



BERR consultation document
Proposal to Amend the European Works Council Directive
September 2008

This response is submitted by Unite the Union. Unite is the UK's largest trade union with 2 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport, local government, food, agriculture, education, health and not for profit sectors.

Unite welcomes the Department for Business Enterprise & Regulatory Reform consultation on the proposal to recast Council Directive 94/45/EC. Unite would be happy to make further written or oral submissions on this issue.

Unite has a great deal of experience of European Works Councils in all the industrial sectors and Unite plays an active role in all of the European Industrial Federations. Unite members are currently involved in over 200 EWCs and our Officers assist as expert advisors in over 50 EWCs. Commissioner Vladimir Spidla has received over 400 letters from individual Unite members who are members of EWCs or work for companies that have EWCs, demanding substantial improvement to the Directive. This document is based on Unites members and Officers experience as well as our relationship with the European Industrial Federations.

Executive Summary

- Unite welcomes the publishing of the Commissions proposals. These proposals to the EWC Directive are long overdue and the Directive must be revised now.
- However Unite feels that the Commissions proposals fall short of meeting the long standing demands of the European Trade Unions. Key issues such as confidentiality, legal challenges, EWC trade union experts and sanctions have not been dealt with at all. Because this is a 'recast directive' they will not be included in the European Parliaments opinion. Other issues were not addressed such as a clear procedure for EWC agreements to be renegotiated under the new Directive and there is real concern with the new rule on transnationality.

Performance and effectiveness of EWCs

- In Article 1 of the Directive it states that the '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'. The experience of Unite is that the objective of the Directive has only been achieved in a very small number of European Works Councils.
- Unite members and Unite expert advisors confirm that Information and Consultation is only taking place after a decision has been made by the company. This experience is supported by research from the European Trade Union Institute <http://www.etui-rehs.org> as well as the Dublin Foundation <http://search.eurofound.europa.eu>. It should be noted that the EU Commission Impact assessment published on 2nd July 2008 suggests that existing EWCs are not properly Informed or Consulted in over half of restructuring cases.
- For EWCs to be effective in representing the interests of fellow employees in their countries the Information and Consultation definitions need to be strengthened.

- The majority of EWCs only meet once a year and there are no resources provided for EWC representatives to communicate with each other over the following 12 months. The experience of Unite is that companies are quite happy for EWCs to be effective so long as they don't interfere with the company decision making process.
- Unite believes that this is a missed opportunity to engage the most valuable resource in the company, its employees.

Unites comments on the Commission proposals in detail

1. Article 1 – Objective

- The subsidiary requirements of the current Directive refer to the EWC being 'limited to information and consultation on the matters which concern the community-scale undertakings or community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different member states' This has led to an interpretation that only issues that affect employees in two member states can be discussed in the EWC.
- There are examples where companies have delayed implementing plans so that it only affects one member state at any one time to avoid meeting this criterion. The most recent example of this is the British Airways case in which the Belgian courts ruled in favour of the EWC representatives.
- It should also be pointed out that in the introduction to the Directive it states that '...appropriate provision must be adopted to ensure that the employees...are properly informed and consulted when decisions which affect them are taken in a member state other than that in which they are employed'.
- The Commissions proposal still leaves this area unclear and will continue to allow companies to manipulate the definition of transnational. We agree with the ETUC demands that not only should

the above definition apply, but that the burden of proof should be with the company to demonstrate that an issue is not transnational.

2. Article 2 – Definitions

- As stated in our executive summary, Information and Consultation is only taking place after a decision has been made. This does not allow the EWC representatives the possibility to contribute to the strategic decision making of the company.
- There are some exceptions but in these EWCs the central management, which would be either the CEO or the Senior HR director, have actively committed the company and their management to the EWC objective.
- In all other EWCs this is not the case. There are a number of reasons for this which included the lack of a definition of Information and the very weak definition of Consultation. This has allowed companies to decide the timing and quality of Information as well as the process of Consultation.
- Unite therefore welcomes the new Information and Consultation definitions and in particular the definitions in the ETUC and BusinessEuropes joint advice. We do not believe that these definitions will limit effective decision making within companies.
- The key to effective decision making is to Inform and Consult the EWC at the correct stage.

3. Article 4 – Responsibility for the Establishment of an EWC

- Unite welcomes the new Article 4 (4) proposals that reflect the interpretation of the ECJ rulings.

4. Article 5 - Special Negotiating Body

- Article 5 (2) (b) Unite understands the reasoning behind this proposal but feels that it would exclude the participation of employees in the

Information and Consultation procedure where the company employs less than 50 employees. The Commission proposal also does not identify how these countries without an EWC representative would be represented on the EWC. Unite therefore does not accept the Commissions proposal.

- Article 5 (4) Unite has assisted directly in 4 signed agreements so far this year as well as 5 ongoing negotiations. Unite has also supported EWC requests to commence negotiation in a further 6 companies. This expertise has been welcomed not only by Unite members but also by SNB representatives across the EU. Unite, along with other European Trade Unions, have experienced some attempts by companies to exclude Trade Union expert advisors from assisting SNBs. Unite welcomes the Commissions proposal which will also help to develop the effectiveness of new EWCs.

5. Article 6 – Content of the Agreement

- Article 6 (2) (b) Research from the ETUI demonstrates that in 60% of EWCs the EWC representatives are all male and over the age of 45. Unite agrees with the Commissions proposals to bring a balanced representation of employees with regard to gender.
- Article 6 (2) (c) Unite believes that the arrangements for linking Information and Consultation of EWCs to national employee representation bodies is a positive step. The process of Informing and Consulting EWCs has often been delayed because companies feel that it is legally necessary to consult with the affected national representative bodies before the EWC. This new proposal will help to clarify this area.
- Article 6 (2) (e) In many cases the EWC representatives have already developed internal procedures related to the select committee. This proposal should have little effect on current agreements. In paragraph 25 page 14 the Government state that the current Annex to the

Directive requires the automatic creation of a select committee. We do not believe this to be correct. The Annex to the Directive states that, 'where it's size so warrants, it shall elect a select committee from among its members comprising at most three members'. However, if the Commissions proposal would reduce the right to have a select committee in any way, Unite would not support the Commissions proposal.

- Article 6 (2) (g) Unite welcomes the Commissions proposal to improve the renegotiation of terminated agreements but would want to see a one year renegotiation time limit. Where no agreement is reached, the subsidiary requirements should be applied.

6. Article 10 – Role and protection of Employees' Representatives

- Article 10 (1) & (2) Unite would like to see further clarification of the phrase 'means required to apply the rights'. What exactly does this mean?
- Article 10 (4) Unite has held two EWC courses for its members this year with a further course planned for November. In addition, Unite has delivered one day training at the request of EWCs. Unite believes that this is an area of vital importance if EWCs are to be of any value. There are a number of EWC agreements that provide training for EWC representatives. Unite welcomes the Commissions proposals which will improve the effectiveness of EWCs that do not have this provision.

7. Article 12 – Links between This Directive and Other Community and National provisions

- See comments above in point 5.

8. Article 13 – Agreements in Force

- Unite believes that the Commissions proposals are a genuine attempt at resolving the issue of renegotiating Article 13 agreements. However

Unite does not agree that the proposals are an effective way of achieving this. It is not clear what would be 'significant changes' in the structure of an undertaking. It would also be unacceptable for a renegotiation, under the provisions set out under Article 6 of the Directive, to last for up to three years.

- Unite feels that the ETUC and BusinessEuropes joint advice with regard to Article 13 agreements goes some way to resolving these questions. Unite would require further clarification on the wording of the advice, and a one year renegotiation time limit. Where no agreement is reached the subsidiary requirements should be applied.

9. Annex1 to the Directive – Subsidiary Requirements

- Annex 1 (1) (a) Unite understands that although the text in paragraph 2 has been brought up to Annex 1 (1) (a), the text does not remain identical. The Commissions proposal adds "evolution of employee competences, employee mobility, health and safety in the workplace and the environment". Unite welcomes this improvement which will complement the Governments climate change strategy to engage employees in the workplace.
- There is concern that the Commissions proposals in the body of the Directive will not apply to the subsidiary requirements. These include the Information & Consultation definitions as well as the Transnational proposal. It is not clear to Unite why this is the case.

Impact Assessment at Annex B

- Unite acknowledges the positive steps taken by the ETUC and BusinessEuropes joint advice but we would be looking for further improvements to the Directive.
- Unite would like to see further clarification of how point 4 Article 10.1 and point 7 Article 13.1 would operate.

Other comments

- Unite believes that EWCs can be an invaluable tool for both employers and employees, but only if effective Information and Consultation procedures are in place.
- Unite would like the UK Government to review its sanctions which should be effective, proportionate and dissuasive. Under the UK system the maximum penalty is £75,000. EWCs are not interested in adding cost to their company, but instead want to see the courts take dissuasive action when companies do not consult the EWC on transnational issues. The recent Gaz de France merger with Suez and British Airways cases taken in France and Belgium respectively powerfully demonstrate this.

For further clarification please contact:

Ian Methven

International Officer, Unite the Union

Hayes Court, West Common Road, Hayes, Kent, BR2 7AU

07876501150

ian.methven@unitetheunion.com

Karen Goulding

Employment Relations Directorate

Department for Business, Enterprise & Regulatory Reform

Bay 460

1 Victoria Street

London SW1H 0ET

EWC@berr.gsi.gov.uk