

Employee involvement in the European company

UNICE position paper

1. In the framework of Council discussions on employee involvement in the European company, the Presidency has submitted a proposal which contains new elements as compared with the proposals in the Davignon report.

UNICE acknowledges the attempts to achieve greater flexibility contained in this proposal, insofar as it recognises the importance of diverse national and corporate systems and practices. However, UNICE would like to confirm and complement its preliminary comments published on 25 November 1997 by views on two key elements of this new compromise proposal whose basic structure, if pursued, would prompt strong opposition from European industry.

2. These two key elements are:
 - introduction of special majority requirements within the special negotiating body for an agreement on employee involvement which is less far-reaching than current arrangements in those companies forming the European company,
 - application of the most far-reaching national arrangements for employee participation in company affairs relevant to a company taking part in creation of a European company in the event of failure to reach agreement.
- 2.1. In its 25 November 1997 position paper UNICE welcomed the approach involving a negotiated solution. It believes it is legitimate and important to give priority to negotiations between company management and employees, with a view to arriving at freely reached agreements which take account of the needs of the future European company and diverse corporate cultures.

The proposal claims to follow this approach. However, in reality it moves away from it insofar as it places substantial difficulties in the way of a freely reached agreement on employee involvement.

This is done by laying down that an agreement on employee involvement requires a two-thirds or even three-quarters majority of the employee votes in the special negotiating body if the agreement does not go as far as the most far-reaching national arrangements for worker involvement amongst the companies forming the European company. With such a construction, the claim to be giving priority to a freely negotiated solution is no longer valid. Moreover, UNICE finds it very difficult to justify why only an absolute minority of one-third or one-quarter on the employee side should ultimately decide for all employees.

- 2.2 UNICE does not underestimate the problems that arise when reference rules for employee involvement are laid down for cases where no agreement can be reached. It also expressed this view in its 25 November 1997 position paper. It reminds that such reference rules must aim at facilitating flexible solutions geared to the needs of the future European company, taking account of the different cultures of the companies concerned, respect the different national traditions and protect the balance of the negotiations.

In this respect, it must be clear that, whatever the majority necessary for an agreement might be, worker participation should not be imposed if it was refused during negotiations between the management and worker representatives, and if other forms of worker involvement were preferred.

According to UNICE, the Presidency's compromise proposal does not reflect this. It is structured to ensure the widest possible employee involvement regardless of the differences in cultures and regards employee involvement as an end in itself.

UNICE rejects this idea and recalls that a constructive discussion on the possibilities for employee involvement in the European company can only be held on the basis of proposals which are geared to the needs and objectives of the European company as a legal form which can be used across Europe.

3. Limitation of this position paper to the two key elements of the Presidency's proposal discussed above should not be understood to mean that UNICE does not have critical comments on a range of other questions which are being discussed in the Council in this connection.

At this point, UNICE's only purpose is to draw the Council's attention to the fact that it regards the new approach to employee involvement in the European company, as reflected in these two key elements of the Presidency's proposal, to be unacceptable for European industry.

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25 November 1997

REPORT BY THE GROUP OF EXPERTS
“EUROPEAN SYSTEMS OF WORKER INVOLVEMENT”
(with regard to the European Company Statute and the other pending proposals)

UNICE COMMENTS

UNICE has carefully examined the final report adopted by the Group of Experts “European Systems of Worker Involvement”, entrusted with the task of identifying solutions to allow progress in the debate surrounding adoption of the European Company Statute.

UNICE welcomes the renewed debate on this dossier and would like briefly to submit some initial reactions to the report.

1. Since the European Commission presented its first proposal for a European Company Statute in June 1970, UNICE has repeatedly stressed the interest that creation of a European Company could present for European companies. The existence of an optional legal form of this type would facilitate crossborder mergers and foster industrial cooperation in Europe and is therefore an important element of the internal market.
2. However, UNICE has been no less constant in pointing out that companies would only opt for this form of incorporation if the proposed statute is sufficiently attractive and corresponds to their needs, i.e. if it is a flexible instrument which does not impose additional constraints, allows sound business management and offers the necessary legal certainty.
3. The successive versions of the European Commission's proposals on this theme have run into major obstacles relating to three aspects of the proposed instrument: provisions on company law, fiscal arrangements applicable to the European Company and lastly questions touching on the involvement of workers in the corporate decision-making process.
4. The Group of Experts has recognised that the diversity of existing systems in the Member States and the specific nature of employee involvement systems rule out the possibility of harmonisation in this field. The Group has therefore concentrated on the quest for a consensual approach and UNICE welcomes the concern of the Group's members to give priority to negotiations between

management and workers, without minimum requirements, with a view to freely reached agreements on flexible solutions geared to the needs of the company and its corporate culture.

5. However, having regard to the fact that most EU Member States have no provisions for worker participation in corporate bodies, members from those countries express strong opposition to the so-called “reference” rules which would systematically and immediately apply in the event of failure to agree. In UNICE's view, immediate and automatic application of pre-ordained “reference” rules, which prescribe a form of co-determination alien to the majority of Member States, may have the effect of distorting the negotiating balance from the outset.

Therefore, if the negotiated approach proposed by the Group of Experts is to revive the hope that the impasse can be broken, UNICE believes it is still necessary to demonstrate initiative and creativity to develop a form of employee involvement which could be implemented so as to respect the relevant national traditions.

6. In addition, if the debate on worker involvement in the corporate bodies of the European Company were to pinpoint solutions acceptable to the European companies that want to use this *optional* model of incorporation, UNICE would nevertheless like to make it clear straightaway that it could under no circumstances give its imprimatur to generalisation of these solutions in the framework of debates on other instruments *without* this optional character.
7. Lastly, UNICE would like to stress that the work of the Group of Experts was limited to the issue of worker involvement. Yet, as UNICE recalls above, discussions on the European Company Statute have in the past encountered many other difficulties. Since it will essentially be a corporate structure, it will therefore clearly be important to re-examine the provisions on company law and to remove any obstacles which may still remain in this area.

In the course of the forthcoming debate, the question of the fiscal arrangements applicable to the European Company will also need to be re-examined. In UNICE's eyes, this aspect is as important for companies as that examined by the Group of Experts, and the search for a solution to the difficulties posed in this area no doubt justifies the setting-up of a similar group charged with examining the tax questions.

Whatever direction the future debate on the European Company may take, the various facets of this dossier are intricately bound and it is crucial that all its elements should be deemed acceptable by companies.

Now that the Group of Experts “European Systems of Worker Involvement” has renewed discussions on the European Company Statute, UNICE hopes that forthcoming work on this theme will result in development of a balanced general framework that responds adequately to the needs of European companies – including SMEs – and is likely to increase their competitiveness and stimulate industrial cooperation with the greatest respect for national traditions and practices.