

30 June 2008

Dear Head of Cabinet,

**Re: Letter to EU Commissioners' Heads of Cabinets on EWCs**

We understand the EU Commission is entering the last phase leading to adoption of the proposed revision concerning the EU directive on European work councils. More than 800 among Europe's largest companies are very much concerned about the present draft text. They fear that their operations could be hampered through this proposal if it were adopted as it stands.

BUSINESSEUROPE had offered immediate negotiations to the European Trade Union Confederation last April. Not only were we surprised that this offer was refused by ETUC but we now fail to understand why the Commission is taking a biased view on the issues in question.

Indeed, the present draft imposes on companies a number of new burdens of lengthy and uncertain consultation. It is a breach of the original spirit of the directive, which was to entrust social dialogue to determine how companies handle information and consultation of workers. Instead, the draft introduces several rules which constitute a straitjacket to negotiations at company level. Where is autonomy of decision in this directive? In addition, the proposal departs from a normal directive, i.e. a goal set at EU level, the means to reach it belonging to member states.

This draft is over-prescriptive and ill-suited for individual companies. It will endanger business in the EU and will run directly counter to freedom of companies. In our view, it is a serious attack on the Lisbon spirit which was to try and make Europe the most competitive region in the world. How can Europe help its companies to grow or attract new ones if it establishes such high obstacles to taking decisions quickly and adapting to competition?

Contrary to the 1994 directive, which successfully allowed more than 800 companies to implement information and consultation at European level, the present draft directive raises three major challenges that we want to draw to your attention:

- The text is biased in favour of trade unions, giving them undue legal recognition and a major role that corresponds neither to their influence in Europe nor to the interests of workers themselves. Trade unions and workers are not

interchangeable concepts. The draft directive comprises bureaucratic elements that can only impede genuine social dialogue and raise a number of legal challenges to normal business operations. The role of workers' representatives should continue to be dealt with on a case-by-case basis in companies, reflecting social and economic reality. We agreed to reinforce the means available to members of EWCs, notably through training, but their power should be confined within the company and not allow employee representatives to engage in outside lobbying on the basis of their EWC membership.

- The text raises serious challenges to existing agreements under article 13, which have enabled companies to be exempt from the obligations of the directive if an agreement with their workforces was reached ahead of the original transposition deadline of 22 September 1996. Agreements established under article 13 account for 40% of all EWCs and should remain protected. The Commission had promised it would not endanger them and we need this promise to be kept. Not only should article 13 not be restricted as it is now, but it would be logical to offer a new possibility to conclude article 13 agreements in the two years following adoption of the directive, as was decided in 1994. This would be in line with the preamble of the proposal recalling the need to encourage new companies to set up an EWC. Otherwise, uncertainty would be high and the risk would appear quickly that companies would be forced to lose the advantages of article 13 agreements despite the good functioning of their EWC.
- The text leaves the door open to a possible consultation process taking place before the decision is taken. This would not only challenge the right of management to take decisions approved by shareholders, but also slow down operations. It is anything but benign. We favour a consultation in good time, effective, and fair. If it takes place between the moment the decision is taken and the moment the decision is implemented, then it is effective and fair because the format and the content of the decision can still be adapted. This point must be clearly defined in the text and the worst would be to allow a consultation on "envisaged measures". We cannot afford to leave the settlement of this major question to a future decision of the ECJ.

BUSINESSEUROPE is very concerned that an EU initiative would further weaken European industry at the very moment when competition is becoming tougher and international uncertainties are being reassessed. We are pleased to suggest the above-mentioned proposals to develop the efficiency and smooth functioning of EWCs. This cannot be achieved if choices are made that are obviously detrimental to EU companies. The initiative should be balanced. All the new proposals aim at giving new powers to trade unions or workers, without any consideration being given to management. On the contrary, management is faced with new constraints and procedures, with no incentive to tackle challenges through social dialogue.

BUSINESSEUROPE urges the Commission to avoid the temptation to completely overhaul the original text. It was supposed to be a revision in order to facilitate social dialogue, not a dramatic rewriting of the directive to offer new tools to help trade unionism strengthen its grip on day-to-day functioning of EU companies. If the EU goes down this route, a negative outcome for Europe and its citizens can easily be foreseen.

We want a balanced text, trying to empower social dialogue and improve clarity and legal certainty, for instance in the definition of consultation and the future of article 13. We are ready to agree on some means to be given to EWCs. But a fundamental change to the spirit of the text and of the rules of the game will only discourage new companies from engaging in EWCs and introduce threats to existing ones.

BUSINESSEUROPE is committed to promote EWCs and to encourage constructive individual solutions to be found in each company, through a sincere and results-oriented dialogue between management and workers. The strength of EWCs is that they have been jointly agreed and created. If all this becomes a pure question of bureaucracy and compliance, then it is foreseeable that the impetus will decrease and business will be encouraged to avoid investment in the EU. Why add to the EWCs reputation for generating red tape?

I hope that you will consider those considerations. The draft proposal creates far-reaching difficulties for companies and does not facilitate social dialogue. Too many rules are introduced which all go in the same direction: giving more power to trade-unionism without improving effectiveness of information and consultation. We raise the attention of the EU Commission of this dangerous vision of industry. We do hope that the possibility exists to come back to a more modest, legally certain and concrete attempt to help the development of EWCs from which many companies have hitherto been able to draw inspiration.

Yours sincerely,



Philippe de Buck