotiations start as early as October 2004. The Treaty foresees negotiations lasting up to nine months. If all this time were used we would be looking at an end of negotiations in about June 2005. However, UNICE have already declared their objection to a revision of the Directive and their desire to delay the review following discussions under the auspices of the social partners work programme. It is therefore quite likely that they will press for delay once again if a second phase of consultation is announced.

If UNICE does not agree to negotiate (as seems likely) it would fall to the Commission to develop its own proposals. In such a case, one could expect the Commission to work on these over the winter and, if they make proposals for amendments to the Directive, we might expect to see these in Spring 2005. To continue with this scenario, one might then expect to see the legislative procedure begin in the Autumn and, all being well, the adoption of a revised Directive at council by qualified majority voting at the end of the year or the beginning of 2006. Once the Directive is adopted, the Commission would give member states two years to transpose it into their national laws. Therefore we would be unlikely to see EWCs being protected by a new law until the beginning of 2008.

Of course, another more unpleasant possibility is that we do not get a revised Directive at all. Even after a second phase of consultation is launched the Commission, having considered the responses of the European social partners and with no negotiations being triggered, could simply decide not to put forward amendments. It is also theoretically possible that the proposals would not find a qualified majority in council.

Of course, there are other possibilities to consider. As Walter Cerfeda has said in the forward to this book, "the revision of the Directive is urgent". However, our previous experience has taught us that the procedures for revision have tended to be very slow. When we add this fact to the fact that the Employers' representatives are hostile to change and are seeking delay, it is clear that we must be even more concerned with timing.

Further uncertainty is generated by the fact that we have a new Parliament and will soon get a new Commission. Even on the assumption that the Commission will open the second stage of consultation, there is no guarantee that a second phase document will be as reasonable as the first. There are two lessons that can be drawn from all this. Firstly, the revision process is going to take some time even if it is expedited and ultimately successful one for us. Where it is possible to improve agreements now in renegotiations, we should be doing that and not holding back in order to wait for a new Directive. The second point to remember is that the process is not certain, there are many opportunities for obstacles to be placed in the way of a revised Directive with fairer provisions for EWCs. So, there may be real struggles ahead and it will be important for us all to stay united and committed in our demands for speedy path to a better Directive.

### **Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees**

Official Journal L 254 , 30/09/1994 P. 0064 - 0072  
Finnish special edition: Chapter 5 Volume 6 P. 0160  
Swedish special edition: Chapter 5 Volume 6 P. 0160  
CONSLEG - 94R0045 - 16/01/1998 - 20 P.

COUNCIL DIRECTIVE 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Agreement on social policy annexed to Protocol 14 on social policy annexed to the Treaty establishing the European Community, and in particular Article 2 (2) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure referred to in Article 189c of the Treaty (3),

Whereas, on the basis of the Protocol on Social Policy annexed to the Treaty establishing the European Community, the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Portuguese Republic (hereinafter referred to as 'the Member States'), desirous of implementing the Social Charter of 1989, have adopted an Agreement on Social Policy;

Whereas Article 2 (2) of the said Agreement authorizes the Council to adopt minimum requirements by means of directives;

Whereas, pursuant to Article 1 of the Agreement, one particular objective of the Community and the Member States is to promote dialogue between management and labour;

Whereas point 17 of the Community Charter of Fundamental Social Rights of Workers provides, inter alia, that information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in different Member States; whereas the

Charter states that 'this shall apply especially in companies or groups of companies having establishments or companies in two or more Member States';

Whereas the Council, despite the existence of a broad consensus among the majority of Member States, was unable to act on the proposal for a Council Directive on the establishment of a European Works Council in Community-scale undertakings or groups of undertakings for the purposes of informing and consulting employees (4), as amended on 3 December 1991 (5);

Whereas the Commission, pursuant to Article 3 (2) of the Agreement on Social Policy, has consulted management and labour at Community level on the possible direction of Community action on the information and consultation of workers in Community-scale undertakings and Community-scale groups of undertakings;

Whereas the Commission, considering after this consultation that Community action was advisable, has again consulted management and labour on the content of the planned proposal, pursuant to Article 3 (3) of the said Agreement, and management and labour have presented their opinions to the Commission;

Whereas, following this second phase of consultation, management and labour have not informed the Commission of their wish to initiate the process which might lead to the conclusion of an agreement, as provided for in Article 4 of the Agreement;

Whereas the functioning of the internal market involves a process of concentrations of undertakings, cross-border mergers, take-overs, joint ventures and, consequently, a transnationalization of undertakings and groups of undertakings; whereas, if economic activities are to develop in a harmonious fashion, undertakings and groups of undertakings operating in two or more Member States must inform and consult the representatives of those of their employees that are affected by their decisions;

Whereas procedures for informing and consulting employees as embodied in legislation or practice in the Member States are often not geared to the transnational structure of the entity which takes the decisions affecting those employees; whereas this may lead to the unequal treatment of employees affected by decisions within one and the same undertaking or group of undertakings;

Whereas appropriate provisions must be adopted to ensure that the employees of Community-scale undertakings are properly informed and consulted when decisions which affect them are taken in a Member State other than that in which they are employed;

Whereas, in order to guarantee that the employees of undertakings or groups of undertakings operating in two or more Member States are properly informed and consulted, it is necessary to set up European Works Councils or to create other suitable procedures for the transnational information and consultation of employees;

Whereas it is accordingly necessary to have a definition of the concept of controlling undertaking relating solely to this Directive and not prejudging definitions of the concepts of group or control which might be adopted in texts to be drafted in the future;

Whereas the mechanisms for informing and consulting employees in such undertakings or groups must encompass all of the establishments or, as the case may be, the group's undertakings located within the Member States, regardless of whether the undertaking or the group's controlling undertaking has its central management inside or outside the territory of the Member States;

Whereas, in accordance with the principle of autonomy of the parties, it is for the representatives of employees and the management of the undertaking or the group's controlling undertaking to determine by agreement the nature, composition, the function, mode of operation, procedures and financial resources of European Works Councils or other information and consultation procedures so as to suit their own particular circumstances;

Whereas, in accordance with the principle of subsidiarity, it is for the Member States to determine who the employees' representatives are and in

particular to provide, if they consider appropriate, for a balanced representation of different categories of employees;  
Whereas, however, provision should be made for certain subsidiary requirements to apply should the parties so decide or in the event of the central management refusing to initiate negotiations or in the absence of agreement subsequent to such negotiations;  
Whereas, moreover, employees' representatives may decide not to seek the setting-up of a European Works Council or the parties concerned may decide on other procedures for the transnational information and consultation of employees;  
Whereas, without prejudice to the possibility of the parties deciding otherwise, the European Works Council set up in the absence of agreement between the parties must, in order to fulfil the objective of this Directive, be kept informed and consulted on the activities of the undertaking or group of undertakings so that it may assess the possible impact on employees' interests in at least two different Member States; whereas, to that end, the undertaking or controlling undertaking must be required to communicate to the employees' appointed representatives general information concerning the interests of employees and information relating more specifically to those aspects of the activities of the undertaking or group of undertakings which affect employees' interests; whereas the European Works Council must be able to deliver an opinion at the end of that meeting;  
Whereas certain decisions having a significant effect on the interests of employees must be the subject of information and consultation of the employees' appointed representatives as soon as possible;  
Whereas provision should be made for the employees' representatives acting within the framework of the Directive to enjoy, when exercising their functions, the same protection and guarantees similar to those provided to employees' representatives by the legislation and/or practice of the country of employment; whereas they must not be subject to any discrimination as a result of the lawful exercise of their activities and must enjoy adequate protection as regards dismissal and other sanctions;  
Whereas the information and consultation provisions laid down in this Directive must be implemented in the case of an undertaking or a group's controlling undertaking which has its central management outside the territory of the Member States by its representative agent, to be designated if necessary, in one of the Member States or, in the absence of such an agent, by the establishment or controlled undertaking employing the greatest number of employees in the Member States;  
Whereas special treatment should be accorded to Community-scale undertakings and groups of undertakings in which there exists, at the time when this Directive is brought into effect, an agreement, covering the entire workforce, providing for the transnational information and consultation of employees;  
Whereas the Member States must take appropriate measures in the event of failure to comply with the obligations laid down in this Directive,

**HAS ADOPTED THIS DIRECTIVE:**

## **SECTION I GENERAL**

### **Article 1**

Objective 1. The purpose of this Directive is to improve the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings.

2. To that end, a European Works Council or a procedure for informing and consulting employees shall be established in every Community-scale undertaking and every Community-scale group of undertakings, where requested in the manner laid down in Article 5 (1), with the purpose of informing and consulting employees under the terms, in the manner and with the effects laid down in this Directive.

3. Notwithstanding paragraph 2, where a Community-scale group of undertakings within the meaning of Article 2 (1) (c) comprises one or more

undertakings or groups of undertakings which are Community-scale undertakings or Community-scale groups of undertakings within the meaning of Article 2 (1) (a) or (c), a European Works Council shall be established at the level of the group unless the agreements referred to in Article 6 provide otherwise.

4. Unless a wider scope is provided for in the agreements referred to in Article 6, the powers and competence of European Works Councils and the scope of information and consultation procedures established to achieve the purpose specified in paragraph 1 shall, in the case of a Community-scale undertaking, cover all the establishments located within the Member States and, in the case of a Community-scale group of undertakings, all group undertakings located within the Member States.

5. Member States may provide that this Directive shall not apply to merchant navy crews.

## Article 2

Definitions 1. For the purposes of this Directive:

(a) 'Community-scale undertaking' means any undertaking with at least 1 000 employees within the Member States and at least 150 employees in each of at least two Member States;

(b) 'group of undertakings' means a controlling undertaking and its controlled undertakings;

(c) 'Community-scale group of undertakings' means a group of undertakings with the following characteristics:

- at least 1 000 employees within the Member States,

- at least two group undertakings in different Member States, and

- at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State;

(d) 'employees' representatives' means the employees' representatives provided for by national law and/or practice;

(e) 'central management' means the central management of the Community-scale undertaking or, in the case of a Community-scale group of undertakings, of the controlling undertaking;

(f) 'consultation' means the exchange of views and establishment of dialogue between employees' representatives and central management or any more appropriate level of management;

(g) 'European Works Council' means the council established in accordance with Article 1 (2) or the provisions of the Annex, with the purpose of informing and consulting employees;

(h) 'special negotiating body' means the body established in accordance with Article 5 (2) to negotiate with the central management regarding the establishment of a European Works Council or a procedure for informing and consulting employees in accordance with Article 1 (2).

2. For the purposes of this Directive, the prescribed thresholds for the size of the workforce shall be based on the average number of employees, including part-time employees, employed during the previous two years calculated according to national legislation and/or practice.

## Article 3

Definition of 'controlling undertaking' 1. For the purposes of this Directive, 'controlling undertaking' means an undertaking which can exercise a dominant influence over another undertaking ('the controlled undertaking') by virtue, for example, of ownership, financial participation or the rules

which govern it.

2. The ability to exercise a dominant influence shall be presumed, without prejudice to proof to the contrary, when, in relation to another undertaking directly or indirectly:

(a) holds a majority of that undertaking's subscribed capital; or

(b) controls a majority of the votes attached to that undertaking's issued share capital; or

(c) can appoint more than half of the members of that undertaking's administrative, management or supervisory body.

3. For the purposes of paragraph 2, a controlling undertaking's rights as regards voting and appointment shall include the rights of any other controlled undertaking and those of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other controlled undertaking.

4. Notwithstanding paragraphs 1 and 2, an undertaking shall not be deemed to be a 'controlling undertaking' with respect to another undertaking in which it has holdings where the former undertaking is a company referred to in Article 3 (5) (a) or (c) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (6).

5. A dominant influence shall not be presumed to be exercised solely by virtue of the fact that an office holder is exercising his functions, according to the law of a Member State relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings.

6. The law applicable in order to determine whether an undertaking is a 'controlling undertaking' shall be the law of the Member State which governs that undertaking.

Where the law governing that undertaking is not that of a Member State, the law applicable shall be the law of the Member State within whose territory the representative of the undertaking or, in the absence of such a representative, the central management of the group undertaking which employs the greatest number of employees is situated.

7. Where, in the case of a conflict of laws in the application of paragraph 2, two or more undertakings from a group satisfy one or more of the criteria laid down in that paragraph, the undertaking which satisfies the criterion laid down in point (c) thereof shall be regarded as the controlling undertaking, without prejudice to proof that another undertaking is able to exercise a dominant influence.

## SECTION II ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL OR AN EMPLOYEE INFORMATION AND CONSULTATION PROCEDURE

### Article 4

Responsibility for the establishment of a European Works Council or an employee information and consultation procedure 1. The central management shall be responsible for creating the conditions and means necessary for the setting up of a European Works Council or an information and consultation procedure, as provided for in Article 1 (2), in a Community-scale undertaking and a Community-scale group of undertakings.

2. Where the central management is not situated in a Member State, the central management's representative agent in a Member State, to be designated if necessary, shall take on the responsibility referred to in paragraph 1.

In the absence of such a representative, the management of the establishment or group undertaking employing the greatest number of employees in any one Member State shall take on the responsibility referred to in paragraph 1.

3. For the purposes of this Directive, the representative or representatives or, in the absence of any such representatives, the management referred to in the second subparagraph of paragraph 2, shall be regarded as the central management.

## Article 5

Special negotiating body 1. In order to achieve the objective in Article 1 (1), the central management shall initiate negotiations for the establishment of a European Works Council or an information and consultation procedure on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.

2. For this purpose, a special negotiating body shall be established in accordance with the following guidelines:

(a) The Member States shall determine the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territories.

Member States shall provide that employees in undertakings and/or establishments in which there are no employees' representatives through no fault of their own, have the right to elect or appoint members of the special negotiating body.

The second subparagraph shall be without prejudice to national legislation and/or practice laying down thresholds for the establishment of employee representation bodies.

(b) The special negotiating body shall have a minimum of three and a maximum of 17 members.

(c) In these elections or appointments, it must be ensured:

- firstly, that each Member State in which the Community-scale undertaking has one or more establishments or in which the Community-scale group of undertakings has the controlling undertaking or one or more controlled undertakings is represented by one member,
- secondly, that there are supplementary members in proportion to the number of employees working in the establishments, the controlling undertaking or the controlled undertakings as laid down by the legislation of the Member State within the territory of which the central management is situated.

(d) The central management and local management shall be informed of the composition of the special negotiating body.

3. The special negotiating body shall have the task of determining, with the central management, by written agreement, the scope, composition, functions, and term of office of the European Works Council(s) or the arrangements for implementing a procedure for the information and consultation of employees.

4. With a view to the conclusion of an agreement in accordance with Article 6, the central management shall convene a meeting with the special negotiating body. It shall inform the local managements accordingly.

For the purpose of the negotiations, the special negotiating body may be assisted by experts of its choice.

5. The special negotiating body may decide, by at least two-thirds of the votes, not to open negotiations in accordance with paragraph 4, or to terminate the negotiations already opened.

Such a decision shall stop the procedure to conclude the agreement referred to in Article 6. Where such a decision has been taken, the provisions in the Annex shall not apply.

A new request to convene the special negotiating body may be made at the earliest two years after the abovementioned decision unless the parties concerned lay down a shorter period.

6. Any expenses relating to the negotiations referred to in paragraphs 3 and 4 shall be borne by the central management so as to enable the special negotiating body to carry out its task in an appropriate manner.

In compliance with this principle, Member States may lay down budgetary rules regarding the operation of the special negotiating body. They may in particular limit the funding to cover one expert only.

#### Article 6

Content of the agreement 1. The central management and the special negotiating body must negotiate in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements for implementing the information and consultation of employees provided for in Article 1 (1).

2. Without prejudice to the autonomy of the parties, the agreement referred to in paragraph 1 between the central management and the special negotiating body shall determine:

- (a) the undertakings of the Community-scale group of undertakings or the establishments of the Community-scale undertaking which are covered by the agreement;
- (b) the composition of the European Works Council, the number of members, the allocation of seats and the term of office;
- (c) the functions and the procedure for information and consultation of the European Works Council;
- (d) the venue, frequency and duration of meetings of the European Works Council;
- (e) the financial and material resources to be allocated to the European Works Council;
- (f) the duration of the agreement and the procedure for its renegotiation.

3. The central management and the special negotiating body may decide, in writing, to establish one or more information and consultation procedures instead of a European Works Council.

The agreement must stipulate by what method the employees' representatives shall have the right to meet to discuss the information conveyed to them.

This information shall relate in particular to transnational questions which significantly affect workers' interests.

4. The agreements referred to in paragraphs 2 and 3 shall not, unless provision is made otherwise therein, be subject to the subsidiary requirements of the Annex.

5. For the purposes of concluding the agreements referred to in paragraphs 2 and 3, the special negotiating body shall act by a majority of its members.

#### Article 7

Subsidiary requirements 1. In order to achieve the objective in Article 1 (1), the subsidiary requirements laid down by the legislation of the Member State in which the central management is situated shall apply:

- where the central management and the special negotiating body so decide, or
- where the central management refuses to commence negotiations within six months of the request referred to in Article 5 (1), or
- where, after three years from the date of this request, they are unable to conclude an agreement as laid down in Article 6 and the special negotiating body has not taken the decision provided for in Article 5 (5).

2. The subsidiary requirements referred to in paragraph 1 as adopted in the legislation of the Member States must satisfy the provisions set out in the Annex.

## SECTION III MISCELLANEOUS PROVISIONS

### Article 8

Confidential information 1. Member States shall provide that members of special negotiating bodies or of European Works Councils and any experts who assist them are not authorized to reveal any information which has expressly been provided to them in confidence.

The same shall apply to employees' representatives in the framework of an information and consultation procedure.

This obligation shall continue to apply, wherever the persons referred to in the first and second subparagraphs are, even after the expiry of their terms of office.

2. Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the central management situated in its territory is not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them.

A Member State may make such dispensation subject to prior administrative or judicial authorization.

3. Each Member State may lay down particular provisions for the central management of undertakings in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, at the date of adoption of this Directive such particular provisions already exist in the national legislation.

### Article 9

Operation of European Works Council and information and consultation procedure for workers The central management and the European Works Council shall work in a spirit of cooperation with due regard to their reciprocal rights and obligations.

The same shall apply to cooperation between the central management and employees' representatives in the framework of an information and consultation procedure for workers.

### Article 10

Protection of employees' representatives Members of special negotiating bodies, members of European Works Councils and employees' representatives exercising their functions under the procedure referred to in Article 6 (3) shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the national legislation and/or practice in force in their country of employment. This shall apply in particular to attendance at meetings of special negotiating bodies or European Works Councils or any other meetings within the framework of the agreement referred to in Article 6 (3), and the payment of wages for members who are on the staff of the Community-scale undertaking or the Community-scale group of undertakings for the period of absence necessary for the performance of their duties.

### Article 11

Compliance with this Directive 1. Each Member State shall ensure that the management of establishments of a Community-scale undertaking and the management of undertakings which form part of a Community-scale group of undertakings which are situated within its territory and their employees' representatives or, as the case may be, employees abide by the obligations laid down by this Directive, regardless of whether or not the central management is situated within its territory.

2. Member States shall ensure that the information on the number of employees referred to in Article 2 (1) (a) and (c) is made available by undertakings at the request of the parties concerned by the application of this Directive.

3. Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.

4. Where Member States apply Article 8, they shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the central management requires confidentiality or does not give information in accordance with that Article. Such procedures may include procedures designed to protect the confidentiality of the information in question.

#### Article 12

Link between this Directive and other provisions 1. This Directive shall apply without prejudice to measures taken pursuant to Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (7), and to Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (8).

2. This Directive shall be without prejudice to employees' existing rights to information and consultation under national law.

#### Article 13

Agreements in force 1. Without prejudice to paragraph 2, the obligations arising from this Directive shall not apply to Community-scale undertakings or Community-scale groups of undertakings in which, on the date laid down in Article 14 (1) for the implementation of this Directive or the date of its transposition in the Member State in question, where this is earlier than the abovementioned date, there is already an agreement, covering the entire workforce, providing for the transnational information and consultation of employees.

2. When the agreements referred to in paragraph 1 expire, the parties to those agreements may decide jointly to renew them. Where this is not the case, the provisions of this Directive shall apply.

#### Article 14

Final provisions 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 22 September 1996 or shall ensure by that date at the latest that management and labour introduce the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them at all times to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

#### Article 15

Review by the Commission Not later than 22 September 1999, the Commission shall, in consultation with the Member States and with management and labour at European level, review its operation and, in particular examine whether the workforce size thresholds are appropriate with a view to

proposing suitable amendments to the Council, where necessary.

#### Article 16

This Directive is addressed to the Member States.

Done at Brussels, 22 September 1994.

For the Council

The President

N. BLUEM

(1) OJ No C 135, 18. 5. 1994, p. 8 and OJ No C 199, 21. 7. 1994, p. 10.

(2) Opinion delivered on 1 June 1994 (not yet published in the Official Journal).

(3) Opinion of the European Parliament of 4 May 1994 (OJ No C 205, 25. 7. 1994) and Council common position of 18 July 1994 (OJ No C 244, 31. 8. 1994, p. 37).

(4) OJ No C 39, 15. 2. 1991, p. 10.

(5) OJ No C 336, 31. 12. 1991, p. 11.

(6) OJ No L 395, 30. 12. 1989, p. 1.

(7) OJ No L 48, 22. 2. 1975, p. 29. Regulation as last amended by Directive 92/56/EEC (OJ No L 245, 26. 8. 1992, p. 3).

(8) OJ No L 61, 5. 3. 1977, p. 26.

#### ANNEX

##### SUBSIDIARY REQUIREMENTS referred to in Article 7 of the Directive

1. In order to achieve the objective in Article 1 (1) of the Directive and in the cases provided for in Article 7 (1) of the Directive, the establishment, composition and competence of a European Works Council shall be governed by the following rules:

(a) The competence of the European Works Council shall be limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States.

In the case of undertakings or groups of undertakings referred to in Article 4 (2), the competence of the European Works Council shall be limited to those matters concerning all their establishments or group undertakings situated within the Member States or concerning at least two of their establishments or group undertakings situated in different Member States.

(b) The European Works Council shall be composed of employees of the Community-scale undertaking or Community-scale group of undertakings elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

The election or appointment of members of the European Works Council shall be carried out in accordance with national legislation and/or practice.

(c) The European Works Council shall have a minimum of three members and a maximum of 30.

Where its size so warrants, it shall elect a select committee from among its members, comprising at most three members. It shall adopt its own rules of procedure.

(d) In the election or appointment of members of the European Works Council, it must be ensured:

- firstly, that each Member State in which the Community-scale undertaking has one or more establishments or in which the Community-scale group of undertakings has the controlling undertaking or one or more controlled undertakings is represented by one member,
- secondly, that there are supplementary members in proportion to the number of employees working in the establishments, the controlling undertaking or the controlled undertakings as laid down by the legislation of the Member State within the territory of which the central management is situated.

(e) The central management and any other more appropriate level of management shall be informed of the composition of the European Works Council.

(f) Four years after the European Works Council is established it shall examine whether to open negotiations for the conclusion of the agreement referred to in Article 6 of the Directive or to continue to apply the subsidiary requirements adopted in accordance with this Annex.

Articles 6 and 7 of the Directive shall apply, mutatis mutandis, if a decision has been taken to negotiate an agreement according to Article 6 of the Directive, in which case 'special negotiating body' shall be replaced by 'European Works Council'.

2. The European Works Council shall have the right to meet with the central management once a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly.

The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organization, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

3. Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed. It shall have the right to meet, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

Those members of the European Works Council who have been elected or appointed by the establishments and/or undertakings which are directly concerned by the measures in question shall also have the right to participate in the meeting organized with the select committee.

This information and consultation meeting shall take place as soon as possible on the basis of a report drawn up by the central management or any other appropriate level of management of the Community-scale undertaking or group of undertakings, on which an opinion may be delivered at the end of the meeting or within a reasonable time.

This meeting shall not affect the prerogatives of the central management.

4. The Member States may lay down rules on the chairing of information and consultation meetings.

Before any meeting with the central management, the European Works Council or the select committee, where necessary enlarged in accordance with the second paragraph of point 3, shall be entitled to meet without the management concerned being present.

5. Without prejudice to Article 8 of the Directive, the members of the European Works Council shall inform the representatives of the employees of the establishments or of the undertakings of a Community scale group of undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure carried out in accordance with this Annex.

6. The European Works Council or the select committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks.

7. The operating expenses of the European Works Council shall be borne by the central management.

The central management concerned shall provide the members of the European Works Council with such financial and material resources as enable them to perform their duties in an appropriate manner.

In particular, the cost of organizing meetings and arranging for interpretation facilities and the accommodation and travelling expenses of members of the European Works Council and its select committee shall be met by the central management unless otherwise agreed.

In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the European Works Council. They may in particular limit funding to cover one expert only.

### **Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees**

Official Journal L 294 , 10/11/2001 P. 0022 - 0032

Council Directive 2001/86/EC  
of 8 October 2001  
supplementing the Statute for a European company with regard to the involvement of employees

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the amended proposal from the Commission(1),

Having regard to the opinion of the European Parliament(2),

Having regard to the opinion of the Economic and Social Committee(3),

Whereas:

(1) In order to attain the objectives of the Treaty, Council Regulation (EC) No 2157/2001(4) establishes a Statute for a European company (SE).

(2) That Regulation aims at creating a uniform legal framework within which companies from different Member States should be able to plan and carry out the reorganisation of their business on a Community scale.

(3) In order to promote the social objectives of the Community, special provisions have to be set, notably in the field of employee involvement, aimed at ensuring that the establishment of an SE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of an SE. This objective should be pursued through the establishment of a set of rules in this field, supplementing the provisions of the Regulation.

(4) Since the objectives of the proposed action, as outlined above, cannot be sufficiently achieved by the Member States, in that the object is to establish a set of rules on employee involvement applicable to the SE, and can therefore, by reason of the scale and impact of the proposed action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the

Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve these objectives.

- (5) The great diversity of rules and practices existing in the Member States as regards the manner in which employees' representatives are involved in decision-making within companies makes it inadvisable to set up a single European model of employee involvement applicable to the SE.
- (6) Information and consultation procedures at transnational level should nevertheless be ensured in all cases of creation of an SE.
- (7) If and when participation rights exist within one or more companies establishing an SE, they should be preserved through their transfer to the SE, once established, unless the parties decide otherwise.
- (8) The concrete procedures of employee transnational information and consultation, as well as, if applicable, participation, to apply to each SE should be defined primarily by means of an agreement between the parties concerned or, in the absence thereof, through the application of a set of subsidiary rules.
- (9) Member States should still have the option of not applying the standard rules relating to participation in the case of a merger, given the diversity of national systems for employee involvement. Existing systems and practices of participation where appropriate at the level of participating companies must in that case be maintained by adapting registration rules.
- (10) The voting rules within the special body representing the employees for negotiation purposes, in particular when concluding agreements providing for a level of participation lower than the one existing within one or more of the participating companies, should be proportionate to the risk of disappearance or reduction of existing systems and practices of participation. That risk is greater in the case of an SE established by way of transformation or merger than by way of creating a holding company or a common subsidiary.
- (11) In the absence of an agreement subsequent to the negotiation between employees' representatives and the competent organs of the participating companies, provision should be made for certain standard requirements to apply to the SE, once it is established. These standard requirements should ensure effective practices of transnational information and consultation of employees, as well as their participation in the relevant organs of the SE if and when such participation existed before its establishment within the participating companies.
- (12) Provision should be made for the employees' representatives acting within the framework of the Directive to enjoy, when exercising their functions, protection and guarantees which are similar to those provided to employees' representatives by the legislation and/or practice of the country of employment. They should not be subject to any discrimination as a result of the lawful exercise of their activities and should enjoy adequate protection as regards dismissal and other sanctions.
- (13) The confidentiality of sensitive information should be preserved even after the expiry of the employees' representatives terms of office and provision should be made to allow the competent organ of the SE to withhold information which would seriously harm, if subject to public disclosure, the functioning of the SE.
- (14) Where an SE and its subsidiaries and establishments are subject to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees<sup>(5)</sup>, the provisions of that Directive and the provision transposing it into national legislation should not apply to it nor to its subsidiaries and establishments, unless the special negotiating body decides not to open negotiations or to terminate negotiations already opened.
- (15) This Directive should not affect other existing rights regarding involvement and need not affect other existing representation structures, provided

for by Community and national laws and practices.

(16) Member States should take appropriate measures in the event of failure to comply with the obligations laid down in this Directive.

(17) The Treaty has not provided the necessary powers for the Community to adopt the proposed Directive, other than those provided for in Article 308.

(18) It is a fundamental principle and stated aim of this Directive to secure employees' acquired rights as regards involvement in company decisions. Employee rights in force before the establishment of SEs should provide the basis for employee rights of involvement in the SE (the "before and after" principle). Consequently, that approach should apply not only to the initial establishment of an SE but also to structural changes in an existing SE and to the companies affected by structural change processes.

(19) Member States should be able to provide that representatives of trade unions may be members of a special negotiating body regardless of whether they are employees of a company participating in the establishment of an SE. Member States should in this context in particular be able to introduce this right in cases where trade union representatives have the right to be members of, and to vote in, supervisory or administrative company organs in accordance with national legislation.

(20) In several Member States, employee involvement and other areas of industrial relations are based on both national legislation and practice which in this context is understood also to cover collective agreements at various national, sectoral and/or company levels,

HAS ADOPTED THIS DIRECTIVE:

## SECTION I

### GENERAL

#### Article 1

##### Objective

1. This Directive governs the involvement of employees in the affairs of European public limited-liability companies (*Societas Europaea*, hereinafter referred to as "SE"), as referred to in Regulation (EC) No 2157/2001.

2. To this end, arrangements for the involvement of employees shall be established in every SE in accordance with the negotiating procedure referred to in Articles 3 to 6 or, under the circumstances specified in Article 7, in accordance with the Annex.

#### Article 2

##### Definitions

For the purposes of this Directive:

(a) "SE" means any company established in accordance with Regulation (EC) No 2157/2001;

(b) "participating companies" means the companies directly participating in the establishing of an SE;

(c) "subsidiary" of a company means an undertaking over which that company exercises a dominant influence defined in accordance with Article 3(2) to (7) of Directive 94/45/EC;

(d) "concerned subsidiary or establishment" means a subsidiary or establishment of a participating company which is proposed to become a subsidiary or establishment of the SE upon its formation;

- (e) "employees' representatives" means the employees' representatives provided for by national law and/or practice;
- (f) "representative body" means the body representative of the employees set up by the agreements referred to in Article 4 or in accordance with the provisions of the Annex, with the purpose of informing and consulting the employees of an SE and its subsidiaries and establishments situated in the Community and, where applicable, of exercising participation rights in relation to the SE;
- (g) "special negotiating body" means the body established in accordance with Article 3 to negotiate with the competent body of the participating companies regarding the establishment of arrangements for the involvement of employees within the SE;
- (h) "involvement of employees" means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company;
- (i) "information" means the informing of the body representative of the employees and/or employees' representatives by the competent organ of the SE on questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE;
- (j) "consultation" means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE;
- (k) "participation" means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of:
  - the right to elect or appoint some of the members of the company's supervisory or administrative organ, or
  - the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ.

## SECTION II

### NEGOTIATING PROCEDURE

#### Article 3

##### Creation of a special negotiating body

1. Where the management or administrative organs of the participating companies draw up a plan for the establishment of an SE, they shall as soon as possible after publishing the draft terms of merger or creating a holding company or after agreeing a plan to form a subsidiary or to transform into an SE, take the necessary steps, including providing information about the identity of the participating companies, concerned subsidiaries or establishments, and the number of their employees, to start negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the SE.
2. For this purpose, a special negotiating body representative of the employees of the participating companies and concerned subsidiaries or establishments shall be created in accordance with the following provisions:
  - (a) in electing or appointing members of the special negotiating body, it must be ensured:
    - (i) that these members are elected or appointed in proportion to the number of employees employed in each Member State by the participating

companies and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together;

(ii) that in the case of an SE formed by way of merger, there are such further additional members from each Member State as may be necessary in order to ensure that the special negotiating body includes at least one member representing each participating company which is registered and has employees in that Member State and which it is proposed will cease to exist as a separate legal entity following the registration of the SE, in so far as:

- the number of such additional members does not exceed 20 % of the number of members designated by virtue of point (i), and
- the composition of the special negotiating body does not entail a double representation of the employees concerned.

If the number of such companies is higher than the number of additional seats available pursuant to the first subparagraph, these additional seats shall be allocated to companies in different Member States by decreasing order of the number of employees they employ;

(b) Member States shall determine the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territories. They shall take the necessary measures to ensure that, as far as possible, such members shall include at least one member representing each participating company which has employees in the Member State concerned. Such measures must not increase the overall number of members.

Member States may provide that such members may include representatives of trade unions whether or not they are employees of a participating company or concerned subsidiary or establishment.

Without prejudice to national legislation and/or practice laying down thresholds for the establishing of a representative body, Member States shall provide that employees in undertakings or establishments in which there are no employees' representatives through no fault of their own have the right to elect or appoint members of the special negotiating body.

3. The special negotiating body and the competent organs of the participating companies shall determine, by written agreement, arrangements for the involvement of employees within the SE.

To this end, the competent organs of the participating companies shall inform the special negotiating body of the plan and the actual process of establishing the SE, up to its registration.

4. Subject to paragraph 6, the special negotiating body shall take decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees. Each member shall have one vote. However, should the result of the negotiations lead to a reduction of participation rights, the majority required for a decision to approve such an agreement shall be the votes of two thirds of the members of the special negotiating body representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States,

- in the case of an SE to be established by way of merger, if participation covers at least 25 % of the overall number of employees of the participating companies, or

- in the case of an SE to be established by way of creating a holding company or forming a subsidiary, if participation covers at least 50 % of the overall number of employees of the participating companies.

Reduction of participation rights means a proportion of members of the organs of the SE within the meaning of Article 2(k), which is lower than the highest proportion existing within the participating companies.

5. For the purpose of the negotiations, the special negotiating body may request experts of its choice, for example representatives of appropriate Community level trade union organisations, to assist it with its work. Such experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, where appropriate to promote coherence and consistency at Community level. The special negotiating body may decide to inform the representatives of appropriate external organisations, including trade unions, of the start of the negotiations.

6. The special negotiating body may decide by the majority set out below not to open negotiations or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in the Member States where the SE has employees. Such a decision shall stop the procedure to conclude the agreement referred to in Article 4. Where such a decision has been taken, none of the provisions of the Annex shall apply.

The majority required to decide not to open or to terminate negotiations shall be the votes of two thirds of the members representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States.

In the case of an SE established by way of transformation, this paragraph shall not apply if there is participation in the company to be transformed.

The special negotiating body shall be reconvened on the written request of at least 10 % of the employees of the SE, its subsidiaries and establishments, or their representatives, at the earliest two years after the abovementioned decision, unless the parties agree to negotiations being reopened sooner. If the special negotiating body decides to reopen negotiations with the management but no agreement is reached as a result of those negotiations, none of the provisions of the Annex shall apply.

7. Any expenses relating to the functioning of the special negotiating body and, in general, to negotiations shall be borne by the participating companies so as to enable the special negotiating body to carry out its task in an appropriate manner.

In compliance with this principle, Member States may lay down budgetary rules regarding the operation of the special negotiating body. They may in particular limit the funding to cover one expert only.

#### Article 4

##### Content of the agreement

1. The competent organs of the participating companies and the special negotiating body shall negotiate in a spirit of cooperation with a view to reaching an agreement on arrangements for the involvement of the employees within the SE.

2. Without prejudice to the autonomy of the parties, and subject to paragraph 4, the agreement referred to in paragraph 1 between the competent organs of the participating companies and the special negotiating body shall specify:

(a) the scope of the agreement;

(b) the composition, number of members and allocation of seats on the representative body which will be the discussion partner of the competent organ of the SE in connection with arrangements for the information and consultation of the employees of the SE and its subsidiaries and establishments;

(c) the functions and the procedure for the information and consultation of the representative body;

(d) the frequency of meetings of the representative body;

(e) the financial and material resources to be allocated to the representative body;

(f) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the

arrangements for implementing those procedures;

(g) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights;

(h) the date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for its renegotiation.

3. The agreement shall not, unless provision is made otherwise therein, be subject to the standard rules referred to in the Annex.

4. Without prejudice to Article 13(3)(a), in the case of an SE established by means of transformation, the agreement shall provide for at least the same level of all elements of employee involvement as the ones existing within the company to be transformed into an SE.

## Article 5

### Duration of negotiations

1. Negotiations shall commence as soon as the special negotiating body is established and may continue for six months thereafter.

2. The parties may decide, by joint agreement, to extend negotiations beyond the period referred to in paragraph 1, up to a total of one year from the establishment of the special negotiating body.

## Article 6

### Legislation applicable to the negotiation procedure

Except where otherwise provided in this Directive, the legislation applicable to the negotiation procedure provided for in Articles 3 to 5 shall be the legislation of the Member State in which the registered office of the SE is to be situated.

## Article 7

### Standard rules

1. In order to achieve the objective described in Article 1, Member States shall, without prejudice to paragraph 3 below, lay down standard rules on employee involvement which must satisfy the provisions set out in the Annex.

The standard rules as laid down by the legislation of the Member State in which the registered office of the SE is to be situated shall apply from the date of the registration of the SE where either:

(a) the parties so agree; or

(b) by the deadline laid down in Article 5, no agreement has been concluded, and:

- the competent organ of each of the participating companies decides to accept the application of the standard rules in relation to the SE and so to continue with its registration of the SE, and

- the special negotiating body has not taken the decision provided in Article 3(6).

2. Moreover, the standard rules fixed by the national legislation of the Member State of registration in accordance with part 3 of the Annex shall apply only:

(a) in the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied to a company transformed into an SE;

(b) in the case of an SE established by merger:

- if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 25 % of the total number of employees in all the participating companies, or

- if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 25 % of the total number of employees in all the participating companies and if the special negotiating body so decides,

(c) in the case of an SE established by setting up a holding company or establishing a subsidiary:

- if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 50 % of the total number of employees in all the participating companies; or

- if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 50 % of the total number of employees in all the participating companies and if the special negotiating body so decides.

If there was more than one form of participation within the various participating companies, the special negotiating body shall decide which of those forms must be established in the SE. Member States may fix the rules which are applicable in the absence of any decision on the matter for an SE registered in their territory. The special negotiating body shall inform the competent organs of the participating companies of any decisions taken pursuant to this paragraph.

3. Member States may provide that the reference provisions in part 3 of the Annex shall not apply in the case provided for in point (b) of paragraph 2.

## SECTION III

### MISCELLANEOUS PROVISIONS

#### Article 8

##### Reservation and confidentiality

1. Member States shall provide that members of the special negotiating body or the representative body, and experts who assist them, are not authorised to reveal any information which has been given to them in confidence.

The same shall apply to employees' representatives in the context of an information and consultation procedure.

This obligation shall continue to apply, wherever the persons referred to may be, even after the expiry of their terms of office.

2. Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the supervisory or administrative organ of an SE or of a participating company established in its territory is not obliged to transmit information where its nature is such that, according to objective criteria, to do so would seriously harm the functioning of the SE (or, as the case may be, the participating company) or its subsidiaries and establishments or would be prejudicial to them.

A Member State may make such dispensation subject to prior administrative or judicial authorisation.

3. Each Member State may lay down particular provisions for SEs in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, on the date of adoption of this Directive, such provisions already exist in the national legislation.

4. In applying paragraphs 1, 2 and 3, Member States shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the supervisory or administrative organ of an SE or participating company demands confidentiality or does not give information.

Such procedures may include arrangements designed to protect the confidentiality of the information in question.

#### Article 9

Operation of the representative body and procedure for the information and consultation of employees

The competent organ of the SE and the representative body shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations.

The same shall apply to cooperation between the supervisory or administrative organ of the SE and the employees' representatives in conjunction with a procedure for the information and consultation of employees.

#### Article 10

Protection of employees' representatives

The members of the special negotiating body, the members of the representative body, any employees' representatives exercising functions under the information and consultation procedure and any employees' representatives in the supervisory or administrative organ of an SE who are employees of the SE, its subsidiaries or establishments or of a participating company shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the national legislation and/or practice in force in their country of employment.

This shall apply in particular to attendance at meetings of the special negotiating body or representative body, any other meeting under the agreement referred to in Article 4(2)(f) or any meeting of the administrative or supervisory organ, and to the payment of wages for members employed by a participating company or the SE or its subsidiaries or establishments during a period of absence necessary for the performance of their duties.

#### Article 11

Misuse of procedures

Member States shall take appropriate measures in conformity with Community law with a view to preventing the misuse of an SE for the purpose of depriving employees of rights to employee involvement or withholding such rights.

#### Article 12

Compliance with this Directive

1. Each Member State shall ensure that the management of establishments of an SE and the supervisory or administrative organs of subsidiaries and of participating companies which are situated within its territory and the employees' representatives or, as the case may be, the employees themselves abide by the obligations laid down by this Directive, regardless of whether or not the SE has its registered office within its territory.

2. Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular they shall ensure that administrative or legal procedures are available to enable the obligations deriving from this Directive to be enforced.

## Article 13

### Link between this Directive and other provisions

1. Where an SE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of Directive 94/45/EC or of Directive 97/74/EC(6) extending the said Directive to the United Kingdom, the provisions of these Directives and the provisions transposing them into national legislation shall not apply to them or to their subsidiaries.

However, where the special negotiating body decides in accordance with Article 3(6) not to open negotiations or to terminate negotiations already opened, Directive 94/45/EC or Directive 97/74/EC and the provisions transposing them into national legislation shall apply.

2. Provisions on the participation of employees in company bodies provided for by national legislation and/or practice, other than those implementing this Directive, shall not apply to companies established in accordance with Regulation (EC) No 2157/2001 and covered by this Directive.

3. This Directive shall not prejudice:

(a) the existing rights to involvement of employees provided for by national legislation and/or practice in the Member States as enjoyed by employees of the SE and its subsidiaries and establishments, other than participation in the bodies of the SE;

(b) the provisions on participation in the bodies laid down by national legislation and/or practice applicable to the subsidiaries of the SE.

4. In order to preserve the rights referred to in paragraph 3, Member States may take the necessary measures to guarantee that the structures of employee representation in participating companies which will cease to exist as separate legal entities are maintained after the registration of the SE.

## Article 14

### Final provisions

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 8 October 2004, or shall ensure by that date at the latest that management and labour introduce the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them at all times to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

## Article 15

### Review by the Commission

No later than 8 October 2007, the Commission shall, in consultation with the Member States and with management and labour at Community level, review the procedures for applying this Directive, with a view to proposing suitable amendments to the Council where necessary.

## Article 16

### Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

## Article 17

### Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 8 October 2001.

For the Council

The President

L. Onkelinx

(1) OJ C 138, 29.5.1991, p. 8.

(2) OJ C 342, 20.12.1993, p. 15.

(3) OJ C 124, 21.5.1990, p. 34.

(4) See page 1 of this Official Journal.

(5) OJ L 254, 30.9.1994, p. 64. Directive as last amended by Directive 97/74/EC (OJ L 10, 16.1.1998, p. 22).

(6) OJ L 10, 16.1.1998, p. 22.

## ANNEX

### STANDARD RULES

(referred to in Article 7)

Part 1: Composition of the body representative of the employees

In order to achieve the objective described in Article 1, and in the cases referred to in Article 7, a representative body shall be set up in accordance with the following rules.

(a) The representative body shall be composed of employees of the SE and its subsidiaries and establishments elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

(b) The election or appointment of members of the representative body shall be carried out in accordance with national legislation and/or practice. Member States shall lay down rules to ensure that the number of members of, and allocation of seats on, the representative body shall be adapted to take account of changes occurring within the SE and its subsidiaries and establishments.

(c) Where its size so warrants, the representative body shall elect a select committee from among its members, comprising at most three members.

(d) The representative body shall adopt its rules of procedure.

(e) The members of the representative body are elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together.

(f) The competent organ of the SE shall be informed of the composition of the representative body.

(g) Four years after the representative body is established, it shall examine whether to open negotiations for the conclusion of the agreement referred to in Articles 4 and 7 or to continue to apply the standard rules adopted in accordance with this Annex.

Articles 3(4) to (7) and 4 to 6 shall apply, *mutatis mutandis*, if a decision has been taken to negotiate an agreement according to Article 4, in which case the term "special negotiating body" shall be replaced by "representative body". Where, by the deadline by which the negotiations come to an end, no agreement has been concluded, the arrangements initially adopted in accordance with the standard rules shall continue to apply.

#### Part 2: Standard rules for information and consultation

The competence and powers of the representative body set up in an SE shall be governed by the following rules.

(a) The competence of the representative body shall be limited to questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State.

(b) Without prejudice to meetings held pursuant to point (c), the representative body shall have the right to be informed and consulted and, for that purpose, to meet with the competent organ of the SE at least once a year, on the basis of regular reports drawn up by the competent organ, on the progress of the business of the SE and its prospects. The local managements shall be informed accordingly.

The competent organ of the SE shall provide the representative body with the agenda for meetings of the administrative, or, where appropriate, the management and supervisory organ, and with copies of all documents submitted to the general meeting of its shareholders.

The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

(c) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies, the representative body shall have the right to be informed. The representative body or, where it so decides, in particular for reasons of urgency, the select committee, shall have the right to meet at its request the competent organ of the SE or any more appropriate level of management within the SE having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, this body shall have the right to a further meeting with the competent organ of the SE with a view to seeking agreement.

In the case of a meeting organised with the select committee, those members of the representative body who represent employees who are directly concerned by the measures in question shall also have the right to participate.

The meetings referred to above shall not affect the prerogatives of the competent organ.

(d) Member States may lay down rules on the chairing of information and consultation meetings.

Before any meeting with the competent organ of the SE, the representative body or the select committee, where necessary enlarged in accordance with the third subparagraph of paragraph (c), shall be entitled to meet without the representatives of the competent organ being present.

(e) Without prejudice to Article 8, the members of the representative body shall inform the representatives of the employees of the SE and of its subsidiaries and establishments of the content and outcome of the information and consultation procedures.

(f) The representative body or the select committee may be assisted by experts of its choice.

(g) In so far as this is necessary for the fulfilment of their tasks, the members of the representative body shall be entitled to time off for training without loss of wages.

(h) The costs of the representative body shall be borne by the SE, which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner.

In particular, the SE shall, unless otherwise agreed, bear the cost of organising meetings and providing interpretation facilities and the accommodation and travelling expenses of members of the representative body and the select committee.

In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the representative body. They may in particular limit funding to cover one expert only.

Part 3: Standard rules for participation

Employee participation in an SE shall be governed by the following provisions

(a) In the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SE. Point (b) shall apply *mutatis mutandis* to that end.

(b) In other cases of the establishing of an SE, the employees of the SE, its subsidiaries and establishments and/or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SE equal to the highest proportion in force in the participating companies concerned before registration of the SE.

If none of the participating companies was governed by participation rules before registration of the SE, the latter shall not be required to establish provisions for employee participation.

The representative body shall decide on the allocation of seats within the administrative or supervisory body among the members representing the employees from the various Member States or on the way in which the SE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SE's employees in each Member State. If the employees of one or more Member States are not covered by this proportional criterion, the representative body shall appoint a member from one of those Member States, in particular the Member State of the SE's registered office where that is appropriate. Each Member State may determine the allocation of the seats it is given within the administrative or supervisory body.

Every member of the administrative body or, where appropriate, the supervisory body of the SE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be a full member with the same rights and obligations as the members representing the shareholders, including the right to vote.

## Social provisions of the Treaty establishing the European Community

### Article 136

The Community and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the Community and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Community economy.

They believe that such a development will ensue not only from the functioning of the common market, which will favour the harmonisation of social systems, but also from the procedures provided for in this Treaty and from the approximation of provisions laid down by law, regulation or administrative action.

### Article 137

1. With a view to achieving the objectives of Article 136, the Community shall support and complement the activities of the Member States in the following fields:

- improvement in particular of the working environment to protect workers' health and safety;
- working conditions;
- the information and consultation of workers;
- the integration of persons excluded from the labour market, without prejudice to Article 150;

— equality between men and women with regard to labour market opportunities and treatment at work.

2. To this end, the Council may adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

The Council shall act in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee and the Committee of the Regions.

The Council, acting in accordance with the same procedure, may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences in order to combat social exclusion.

3. However, the Council shall act unanimously on a proposal from the Commission, after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions in the following areas:

— social security and social protection of workers;

— protection of workers where their employment contract is terminated;

— representation and collective defence of the interests of workers and employers, including codetermination, subject to paragraph 6;

— conditions of employment for third-country nationals legally residing in Community territory;

— financial contributions for promotion of employment and job-creation, without prejudice to the provisions relating to the Social Fund.

4. A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraphs 2 and 3.

In this case, it shall ensure that, no later than the date on which a directive must be transposed in accordance with Article 249, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive.

5. The provisions adopted pursuant to this Article shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.

6. The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

### **Article 138**

1. The Commission shall have the task of promoting the consultation of management and labour at Community level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.

2. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Community action.

3. If, after such consultation, the Commission considers Community action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.

4. On the occasion of such consultation, management and labour may inform the Commission of their wish to initiate the process provided for in Article 139. The duration of the procedure shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

### **Article 139**

1. Should management and labour so desire, the dialogue between them at Community level may lead to contractual relations, including agreements.

2. Agreements concluded at Community level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 137, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission.

The Council shall act by qualified majority, except where the agreement in question contains one or more provisions relating to one of the areas referred to in Article 137(3), in which case it shall act unanimously.

## **Article 140**

With a view to achieving the objectives of Article 136 and without prejudice to the other provisions of this Treaty, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this chapter, particularly in matters relating to:

- employment;
- labour law and working conditions;
- basic and advanced vocational training;
- social security;
- prevention of occupational accidents and diseases;
- occupational hygiene;
- the right of association and collective bargaining between employers and workers.

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations.

Before delivering the opinions provided for in this Article, the Commission shall consult the Economic and Social Committee.

## **Article 141**

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
2. For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
- (b) that pay for work at time rates shall be the same for the same job.

3. The Council, acting in accordance with the procedure referred to in Article 251, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.

4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

#### **Article 142**

Member States shall endeavour to maintain the existing equivalence between paid holiday schemes.

#### **Article 143**

The Commission shall draw up a report each year on progress in achieving the objectives of Article 136, including the demographic situation in the Community. It shall forward the report to the European Parliament, the Council and the Economic and Social Committee.

The European Parliament may invite the Commission to draw up reports on particular problems concerning the social situation.

#### **Article 144**

The Council may, acting unanimously and after consulting the Economic and Social Committee, assign to the Commission tasks in connection with the implementation of common measures, particularly as regards social security for the migrant workers referred to in Articles 39 to 42.

#### **Article 145**

The Commission shall include a separate chapter on social developments within the Community in its annual report to the European Parliament.

The European Parliament may invite the Commission to draw up reports on any particular problems concerning social conditions.

## Web addresses of other relevant documents

- **Report from the Commission to the European Parliament and the Council - 04.4.2000**
  - [http://europa.eu.int/comm/employment\\_social/labour\\_law/docs/03\\_ewc\\_implreport\\_en.pdf](http://europa.eu.int/comm/employment_social/labour_law/docs/03_ewc_implreport_en.pdf)
  
- **European Parliament Resolution on the Commission Report - 04.9.2001**
  - <http://www3.europarl.eu.int/omk/omisapir.so/pv2?PRG=QUERY&APP=PV2&LANGUE=EN&TYPEF=A5&FILE=BIBLIO01&NUMERO=0282&YEAR=01>
  
- **Communication from the Commission - The European social dialogue, a force for innovation and change - 26.6.2002**
  - [http://europa.eu.int/comm/employment\\_social/news/2002/jul/socdial\\_en.pdf](http://europa.eu.int/comm/employment_social/news/2002/jul/socdial_en.pdf)
  
- **Opinion of the European Economic and Social Committee – 24.9.2003**
  - [http://eescopinions.esc.eu.int/viewdoc.aspx?doc=\\esppub1\esp\\_public\ces\soc\soc139\en\ces1164-2003\\_ac\\_en.doc](http://eescopinions.esc.eu.int/viewdoc.aspx?doc=\\esppub1\esp_public\ces\soc\soc139\en\ces1164-2003_ac_en.doc)