

Opinion of the European Economic and Social Committee on European Works Councils: a new role in promoting European integration

(2006/C 318/25)

On 12 July 2005 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on *European Works Councils: a new role in promoting European integration*.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 September 2006. The rapporteur was Mr Iozia.

At its 429th plenary session, held on 13 and 14 September 2006 (meeting of 13 September), the European Economic and Social Committee adopted the following opinion by 144 votes to 76 with 15 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee recognises the essential role of European Works Councils (EWC) in stimulating and upholding social cohesion, and as a means of integrating European workers, with mutual knowledge and understanding helping European citizens to gain a clearer picture. The more than 10 000 EWC delegates working in Europe are directly and actively committed to creating a new society.

1.2 The European social model, based on consensus-seeking and social dialogue, respect for personal identity and dignity, conciliation of different interests, the ability to combine development with care for individuals and the environment, advocates creating a forum for meeting and discussion within transnational companies. The EESC believes that Directive 94/45 has played an important part in achieving these objectives.

1.3 The Commission was required, not later than 22 September 1999, to review its operation 'in consultation with the Member States and with management and labour at European level', with a view to proposing 'suitable amendments to the Council, where necessary'.

1.4 The Commission has begun consulting the social partners. UNICE and CEEP have said they are opposed to a revision of the directive. The European Trade Union Confederation (ETUC), in contrast, has repeatedly called for an urgent revision.

1.5 The EESC has closely examined the present situation, in part by means of a hearing with labour, employers' and civil society representatives.

1.6 Experience to date presents many positive aspects. As pointed out by several studies on the question, and as recalled by the EESC, the social partners have also reached voluntary agreements on work organisation, employment, working conditions and further training, based on a partnership for change. Their successful implementation is also entirely dependent on the will of the parties concerned.

1.7 The EWC experience has also revealed a number of areas of concern: the most prominent of these is the persistently low percentage of EWCs set up compared to the number of companies covered by obligations under the directive, which allows for the possibility of setting up EWCs at the initiative of undertakings or workers in at least two Member States. The lack of workers' initiative is one of the reasons for the incomplete implementation of the directive, although this might itself be due in some countries to the absence of legislation protecting trade union rights in enterprises.

1.8 In the years since Directive 94/45 came into force, the Community legal framework on information and consultation rights has been strengthened, in particular by Directives 2001/86, 2002/14 and 2003/72, which provide a more advanced view of information and consultation than under Directive 94/45, together with employee involvement procedures designed to ensure that they take place prior to any decisions. These procedures help to make European businesses more competitive on a global scale.

1.9 The EESC has identified three main points which it feels should be taken into consideration for a rapid updating of Directive 94/45:

- coordination of the information and consultation provisions of Directive 94/45 with those dealing with the same question in the above-mentioned directives;
- an adjustment to the number of worker representatives on the Special Negotiating Bodies (SNBs) and EWCs to reflect EU enlargement and the right of representatives of each country concerned to belong to the former; the directive had set a maximum membership of 17, which at the time corresponded to the number of countries covered by the directive;
- recognition of the right of national and European trade unions to belong to SNBs and EWCs, and to make use of their own experts, not only during the scheduled meetings.

1.10 The EESC proposes that, following a reasonable period of integration for the new Member States and in the light of whatever the social partners may highlight from the lessons learned on EWCs, currently being discussed in various seminars, the directive should be subject to a review which takes account of these experiences and of those indications which can already be made.

1.11 The EESC upholds the social dimension of businesses in the European Union, and the role played by EWCs. In discussing sustainable development and the European social model, the European debate has focused on the Union's unique features. Corporate social responsibility in a global economy represents one of Europe's responses to the problems raised by globalisation, the negative effects of which could be mitigated by the adherence of all WTO members to basic ILO standards. Businesses are seen as a major player on the social scene, able to make a vital contribution to enhancing the quality of life of all stakeholders and of the regions. It should be noted that, as with EWCs themselves, and particularly at transnational level, progress made through social dialogue is all the greater for being legislation-based.

1.12 The EESC takes note of the Commission's comments, in its Communication on corporate social responsibility, regarding the important role of employees and their trade unions in implementing CSR practices⁽¹⁾. In the communication, the Commission argues that 'social dialogue, especially at the sectoral level, has been an effective means for promoting CSR initiatives, and European Works Councils have also played a constructive role in the development of best practice on CSR. Nevertheless, the uptake, implementation and strategic integration of CSR by European enterprises should be further improved. The role of employees, their representatives and their trade unions in the development and implementation of CSR practices should be further enhanced. External stakeholders, including NGOs, consumers and investors, should play a stronger role in encouraging and rewarding responsible business conduct'.

1.13 The European social model is marked by the respect it shows for the rights on which human dignity is based, as well as by the protection it provides for the most vulnerable through welfare systems. In today's Europe, it should be indeed possible to exercise citizenship rights everywhere, including in the workplace and, in particular, within cross-border companies. The EESC urges the Commission to recognise those new elements which have emerged since Directive 94/45 was adopted, and to identify the measures most likely to strengthen the feeling of belonging to the Union.

(1) COM(2006) 136 final.

2. The socio-economic and legislative context in which European Works Councils operate

2.1 The EESC wishes firstly to highlight the positive aspects emerging from ten years' implementation of Directive 94/45, without however overlooking the difficulties and areas of concern which have marked the European Works Council (EWC) experience. To this end, it plans to ask all the relevant stakeholders, both Community institutions and bodies, and the social partners at the various organisational levels, to cooperate in improving this democratic instrument of representation which, it is now clear, is essential if the European social model is to be consolidated. The EESC confirms its support for the stable development and reinforcement of this instrument.

2.2 The purpose of the EESC's present own-initiative opinion is to help make the role of EWCs more incisive, by means of updating Directive 94/45 so as to facilitate integration and social cohesion. This is an objective of increasing political significance, especially in the current climate in which the impetus towards a socially stronger and more united European Union is diminishing.

2.3 Much has changed in the European Union in the twelve years since the directive was adopted. The enlargement process, supported by the EESC, resulted in the accession of ten countries in May 2004, and two more, Bulgaria and Romania, are about to enter. In spite of the considerable efforts to bring national legislation into line with the *acquis communautaire* and the substantial progress made in protecting working conditions, there is no doubt that in some of these countries, workers' and employers' organisations still experience difficulties in consolidating their level of representation.

2.4 The EESC hopes that the social dialogue will be reinforced and is convinced that EWCs are crucial to achieving this aim, since they introduce structures for contact and mutual understanding which can promote a culture of social dialogue in the Member States.

2.5 The adoption by the Council of Ministers, on 22 September 1994, of Directive 94/45 on *The establishment of a European Works Council or a procedure for the purposes of informing and consulting employees* and its extension to the United Kingdom by Council Directive 97/74/EC of 17 December 1997 marked a crucial step forward in the development of a European social dialogue at company level, matching the transnational structure of companies and groups of companies. This new transnational instrument, has made a very important contribution to developing the European dimension of industrial relations⁽²⁾.

(2) EESC opinion on the *Practical application of the European Works Council Directive (94/45/EC) and on any aspects of the directive that might need to be revised* (rapporteur: Mr Piette), OJ C 10 of 14.1.2004, p. 11.

2.6 Under Article 15 of Directive 94/45, the Commission was required, not later than 22 September 1999, to review its operation 'in consultation with the Member States and with management and labour at European level', 'with a view to proposing suitable amendments to the Council, where necessary'. The review was to concentrate on how the directive's operation and, consequently, all aspects relating to the establishment and operation of European Works Councils, and particularly the suitability of the workforce size thresholds.

2.7 While recognising that the process involved was certainly innovative, the Commission felt that by 22 September 1999 the negotiations and other work conducted by the EWCs should have provided enough information and practical experience to permit a review of the directive.

2.8 On 4 April 2000 the Commission presented its report on the application of the directive to the Parliament and the Council. While focusing essentially on an assessment of the transposition measures adopted by the Member States, the report also examined the application of the directive itself. The Commission underlined that, regardless of the quality of the implementing measures, some of the points they contained still needed further interpretation. It also pointed out that it was usually either the parties concerned or the courts who settled these issues. The Commission did not therefore consider it necessary to propose any amendments at that stage.

2.9 The EP took an interest in the review of the directive. In its resolution on the application of the directive and the need for it to be revised, adopted on 4 September 2001, the European Parliament highlighted the role of transnational bodies representing employees and assessed the limits of, and opportunities arising from, exercise of the rights to information and consultation⁽³⁾. The EP therefore urged the Commission to put forward a proposal for a revision at an early date, to include a series of improvements: as well as enabling workers to influence management decision-making processes, and providing for appropriate sanctions, the EP considered that the definition of 'Community-scale undertakings' should be re-examined with reference to the thresholds. According to the EP, the threshold for the directive's scope should have been lowered from companies with 1 000 employees to those with 500, and from 150 to 100 for those operating in at least two Member States (as is known, throughout the course of the directive's adoption procedure, the Parliament and Commission had both suggested a lower threshold than was eventually laid down in Directive 94/45)⁽⁴⁾.

2.10 In 2004, at the end of a lengthy implementation period for Directive 94/45, the Commission considered that a further

examination of the directive's application should be carried out, particularly since the issue was included on the Social Agenda adopted at Nice in December 2000.

3. The procedure for reviewing Directive 94/45

3.1 On 20 April 2004 the Commission commenced the first stage of consultation of the social partners on a possible revision of Directive 94/45, asking them to comment on:

- how best to ensure that the potential of 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 the review of the EWC directive;
- the role the social partners intend to play in addressing issues connected with managing a context of rapid and radical change, and its social consequences.

3.2 In opening the consultation procedure, the Commission noted that the institutional landscape has changed considerably since it was examined in its report of 4 April 2000. The report did not reflect new developments such as the Lisbon Agenda or Union enlargement. Regarding this second aspect more specifically, the Commission pointed out that 'the inclusion of activities in the new Member States will swell the number of undertakings or groups falling within the scope of the directive', and that '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'. Application of the EWC directive after 1 May 2004 will entail more, and new, representatives from the new Member States with a different economic environment, social traditions, languages and cultures, compounded by greater complexity and higher cost.

3.3 The European Economic and Social Committee adopted an opinion on 24 September 2003 in which it drew the Commission's attention to a number of aspects to take into account in any revision of the directive⁽⁵⁾.

3.4 UNICE has replied to the Commission that it is strongly opposed to a revision of the EWC directive⁽⁶⁾. The best way of developing worker information and consultation in Community-scale undertakings is through dialogue at the level of the companies affected by the directive. Intervention by the EU legislator would be counterproductive, as it could undermine the dynamic for gradual progress in EWC functioning. For its part, the CEEP has declared its opposition to a revision of the directive at this stage. It does not agree with a revision of

⁽³⁾ EP document (A5-0282/2001).

⁽⁴⁾ European Parliament Report A5-0282/2001 FINAL of 17 July 2001 on the Commission report on the application of Directive 94/45/EC, Committee on Employment and Social Affairs.

⁽⁵⁾ Cf. footnote 2.

⁽⁶⁾ See document of 1.6.2004.

Directive 94/45, but calls for better use of existing tools, especially the information and consultation procedure. The European social partners could play a key role in this process, especially in the new Member States. Furthermore, the case studies underpinning the basic guidelines for managing change and its social consequences highlight the importance of effective information and consultation and point to further social partner activities, particularly in the new Member States ⁽⁷⁾.

3.4.1 The ETUC, in contrast, has responded favourably, confirming a number of comments already made in a previous resolution from 1999 ⁽⁸⁾: basing its thinking on established agreements and practices so far, the ETUC argues that the restrictions and shortcomings attributable to the legislation cannot be redressed purely through negotiations, or voluntarily, while perhaps continuing to monitor the positive results of best practice, but that a revision of the directive itself is 'urgently necessary' ⁽⁹⁾.

3.5 The Commission has moved on to the second stage of consultation of the European social partners on the review of the EWC directive, albeit in conjunction with the consultation on restructuring. The EESC welcomed the launch of the second stage, while expressing its reservations about the fact that the procedure was taking place at the same time as, and in conjunction with, another subject: **'European Works Councils do, indeed, play an important role in the issue of restructuring. Quite apart from this fact, however, the improvement of the European Works Council Directive is long overdue'** ⁽¹⁰⁾.

4. The EWC experience. A question of method: highlighting positive aspects and thinking about negative results

4.1 Experience to date presents many positive aspects. The studies show how a growing number of EWCs are functioning effectively under the new conditions. As underlined in the April 2005 Joint Statement by the social partners, *'Lessons learned on European Works Councils'*, EWCs have, among other things, helped workers' representatives and workers themselves to understand the internal market and a transnational corporate culture in a market economy. Research indicates that a

growing number of EWCs are functioning effectively, and are enhancing social dialogue. As pointed out by several studies on the question, as indicated by the social partners in a number of joint seminars, and as recalled by the EESC in particular, voluntary agreements on work organisation, employment, working conditions and further training, based on a partnership for change, have also been reached ⁽¹¹⁾.

4.1.1 All these proposals have analysed the major problems which have emerged from the monitoring of the work of the EWCs, carried out on several occasions. One of the most recent studies ⁽¹²⁾ revealed that almost 75 % of EWCs do not at present comply with the directive's requirements for the provision in good time of information in the event of restructuring. Another very important point emerging from an examination of the replies from 409 delegates belonging to 196 EWCs is that 104 delegates reported that joint texts had been negotiated and finalised within their respective EWCs. Given that in 2001, according to a major study by the European Foundation for the Improvement of Living and Working Conditions ⁽¹³⁾, 14 agreements were signed directly or indirectly by EWCs, a clear, albeit partial, view emerges of how the role of EWCs is subject to constant change, and that they are gradually building up a real negotiating power.

4.2 The EWC experience has also revealed a number of areas of concern which must be examined carefully in order to improve this democratic instrument for representation and involvement of workers, which has now become an essential component of the European social model. The most prominent of these is the low percentage of EWCs compared to the number of companies obliged to set them up at workers' request, in accordance with the directive. In December 2004, out of over 2 000 undertakings covered by the directive, some 800 EWCs had been set up ⁽¹⁴⁾, representing approximately 70 % of the workforce employed in companies covered by the directive. One of the reasons for the incomplete application of the directive is lack of initiative on the part of workers. This, however, in the case of several countries, is due to poor worker representation in the workplace, which might be caused in turn by the insufficient protection provided by national legislation. This aspect merits closer examination with a view to identifying possible remedies.

4.3 The new and broader territorial scope of Directive 94/45/EC clearly means that there must be a process for consideration and study, enabling all stakeholders, in both the longer-standing and the recently-entered EU Member States to take on board facts and figures from different cultures, methods and situations, and to overcome the obstacles presented by social, economic and cultural differences, so as to strengthen the European system of industrial relations as a whole.

⁽⁷⁾ See CEEP document of 18.6.2004: CEEP answer to the first-stage consultation of the European Social Partners on the review of the European Work Councils Directive.

⁽⁸⁾ See document of 1.6.2004.

⁽⁹⁾ Trade Union Memorandum to the Luxembourg Presidency of the European Union — ETUC, March 2005.

⁽¹⁰⁾ EESC opinion on the Communication from the Commission on the Social Agenda (rapporteur: Ms Engelen-Kefer), OJ C 294 of 25.11.2005, p. 14.

⁽¹¹⁾ Idem.

⁽¹²⁾ Jeremy Waddington, University of Manchester: The views of EWC representatives, for ETUI, November 2005.

⁽¹³⁾ Mark Carley, Bargaining at European level, Joint texts negotiated by EWC, Dublin 2001.

⁽¹⁴⁾ Kerckhofs and Pas EWC Database ETUI (December 2004).

4.3.1 Enlargement-related issues are however only one aspect of the broader changes throughout the EU's labour market and business sector. The quickening pace of cross-border restructuring, now a permanent feature of company life, and the new forms which businesses are taking, present European Works Councils with challenges far greater than envisaged by the Community legislator in Directive 94/45, as reflected in subsequent enactments of legislation on worker involvement.

4.4 The legislative environment has indeed changed substantially. New Community legislation has been introduced on the information and consultation of workers both across borders, such as Directive 2001/86/EC of 8 October 2001 on the involvement of employees in the European company and the directives on the European company and on mergers, and at national level, such as Directive 2002/14/EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.

4.5 The new and more robust role to be played by EWCs is also set out in the Commission's communication on restructuring in cross-border companies ⁽¹⁵⁾.

4.6 In a series of opinions, the EESC has stated that it favours developing and strengthening EWCs ⁽¹⁶⁾, in connection with the important part they have to play in cross-border restructuring. In the mechanical engineering sector, the role of EWCs has been vital in many cases of restructuring, helping to achieve agreements aimed at maintaining production sites and safeguarding jobs.

5. The role of Directive 94/45 in the evolution of European industrial relations

5.1 Directive 94/45 is one of the most significant pieces of industrial relations legislation adopted at European level. In spite of certain loopholes and shortcomings, pointed out from several quarters, it has certainly made a substantial contribution to launching the process of creating new transnational industrial relations practices, combining new models for solidarity between workers from different countries and for constructive discussion between representatives of employees and transnational companies. It also, for the first time, establishes joint means for representing and safeguarding some fundamental rights of workers regardless of national borders.

⁽¹⁵⁾ COM(2005) 120 final.

⁽¹⁶⁾ EESC opinion on *Social dialogue and employee participation, essential for anticipating and managing industrial change*, 29 September 2005 (CESE 1073/2005), rapporteur: Mr Zöhrer. OJ C 24 of 31.1.2006, p. 90.

5.2 However, as the data on the application of the directive illustrate, its dynamic contribution to building an integrated industrial relations model and consolidating the European social model seems to have been running out of steam in recent years. A number of structural factors, regarding changes in the labour market and business organisation, have contributed to this fall-off. The EESC has previously discussed these factors in its opinions on the Commission's Social Agenda and on restructuring. Other reasons for the diminishing impact of EWCs lie in the fact that the EWCs' information and consultation rights fail 'to make appropriate action' on the definition and implementation of company industrial policy 'feasible'. In other cases, the role of the EWCs has been recognised.

5.3 On the contrary, as the EESC pointed out in a recent opinion, **'European industrial policy needs to be defined in business, sectoral and intervocational terms, and put into practice with input from the social partners, whose expert knowledge, as the main stakeholders affected, will be vital. This requires that companies make their intentions clear at an early enough stage to make appropriate action by the other stakeholders feasible'** ⁽¹⁷⁾.

5.4 One factor in the weakness of EWC action may be that the information and consultation arrangements — aspects covered by the review of Directive 94/45 — appear inconsistent with both the new economic and structural environment and the new Community legislative framework as established by Directives 2001/86 and 2003/72, and Directive 2002/14. In these directives, information and consultation procedures are not purely formal: they are not routine requirements which companies can simply tick off 'downstream' of the decision-making process, but are, in fact, procedures to be carried out 'upstream' of that process.

5.5 Under the directives supplementing the Statute for a European Company and the European Cooperative Society, the purpose of the information and consultation procedures is not only to inform employees' representatives of final decisions that the company has already made regarding important steps, such as transformation or reorganisation on a transnational scale, but above all to give them the right to 'exercise an influence' over such decisions.

⁽¹⁷⁾ EESC opinion on *The scope and effects of company relocations* (rapporteur: Mr Rodríguez García-Caro), OJ C 294 of 25.11.2005, p. 9, point 4.5.10.

6. Informing and consulting employees, an essential component of the European social model

6.1 The employee information and consultation procedures (together with participation procedures in the strict meaning of the word under the terms of Directives 2001/86 and 2003/72) are crucial elements not only in the EU's industrial relations systems, but also in the European social model itself, as can be seen in the way these rights are expressed in the EU's primary sources⁽¹⁸⁾ and their continuing development in Community secondary legislation. The rights in question are recognised and safeguarded in an extensive series of directives⁽¹⁹⁾, in a process culminating in the signing of the Charter of Fundamental Rights in December 2000, and its subsequent incorporation into the Treaty establishing a Constitution for Europe⁽²⁰⁾.

6.1.1 Under the Charter of fundamental rights, the provision that the rights are to be exercised 'in good time' is of particular importance: in this way, an interpretation focusing on the mostly anticipatory nature of these rights would be boosted, in keeping with recent developments in legislation (cf. the above-mentioned directives) and case-law⁽²¹⁾.

6.1.2 The progressive and continuous development of the legislation on the rights of information and consultation since the mid-1970s, within both the national and transnational legal frameworks, can be explained by the Community legislator's concern that the procedures in question should be more than merely formal or routine. As is generally known, the decisive impetus for strengthening these rights came from the events surrounding the closure of the Renault works in Vilvoorde (February 1997), which also had significant judicial implications.

6.2 A report drawn up by a group of experts (the Gyllenhammar Group) at the request of the Luxembourg European Council (November 1997) highlighted the need for a new Community legislative framework to lay down minimum standards which, as well as establishing common principles, rules and methods in the Member States regarding information and consultation, would be consistent with the European Employment Strategy. The strategy, based on the concepts of 'anticipation', 'prevention' and 'employability', which subsequently became features of the European employment strategy, must be

⁽¹⁸⁾ See Article 137 of the TEC, now Article III-210 of the new Treaty of Rome.

⁽¹⁹⁾ Including those on protecting workers in the event of collective redundancies or transfers of undertakings (Directives 98/59 and 2001/23), safety and health at work (Directive 89/391 and specific directives), the involvement of employees in general (Directive 2002/14) and in specific company matters (Directives 2001/86 on the involvement of employees in the European company (SE) and 2003/72 on the involvement of employees in the European cooperative society (SCE)).

⁽²⁰⁾ Article II-87, *Workers' right to information and consultation within the undertaking*, which enshrines the substance of Article 21 of the Council of Europe's European Social Charter, as amended in 1996, together with points 17 and 18 of the 1989 Community Charter.

⁽²¹⁾ (Court of Justice, Judgment of 29 March 2001 in case C-62/99, Bofrost, and the Judgment of 11 July 2002 in case C-440/00, Kühne).

incorporated into the Member States' public policies if it is to have a positive effect on employment by means of an intensified social dialogue, including at company level, in order to facilitate change which is compatible with the continuing priority objective of employment.

6.3 The references to 'employee involvement in the operation and future of the undertaking', partly to 'increase its competitiveness'⁽²²⁾ assume their full meaning in this context. The legislator specifies that such involvement is 'a prerequisite for the success of the restructuring and adaptation of undertakings to the new conditions created by globalisation of the economy'⁽²³⁾.

6.4 This provision is particularly important in making information and consultation procedures effective and, therefore, ensuring effective and substantial involvement of workers, particularly where it is stated⁽²⁴⁾ in the subsidiary applicable standard rules that if the company '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 (or SCE) with a view to seeking agreement'.

6.5 European companies, especially those structured in large groups, are engaged in increasingly radical and rapid restructuring operations. In a recent opinion, the EESC pointed that 'restructuring that is carried out only in response to change usually has painful effects, especially for employment and working conditions'. It concluded that 'the inclusion and involvement of workers and their representatives and trade unions is therefore crucial to managing change in a socially acceptable way at company level', arguing that 'European works councils have a special role to play here. Transnational social dialogue at company level is clearly forging ahead, as shown by the example of agreements on restructuring measures reached by companies with European works councils and/or European trade union federations'⁽²⁵⁾.

6.6 The nature and intensity of these restructuring processes have served to highlight the inadequacy of the legislative and negotiating instruments currently available to workers' and the social partners' representatives at the various levels and have pointed to the need for broader and deeper involvement of the trade unions at the various levels. The aim therefore is not only to complete the formal application phase of the directive on

⁽²²⁾ C.f. the seventh recital of the preamble of Directive 2002/14.

⁽²³⁾ C.f. the ninth recital of the same directive.

⁽²⁴⁾ See Directive 2001/86, and also Directive 2003/72, Part 2 of the Standard Rules.

⁽²⁵⁾ EESC opinion on *Social dialogue and employee participation, essential for anticipating and managing industrial change*, 29 September 2005 (rapporteur: Mr Zöhrer). OJ C 24 of 31.1.2006, p. 90.

EWCs, but also, firstly, to ensure the full efficacy of agreements and national transposition standards and, secondly, to bring the information and consultation procedures and EWC rights into line with the changed market conditions and more active management policies.

6.7 A more careful and receptive attitude to negotiations, although it is, of course, to be encouraged, would not seem to be enough for this purpose; targeted action is needed on those parts of the directive which, if not subjected to appropriate amendment, could make the role of the EWC meaningless and, more generally, undermine the good practices so far introduced. There is, moreover, a danger that the spread of essentially routine procedures at supranational level — which is crucial for many company decisions which would not otherwise be subject to trade union scrutiny — or the replacement of existing good information and consultation practice with 'bad practice', could have a harmful influence on the effectiveness of information and consultation rights at national level. This is in addition to the counterproductive effect, in terms of legitimacy and authority, that it could have on relations between employees and local company managements, with damaging repercussions on the culture of binding information and consultation rights, as recently set out in the Nice Charter and Directives 2001/86, 2003/72 and 2002/14 (this could be summed up, to paraphrase Gresham's Law, as 'bad information drives out the good').

6.8 A crucial element is the formal recognition of trade union organisations. The directives on the involvement of workers in the SE and SCE mention, for the first time, workers' organisations as entities who may be members of the Special Negotiating Body. The earlier directives (on information and consultation rights) did not grant a direct (or supporting) role in negotiations to trade union organisations as such. These elements as well as national specificities must be taken into account with a view to any review of the directive, together with others to be indicated below.

7. Why the directive should be re-examined before negotiations begin on its revision

7.1 It is agreed in many quarters that there are three main sets of reasons for a re-examination of the directive.

7.1.1 The first reason concerns the need to bring the 1994 Directive into line with the changes occurring in subsequent directives dealing with this issue. There is a need for simplification and coordination, in order to eliminate the discrepancies that exist in the definitions of information and consultation in the various directives.

7.1.2 The second reason for change derives from EU enlargement, which logically necessitates a change in the number of SNB and EWC representatives, increasing their number proportionately.

7.1.3 The third reason concerns recognition of the right of national and European trade unions to take part in negotiations and to be EWC members (in the same way as under the directives on the involvement of employees in the SE and SCE), with the opportunity to make use of their own experts, not only for scheduled meetings.

7.1.4 In addition, an assessment of current EWC practice suggests that Directive 94/45 should be reviewed in the light of the potential prospects in the area of corporate social responsibility and the new role that civil society organisations could play with European- and world-scale companies, as well as the efforts those companies need to make to uphold fundamental social and trade union rights within their field of activity.

7.2 The lessons learned on EWCs ⁽²⁶⁾, as expressed by the social partners, are worthy of a more in-depth examination and should lead to an improvement in EWC practices and to better and further development of the agreements. This should not however serve to prevent efforts getting under way regarding how EWCs function in order to define the basis for a revision, following a reasonable period of integration for the new Member States into the EWC process. As part of the future discussions and negotiations, the following points should be taken into account:

- a) Making the current text clearer regarding the methods and quality of the information and consultation: a clearer statement regarding the prior (or anticipatory) nature of the information and consultation procedures is required, especially on issues 'on the agenda' or raised by employees' representatives. Failure to accept the prior nature of the procedures themselves, as set out in the Community legislation on EWCs would lead to a serious imbalance between the procedures under Directive 94/45 on the one hand, and those in the involvement of employees (in the Directives on the European company and the European cooperative society) on the other, with the risk of weakening the latter. Moreover, the spread of *ineffective* information and consultation procedures in Community-scale undertakings (such procedures being compulsory under Directive 94/45) could have a negative, 'copy-cat' effect on information and consultation procedures which must be carried out by national undertaking in accordance with several Community directives ⁽²⁷⁾.

⁽²⁶⁾ Lessons learned on European Works Councils, 7 April 2005, ETUC, UNICE, UEAPME and CEEP.

⁽²⁷⁾ Safeguarding of employees' rights in the event of collective redundancies or transfers of undertakings, and Directive 2002/14.

- b) For very large EWCs, or in the light of the functions they are required to perform, providing a permanent secretariat and a smaller body to prepare meetings, arrange for supply of documents relating to issues on the agenda, prior distribution of the agenda and relevant documents in the various languages and, subsequently, of the minutes and other documents relating to the decisions taken ⁽²⁸⁾. A further important requirement is the need for coordination of different experiences, e.g. according to the industry/services sectors guideline.
- c) Guaranteeing regular and smooth communication between SNB members prior to the establishment of an EWC and, subsequently, between EWC members in the interval between its meetings.
- d) Guaranteeing properly organised meetings of sufficient duration between EWC members in advance of meetings with management representatives.
- e) Recognising the right of national and European trade unions — which, based on the planned re-examination of the directive, are SNB and EWC members — to make use of reliable experts, not only for meetings.
- f) Adjusting existing agreements in line with changes to the scale of groups of companies. More specifically, explicit provision should be made for a specific additional negotiating stage in cases of cross-border concentrations or mergers, tying in with existing directives in this field.
- g) Support for initial and on-going training of EWC members.
- h) Including CSR among the areas subject to information and consultation (as stipulated in the SCE directive), involving business stakeholder organisations at European level.
- i) Acknowledging the importance of the effects and dissemination of information related to the life, acts and positions of the EWC regarding the representatives and workers of the individual establishments of groups of companies in each of the countries where company branches have been set up.
- j) Ensuring proper representation of disabled people and an effective balance between men and women on EWCs (in keeping with Directive 2003/72).

⁽²⁸⁾ The April 2004 Infopoint study of agreements revealed that only 51 % of EWCs had such a steering committee. This could constitute a problem, since most EWCs — some 70 % — meet only once a year. The lack of a small steering committee which can provide continuity in contacts between employees' representatives in individual establishments and countries and company management and European federations, could be a major handicap to the functioning and efficacy of EWCs.

⁽²⁹⁾ NSZZ Solidarnosc research, A. Matla, 2004.

- k) Providing incentives for companies which guarantee full implementation of the directive and deterrents for those which hinder it.
- l) Promoting, by making appropriate adjustments to the relevant procedures, participation in EWCs by all categories of employees, including executives and professional and managerial staff.

8. The work of EWCs in a larger Union: their contribution to boosting European social cohesion

8.1 Particular attention should certainly be paid to the issue of how the labour market and social situation have changed since enlargement.

8.2 In Poland alone, 425 companies have EWCs, and at present EWCs have more than 100 delegates on the basis of voluntary agreements ⁽²⁹⁾; this gives some idea of how the EWC instrument could become a powerful vehicle for integration and for developing a European social model laying down minimum benchmark standards. In the EU-15, but particularly in the enlarged Europe, EWCs are making a practical contribution to building a European mindset, thanks to awareness and recognition flowing from the diversity of national systems.

8.3 There are numerous obstacles to the creation of EWCs in both the older 15 and the new 10 Member States. Social dialogue in some of the latter countries is weak. The laws transposing the directive in the new Member States are theoretically sound, but in practice ineffective. The Commission should identify the obstacles preventing the directive from being properly applied.

8.4 EWCs have so far been an important means for workers to gain a picture of how the companies that employ them operate across borders. The process of European economic integration depends on the recognition of a new role for EWCs, especially in an economic phase when cross-border mergers and the establishment of a European company are constantly increasing.

8.5 EWC presence in the new Member States

Country	MT	CY	LV	LT	BG	SI	EE	TR	RO	SK	CZ	HU	PL
Potential number of EWCs (companies covered by Directive 94/45/EC)	56	65	155	162	163	185	181	256	263	340	636	662	819
Number of EWCs set up	29	33	84	87	89	108	101	136	140	199	333	334	425
Observers						3		3	2	2	8	2	5
Delegates	5	2	8	9	5	13	10	5	5	24	73	58	80

The first line shows the number of possible EWCs, based on the current distribution of employees; the second shows how many EWCs have actually been set up; the third row shows how many observers have been invited to participate in EWCs; line whereas the fourth line indicates the number of delegates with full rights that have been appointed to them.

If all EWCs were set up, there would be 3 943 delegates, and if the presence of delegates from the new countries was guaranteed on those actually set up there would be 2 098. However, only 322 have been elected, representing 8.17 % of the possible total, and 15.35 % within those EWCs already set up (source: ETUI, *op.cit*).

9. The social dimension of companies in the European Union and the new role of the EWCs — corporate social responsibility in a global economy

9.1 In a recent key opinion, the EESC discussed the role of EWCs in connection with CSR strategies ⁽³⁰⁾. The opinion highlighted the importance of dialogue with the main stakeholders in pursuit of company objectives: workers, clients, suppliers, local or regional representatives, and consumer and environmental organisations: **'Voluntary commitment has to go hand-in-hand with a well-organised dialogue with the stakeholders'; 'Dialogue is particularly important for the stakeholders forming part of the value chain'**.

9.2 Against this backdrop, the EESC stated that **'At European level, the voluntary and/or negotiated approach to addressing the implications of CSR in all those multinationals which have set up European enterprise committees [European Works Councils] marks a decisive step. It also makes it possible to involve the new Member States in this dynamic process. European enterprise committees [EWCs] should play a role in bringing about the incorporation of**

⁽³⁰⁾ EESC opinion on *Information and measurement instruments for corporate social responsibility (CSR) in a globalised economy*, OJ C 286 of 17.11.2005, p. 12.

⁽³¹⁾ COM(2001) 264 final.

CSR into the policies pursued by enterprises. They are also the ideal forum for internal stakeholders. It should, however, be borne in mind that a coherent policy on CSR also has to take account of the views of external stakeholders, in particular (a) all members of the overall workforce involved (temporary workers, employees of subcontractors working on the site, craftsmen and other self-employed workers working for the enterprise) and (b) all participants in the value chain (subcontractors, suppliers), whose views should be heeded to the greatest possible extent'.

9.3 In its Communication on a *Strategy for Sustainable Development* ⁽³¹⁾ the Commission called on publicly quoted companies to publish a **'triple bottom line'** in their annual reports that would measure their performance against economic, environmental and social criteria. This information should also be communicated to EWCs.

9.3.1 Part 2(b) of the Standard Rules of the recent directive on the European cooperative society placed social responsibility among the areas for consultation between businesses and employees.

9.4 The EESC welcomes the fact that in keeping with this approach, businesses are now more than just an economic agent, but are seen as a major player on the social scene, able to make a vital contribution to enhancing the quality of life of all stakeholders and of the regions.

9.5 The EESC takes note of the European Commission's recent Communication of 22 March 2006 on corporate social responsibility (CSR), in which it stressed the important role of employees and their trade unions in implementing CSR practices ⁽³²⁾:

⁽³²⁾ COM(2006) 136 final.

'Awareness, understanding and uptake of CSR have improved over the past few years, partly as a consequence of the CSR Forum and other actions supported by the Commission. At the same time, initiatives by business and other stakeholders have moved forward the development of CSR in Europe and globally. Social dialogue, especially at the sectoral level, has been an effective means for promoting CSR initiatives, and European Works Councils have also played a constructive role in the development of best practice on CSR. Nevertheless, the uptake, implementation and strategic integration of CSR by European enterprises should be further improved. The role of employees, their representatives and their trade unions in the development and implementation of CSR practices should be further enhanced. External stakeholders, including NGOs, consumers and investors, should play a stronger role in encouraging and rewarding responsible business conduct. Public authorities at all levels should further improve the consistency of their policies in support of sustainable development, economic growth and job creation. The EU's vision of long-term prosperity, solidarity and security also extends to the international sphere. The Commission recognises the linkages between the uptake of CSR in the EU and internationally, and believes that European companies should behave responsibly wherever they operate, in accordance with European values and internationally agreed norms and standards.'

9.6 In Directive 2003/51, which amends the directives on annual and consolidated accounts, the EU specifically requests that, where necessary for an understanding of the company's development, performance or position, the analysis shall include non-financial key performance indicators, including information relating to environmental and employee matters. In such cases, EWCs should receive all the information, both financial and non-financial, that is relevant for CSR purposes.

Brussels, 13 September 2006.

The Directive recognises the relevance of environmental and social issues in the context of corporate governance.

9.7 In its opinion on *Corporate Social Responsibility* ⁽³³⁾, the EESC advocated a co-regulation system at EU level: a 'specific EU context of CSR could be developed on the basis of joint initiatives and voluntary agreements between the social partners'.

9.8 Organised civil society can make a major contribution in this direction, within a process of dialogue and cooperation, by helping to define the objectives (human rights, social standards, priority of health and environmental policy, etc.), and striving for greater disclosure and transparency regarding company activities. The purpose is definitely not to blur the distinct roles of employers, trade unions and NGOs, but to enrich each of the players concerned through ways of comparing and thinking about items of common concern. This activity can only strengthen their traditional roles and help derive additional benefit from existing legislation, without impeding its progress.

9.9 The European social model is marked by the respect it shows for human dignity at all times and places, as well as by the protection it provides for the most vulnerable through welfare systems. In today's Europe, it should be possible to exercise citizenship rights everywhere, including in the workplace. The great achievement of the above-mentioned directives on rights, and the EWC directive, is to have harmonised these rights, affording — at least in formal terms — dignity to the workers of all EU Member States. The process is not yet complete, and must be stepped up. The Commission is urged to recognise those new elements which have emerged over the last 12 years, and to make the choices most likely to strengthen a feeling of belonging to the Union among the Member States.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

⁽³³⁾ EESC opinion on *Corporate social responsibility* (rapporteur: Ms Hornung-Draus), OJ C 125 of 27.5.2002.