

**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.