

Brussels, 15 June 2004
JM/WC/hdb

Mr Frits Bolkestein
Commissioner
European Commission
200 rue de la Loi
B-1049 Brussels
Fax: +32 (0)2 298 0799

Re: European Commission Consultation on board responsibilities and improving financial and corporate governance information

Dear Mr Bolkestein,

The ETUC has taken note of the Consultation document and strongly disagrees with the general approach of the paper and with the Consultation procedure itself. The ETUC considers that both these elements run counter to the objective of improving Corporate Governance in the EU.

The reaching of a common understanding and the establishment of European legal provisions for governing a cross-border operating company in the SE-legislation, which clearly provides for workers' participation at board level taking into account different national legislations and experiences, was indeed a historical achievement.

The envisaged Recommendation would be in direct contradiction with existing EC law, in particular the Directive on Involvement of Employees in SE 2001/86/EC. This European legislation explicitly accepts workers' participation in the form of representation in the boardroom or in a supervisory board. In most European member states, the members of a (supervisory) board coming from the workers side are usually employees of the company. In clear contrast to this legislation and past experience, the envisaged Recommendation with respect to the definition of "independency" of non-executive directors (point 2.3.3.) would result in the exclusion of these members of (supervisory) boards.

Moreover, the ETUC does not consider this Consultation procedure as a proper consultation under the requirements of Article 138 EC, since it is the social policy field that is being directly addressed in this envisaged Recommendation, particularly because company law, in general, is directly related to the social policy field and thus requires a proper consultation under Article 138 EC. The ETUC would clearly be prepared to express its more detailed views concerning the direction of the Community's action and if necessary - in the second phase - concerning the substance of a proposal.

The ETUC would like to stress that the common understanding of EU policies is that modern European company law requires substantial workers' participation also by trade union representatives. It is obvious however that the envisaged Recommendation would run counter to these general Community policy objectives.

Yours sincerely,

John Monks
General Secretary