



Effective and
well-functioning EWCs
in post – Covid era

EUROPEAN WORKS COUNCILS AND COVID-19 PANDEMIC

training toolbox for EWC members
in the metal industry-

Author: Barbara Surdykowska, ISP,
Poland, with the cooperation of
Peter Fečík, RUZ/NUE, Slovakia.



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EWC - BASIC INFORMATION

The primary aim is to establish a European employee representation body for the purpose of information and consultation on transnational issues.

Another essential principle that should govern the functioning of EWCs is the principle of effectiveness introduced by the recast directive: the EWC must be able to play its role in such a way that the information and consultation process is meaningful and part of the decision-making process (recognized role of employee representatives in the anticipation and accompaniment of change in their companies).

It is also important to state that the rights of the national bodies of employee representation and of the employees shall not be affected by this Agreement. Indeed, both the European and the national levels have their role to play and neither should work at the expense of the other. On the contrary, there should be a mutual benefit from a close link and cooperation between these levels.

The Notion of Transnational Matters

Matters shall be considered transnational when they concern the group as a whole or at least two establishments of the group located in two different Member States. This is the basic definition given in the body of the EWC directive.

At the very least, this basic definition should be incorporated as is into the agreement. No changes in its wording which would weaken it should be accepted. For example, the term “concern” must not be replaced by “affect”, as this “little” change would narrow the scope of competence of the EWC.

The preamble of the EWC directive (no. 12 and 16) gives a more detailed explanation of how this notion of transnationality is to be understood. It clarifies that it is not so much the number of Member States which counts.



Matters must also be considered transnational when: o they exceed the competences of the local/national Management;

- they have a potential cross-border effect (employee representatives must be given the possibility to evaluate whether a proposed measure has a potential impact);
- they involve transfers of activities between Member States.

These elements should be included as much as possible in the agreement. At the very least, it is not acceptable to incorporate a provision stating the reverse.

GLOSSARY OF USEFUL TERMS

Article 13 agreements

Art. 13 agreements (also: pre-directive agreements, voluntary agreements) - agreements setting up EWCs signed under the framework of Art. 13 of directive 94/45/EC. This article allowed worker representatives and management to conclude agreements before 22/09/1996 (entry into force of the directive) that would be exempted from the requirements of the directive. Such agreements continue to claim their status also if renegotiated after 22/09/1996.

Co-determination (Mitbestimmung)

Co-determination (Mitbestimmung) - most extensive form of workers participation in managerial decision-making processes. Co-determination goes beyond consultation, defined as expressing views on decisions taken by management, and includes active involvement in corporate decision taking, by means of negotiating with management, statutory obligation to reach consensus between management and institutionalised representation of workers (e.g. works council). Many trade unions refrain from co-determination on grounds that decision making and managing company is not the goal of trade unions as well as due to extended responsibilities towards workers that come with co-determination.



Corporate Social Responsibility

Corporate Social Responsibility - Corporate social responsibility (CSR, also called corporate conscience, corporate citizenship or responsible business) is a form of corporate self-regulation integrated into a business model. CSR policy functions as a self-regulatory mechanism whereby a business monitors and ensures its active compliance with the spirit of the law, ethical standards and national or international norms. With some models, a firm's implementation of CSR goes beyond compliance and engages in "actions that appear to further some social good, beyond the interests of the firm and that which is required by law. CSR aims to embrace responsibility for corporate actions and to encourage a positive impact on the environment and stakeholders including consumers, employees, investors, communities, and others.

Follow-up meeting

Follow-up meeting - a meeting, usually only among worker representatives (i.e. without presence of representatives of management), during which the EWC members evaluate and discuss information received from management and may start preparing for the consultation phase of the process, i.e. agree on the EWC's response (position) towards the presented information.

Preparatory meeting

Preparatory meeting - meeting, usually only among worker representatives, held by EWCs before the plenary session with management. During this meeting the EWC may exchange information, prepare questions for management, discuss its strategy, submit motions, prepare demands, etc.

Recast directive 2009/38/EC

Recast directive 2009/38/EC - directive amending certain provisions of the original EWC directive of 1994 (94/45/EC) and extending some rights of EWCs.



Select Committee

Select Committee - body elected by EWC members to ensure smooth and efficient operation of the EWC and organisation of its work (especially between annual meetings). The committee members are often responsible for tasks such as (to be defined in agreement): preparation of EWC meetings, the smooth running of meetings, ongoing contact with management (also in exceptional circumstances), distribution of information and documents from management, ensuring communication between EWC members

Special Negotiating Body

Special Negotiating Body - a body elected by workers (national elections at subsidiary level) to negotiate with management conditions for setting up an EWC as well as to agree on arrangements (written down in form of EWC agreement) for operation of a future EWC. Once negotiations are completed and EWC agreement signed the SNB is disbanded and new election for members of the European Works Council are held.

Worker director

Worker director - A worker director or employee-elected director is a member of a company's board of directors or member of company's supervisory board that is elected by the workforce of an organisation. It is often being referred to as board level employee representation (BLER). Employees have a right by law to appoint directors to companies in most European Union member states and based on some European-wide legislation on e.g. Societas Europaea (see directive 2001/86/EC).

Works council

Works council - a "shop-floor" organization representing workers, which functions as local/firm-level complement to national labour negotiations. Works councils exist with different names in a variety of related forms in a number of European countries, including Britain (Joint Consultative Committee); Germany and Austria (Betriebsrat); (Comité Mixte, Délégation du Personnel); the Netherlands and Flanders in Belgium (Ondernemingsraad); France (Comité d'entreprise); Wallonia in Belgium (Délégués du Personnel); in Italy (Comitato aziendale europeo) and Spain (Comité de empresa).



EWCS - PROCEDURES

Composition

The number of EWC members and the allocation of seats must be negotiated (see article 6b of the EWC directive). However, a mere list of countries with number of seats is not good enough. The agreement must contain a key for the allocation of seats per country.

This key should be balanced (respect for the size of the countries in terms of employment figures) but there should be no dominance by one country (as a possible solution, you may want to fix an upper limit of seats available per country). Other criteria may be considered, such as the number of sites and divisions or the number and representativity of national trade unions represented.

Election/ Appointment of EWC Members and Term of Office

Election/appointment must take place in accordance with national law/practice.

The question is often raised whether the provisions negotiated in EWC agreements have precedence over national laws. The EWC directive defines in article 2d) that the employees' representatives are those "provided for by national law and/or practice". Moreover, article 6 of the EWC directive gives no room for negotiation on this issue.

Hence, even if the parties have negotiated arrangements for the election/nomination of EWC members, national laws will always take precedence. Any provision in EWC agreements which is outside the scope of national laws must necessarily take the form of a recommendation.

In the event of lack of or insufficient provisions in the national transposition law allowing the election or appointment of EWC members, the procedure for the election or appointment of SNB members may make up for this lack. As a last resort, if this also proves insufficient, a democratic election by the whole workforce should be foreseen in the agreement.



Representatives of Management

The EWC directive considers the EWC as a collective body of employee representation. However, quite some agreements describe it as a mixed body that also includes representatives of Management.

In this situation, it must be secured that employee representatives on the EWC enjoy all the rights and tools as described in the EWC directive (right to hold preparatory and debriefing meetings, a duty to communicate with the workforce they represent without the Management being present, etc.).

Select Committee

The EWC must be entitled to elect a Select Committee composed of employee representatives only. N.B.: the "Select Committee" is often given different names: "Secretariat", "Administrative Committee", "Steering group", etc.

Should the Select Committee be a mixed body, it is necessary to secure that the employee representatives may elect among them a small group that enjoys the same rights and means as any Select Committee composed of employee representatives only (meetings without the Management, etc.).

Ordinary EWC meetings - Frequency of meetings, venue and timing

The EWC must have a right to meet with central management at least once a year

The place and venue should be agreed between the Management and the Select Committee.

As a rule, EWC and Select Committee meetings are to take place in person. The use of technical/virtual means for meetings should remain exceptional and only if both parties agree. Teleconferences with many users are not feasible and other technical/virtual means should be preferred.

It is recommended to negotiate the right for at least two EWC meetings a year to ensure more continuity in the work of the EWC.



If the Management is not keen to accept two plenary EWC meetings a year, it is worth considering the possibility to request a second meeting outside the plenary meeting which would be for EWC members only (as foreseen in the Swedish transposition law) and with some time devoted to a training session.

The place should be varied as much as possible to give EWC members the opportunity to get to know the different locations of the group.

According to employers' organizations since the COVID-19 pandemic in 2020, digital meetings have become a well-established and well-tested work method that has proven its value.

Agenda setting and working documents

The agenda must be jointly defined by the Management and the Select Committee.

However, the process must be democratic and include also the possibility for EWC members to transmit to the Select Committee requests/proposals for issues to be put on the agenda.

A delay must be fixed for sending the invitation and the agenda to all EWC members.

It is essential for a good preparation of EWC members that they also receive the working documents well in advance of the meeting. A time limit should be mentioned in the agreement.

Minutes of meetings

The agreement must specify who is tasked with drafting the minutes

Central Management and the Select Committee must have the possibility to read, transmit amendments/comments and to approve the final version.

A clear timeframe must be provided to secure that all EWC members receive the minutes within a reasonable delay.

The minutes must be made available in all necessary languages. Here too, a timeframe must be determined.



Exceptional circumstances - procedure for information and consultation

The EWC directive of 2009 introduced new definitions of information and consultation which present them as two linked but distinct phases in one process. Conducting them in one single meeting, at which the Management would simply disclose its final decision and vaguely discuss it with the EWC, is no longer acceptable.

This new reality must be reflected in EWC agreements:

- It is not enough to state that in exceptional circumstances the EWC or the Select Committee shall meet with the Management to be informed and consulted.
- Consultation can only be conducted after the information phase has been properly completed.

The information phase:

- The preliminary information may be conveyed to the employee representatives in ways other than telephone or video conferences.
- However, mere oral communication by the Management is not enough. After this preliminary information the Management must make the information available in writing. This information must be accurate and complete and include especially an analysis of the possible impact. Indeed, it is not the role of the EWC to make additional enquiries.
- It is not acceptable to state in the agreement that in some cases the Management may need to take quick decisions: although the employee representatives may not intentionally slow down the process and obstruct the decision-making process, the Management has the clear responsibility to provide the appropriate information as early as possible to allow for a meaningful information and consultation procedure.



According to the employers' organization - This is a rather unbalanced view. The company's board of directors also has its fiduciary duties to the owners and shareholders. So the agreement is a legitimate place for such a clause and should not be prohibited as such. Safeguards against abuse are of course necessary.

The employee representatives must have the time and the resources necessary. They must especially have the right to be assisted by subject-matter experts of their choice to be able to develop an in-depth understanding and, where appropriate, alternative proposals. The expert should assist them from the beginning and through the whole process.

The consultation phase:

- At this stage meetings between the Management and the employee representatives are essential. Discussions and exchanges of views on issues potentially impacting the future of employees should not take place in telephone conferences. Face-to-face meetings are the only option here.
- Employee representatives must be entitled to a preparatory meeting without the Management before the plenary meeting and a subsequent debriefing meeting.
- The employees' point of view must be discussed and considered in the Central Management's decision-making, e.g. before the final decision is taken.
- Before the process is completed, the Management must give an answer and the reasons for that answer to any opinion expressed by the EWC/Select Committee.

Who must be involved in the information and consultation procedure?

The whole EWC or, where the agreement stipulates that the procedure takes place at the level of the Select Committee, it must be expanded to include the EWC members of the countries concerned. Representatives of sites directly concerned by the circumstances or envisaged measures who are not members of the EWC must be involved in the whole procedure.



Available Means and Costs - The general approach to available means and costs

Financial and material resources are to be allocated to the EWC (see article 6.f), the EWC agreement must detail these means and include at least provisions on costs met by the company, languages, experts, time off, and communication means.

All necessary costs in connection with the work of the EWC must be met by the Management and not just the costs involved in attending meetings. The agreement could include a general statement by which the EWC members shall have at their disposal all means required for them to exercise their rights and duties under the agreement.

Working language, interpretation and translation

Simultaneous interpretation must be provided in all necessary languages for all meetings. It is not acceptable to restrict the number of necessary languages for cost reasons. All EWC members must be able to understand and participate actively at meetings.

Language training may not be used as an excuse to cancel interpretation. Still, this training is necessary to enable EWC members to gain sufficient knowledge of a language common to them for their communications outside of meetings.

Interpreters must be qualified professionals. The Management may not designate people to act as interpreters.

All documents must be translated in the necessary languages by professional translators to guarantee the quality of the texts.

According to employers' organizations, these demands on translation are too extensive. It is not inappropriate to demand knowledge of a sufficient level of English or other languages widely used in the company.



Expertise

A distinction must be made between at least two types of experts: o one external expert who is a trade union Coordinator and who assists the EWC as permanent adviser. The Coordinator must have the right to attend all meetings, including EWC plenary meetings and Select Committee meetings.

Other subject-matter experts whom the EWC may call upon from time to time when they need expertise in a specific area.

Time off

Travel time and time spent by EWC and Select Committee members in plenary, preparatory and debriefing meetings as well as training must count as working hours and be paid accordingly. In addition, EWC members must be given the necessary time off to deal with the tasks and responsibilities the mandate entails. This time-off must also count as working hours.

Reporting back at the national/ local level

As part of their assignments, EWC members have a duty to report to the employee representatives, or in the absence of appropriate structures, to the whole workforce, about the work of the EWC. (See EWC directive, item 10.2).

It is not good enough to limit the duty of reporting back to a general statement issued jointly by the Management and the EWC, after EWC meetings. The EWC members should not be deprived of the possibility to communicate personally with the employees whom they represent, without any interference from the Management.

Employee representatives will generally use established national bodies of employee representation for reporting back to those they represent.



Training

The EWC directive stipulates that EWC members must be provided with training without loss of wages (see article 10.4). Training is indeed essential to enable EWC members to properly carry out their duties. Training courses must be considered an integral part of their mandate and remunerated as working hours.

All training related costs including travel and accommodation costs must be covered by the Management.

Whereas training needs can be identified in discussions with the Management, the EWC is best placed to evaluate what kind of training it needs. Consequently, EWC members “must be able to receive the training they require” (EWC directive, recital 33).

It is important to distinguish between individual training and collective training directed at the whole EWC. Both possibilities must be provided for in the agreement.

Confidentiality

The EWC directive is not very helpful in defining which information is confidential and how to deal with it. Its article 8 leaves Member States to deal with this issue. IndustriAll Europe has therefore developed some basic principles which should be integrated in any EWC agreement.

The dialogue which takes place within the EWC must be open and transparent. Confidentiality must only cover such information as has been explicitly and reasonably designated as such. Treating every information as confidential is not acceptable as it would prevent EWC members from fulfilling their duties, especially in their communication with the national employees or bodies of employee representation.

To avoid abusive classification of information as confidential, Central Management must provide an explanation why such information must remain confidential and how long the confidentiality applies.

This obligation (also for external experts) must continue to apply even after the expiration of the term of office of EWC members but only as long as the information remains confidential.



Duration of the Agreement, Amendments and Termination Clause

The EWC directive (see article 6g) stipulate that EWC agreement must include the date of its entry into force and its duration, the arrangements for amending or terminating it and the cases in which the agreement shall be renegotiated and the procedure for its renegotiation, including, where necessary, where the structure of the company changes.

An agreement can be of unlimited duration or for a fixed term, but it must always include a provision ensuring that the EWC members may terminate it if they consider it no longer meets their expectations. So, stating that an agreement shall continue to be valid until the signing of a new agreement means that the delegates can be stuck indefinitely with that agreement. This must be avoided, unless the agreement is exceptionally good. Provisions for amending the EWC agreement must be clearly distinguished from provisions for its termination. Indeed, EWC members must be given the opportunity to evaluate their agreement from time to time, e.g. before the end of a mandate period, and to propose amendments in order to correct stated dysfunctionalities or adapt the agreement to the improved practice. In any case, when there would be a change in the EWC directive, the agreement would have to be adapted to the changed law.



Example

What sanctions for infringement EWC rights?

EWC Academy News - 4/2021

'In recent years there has been an increase in litigation concerning the European Works Council. Most of the cases have concerned Anglo-Saxon groups, mostly from the USA, and companies in the packaging industry. One focus was Great Britain, where half a dozen EWC lawsuits were filed every year before Brexit. The European Works Councils were able to win many of these cases. So far, however, only in France and Belgium have they succeeded in obtaining injunctions to provisionally stop the implementation of measures. Several attempts in Germany and the Netherlands have failed.

The EU Directive on the establishment of a European Works Council states in recital 35: "The Member States must take appropriate measures in the event of failure to comply with the obligations laid down in this Directive" Recital 36 speaks of "sanctions which are effective, dissuasive and proportionate to the seriousness of the offence". But what is an effective and dissuasive sanction? In France the highest fine ever imposed was €15,000 and in the UK it was £40,000. No fine has ever been imposed in Germany. There is also no European Court of Justice case law on the matter.

The EU General Data Protection Regulation provides guidance. It has been in force since May 2018 Article 83 provides for fines that must be "effective, proportionate and dissuasive" and can amount to up to 4 % of the total worldwide annual turnover of the preceding financial year. On this legal basis, the Hamburg Commissioner for Data Protection and Freedom of Information imposed a fine of €35.3 million on Hennes & Mauritz Online Shop in October 2020 for keeping files with confidential personnel information. As the wording "effective, proportionate and dissuasive" is similar in both legal acts, this order of magnitude could also be considered for violations of EWC law. Shortly before the end of 2021, there are three EWC lawsuits currently underway which have the potential to bring this issue all the way up to the European Court of Justice: one in Austria, one in Germany and one in Ireland.'

<https://www.ewc-news.com/en042021.htm#5>



In the opinion of emeploer organisation this is too extensive analogy, especially because the potential damage caused by the abuse of personal data is much more harmful.

EWCS AND RESTRUCTURING

Restructuring in transnational companies is a permanent feature of company life and development. In fact, it was transnational restructuring and notorious cases of disregarding basic workers' rights that brought about the EWC Directive in 1994. Since then, we have seen various phases and types of restructuring, triggered by drivers such as globalisation and technological change or as an effect of changes in sector-specific market conditions (e.g. market and trade liberalisation). Currently, an accelerated pace of restructuring is taking place: companies are facing new challenges resulting from rapid technological change, driven by digitalisation and increased competition not only from low-pay countries but also from new businessmodels that erode traditional ones (Google Car, Uber, etc.).

Business is one of continuous change, and restructuring is one of the most prevalent approaches adopted by companies to respond to change. The impact of globalisation, improvements in information and communication technologies, new trends in the workplace and sector-specific markets, but also changes in the regulatory frameworks and other factors contribute to change and the need to adjust and restructure.



Major forms of restructuring

- **Internal restructuring:** when the company undertakes a job cutting plan that is not linked to another type of restructuring defined below.
- **Closure:** when a company or an industrial site is closed for economic reasons not directly connected to relocation or outsourcing.
- **Bankruptcy:** when a company goes bankrupt for economic reasons not directly connected to relocation or outsourcing.
- **Outsourcing:** when the activity is subcontracted to another company in the same country.
- **Relocation:** when the activity stays within the same company, but is relocated within the same country.
- **Offshoring/delocalisation:** when the activity is relocated or outsourced outside country's borders.
- **Merger/acquisition:** when two companies merge or when an acquisition involves an internal restructuring programme aimed at rationalising an organisation by reducing personnel.
- **Business expansion:** when a company extends its business activities and hires new workers.

Mergers and acquisitions as well as business creation and closure are just two forms of corporate restructuring. However, they are neither the only nor the most important ones. According to the European Restructuring Monitor (ERM), which has been in place since 2002 and is run by the European Foundation for the Improvement of Living and Working Conditions (Eurofound), mergers/acquisitions and closures/bankruptcies accounted for only 2.2% and 9.5%, respectively, of all 1,500 cases documented in the ERM database. Apart from business creation, the most important form of restructuring according to the ERM database⁵ is "internal restructuring", a broad term referring to corporate restructuring that results in job cutting.



EU regulation on workers' rights and protection related to restructuring

- Fundamental rights of workers regarding information and consultation;
- Information, consultation and participation rights as laid down in the EWC and SE Directives;
- Regulations of the social protection of workers affected by restructuring;
- Workers' rights in the context of economic and company law regulations.

Essential information and consultation rights for workers as well as employee

representation are guaranteed by the EU Treaties for every worker in the European.

According to the Community Charter of the Fundamental Social Rights of Workers (9/12/1989)⁷, the establishment of the internal market must also lead to an improvement in the living and working conditions of workers in the European Community. According to the Charter, key areas of such improvements are workers' rights in situations of collective redundancies and bankruptcies.

The Charter also stresses that information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in the various Member States. A further fundamental right according to the Charter is that information, consultation and participation must be implemented in due time, particularly in connection with restructuring operations that have an impact on the employment of workers.

Information and consultation rights at the national level: Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishes a general framework for informing and consulting employees in the European Community.



If your EWC is affected by restructuring, such as a merger, division, partial closure or relocation of the headquarters, it is important to make use of improvements introduced by the EWC Recast Directive 2009, namely the legal right to renegotiate the agreement, i.e. the so-called “adaptation clause” defined in Article 13 of the Recast Directive. In case of “significant changes” of the transnational company and in case of a lack of respective provisions in the EWC agreement or with conflicting provisions in cases where two or more EWC agreements are concerned, there should be a negotiation of (a) new agreement(s) in accordance with the procedure described in the Directive (establishing an SNB, etc.). This renegotiation might be triggered either by management initiative or by written request of at least 100 employees in at least two Member States.

It is important to note that in the context of cross-border mergers the EU legislative framework guarantees certain rights of employees. If one of the companies involved in a merger has established employee participation at board level, certain procedures have to be respected in order to safeguard this right.

In case of insolvency of the employer, employees and the bodies representing them should be well aware of Directive 2002/74/EC amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer. The Directive provides for minimum standards regarding employees’ claims against employers who are in a state of insolvency.

In case of a transfer and/or merger of undertakings, certain rights of employees are protected by Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses



Directive 2004/25/EC on takeover bids provides employee interest representations with extended information as well as consultation rights in the context of takeovers: while aiming at reducing restrictions of the free movement of capital by banning all kinds of defences against hostile takeovers, the Directive leaves national actors significant room to manoeuvre. Regarding workers' rights, the Directive stipulates that workers have to receive extensive information on the takeover bid and gives them the right to issue their opinion/recommendation.

An EWC that is involved in restructuring in a timely manner can have several functions: it should be instrumental in co-ordinating employees' responses to the restructuring and serve as the catalyst for the creation of a genuinely European strategy or action. The EWC should be used to obtain more information and buy some time, which could prove useful at the local level, at which social plans may be negotiated. The EWC can bring in the necessary experts to assist in evaluating the company's plans and suggest alternatives; it can also support local strategies by exerting influence on management at the European level.

As previous surveys have shown, **EWCs have the potential to play an active role in transnational company restructuring** that complements and articulates local and national employee interests. Despite the well-known challenges related to cultural and language differences or site competition across countries as well as the multiple barriers an effective EWC practice is facing due to a lack of management co-operation, there are a number of tools and instruments provided by the legislative framework that seem to be by too many EWCs.

A key instrument in this context is the right to **call for an extraordinary meeting** not only with a view to meeting management but also in order to meet and exchange with other employee representatives, specifically with those from local sites affected by the restructuring.



Transnational company restructuring - 10 basic principles of IndustriAll Europe

1. Develop an early warning system

Regular exchange of information should be promoted in multinational companies. This is essential to build mutual trust and prepare for closer cooperation. Where EWCs have been established, the EWC Coordinator can play a key role in fostering transnational cooperation.

Any rumour of a restructuring plan should be checked, especially with colleagues from other countries, in order to be able to rapidly confirm or deny the news. Should the information be confirmed, it has to be disclosed as much as possible to the concerned stakeholders, i.e. national officers, the EWC Coordinator and EWC members, in such a way as to allow a rapid reaction. Anticipation is a pre-condition for influencing the decision-making process.

A formal request for further information e.g. in the event of rumours, should be made to the relevant level of management.

2. Ensure full compliance with information and consultation rights both at national and European level

Access to relevant information is essential to understand the company strategy and propose alternative measures. Furthermore, workers and their representatives should have the necessary time to develop these alternative proposals. Steps will be taken to ensure that workers and their representatives are properly informed and consulted both at national and European level before a final decision is taken. Where a European Works Council exists, an extraordinary meeting of an EWC will be requested in the first place with a view to obtaining more information and agreeing on a timeframe for consultation.

Participation rights where they exist as well as the interlinking between the national and European levels will be developed.

3. Set up a European trade union network

If it is deemed necessary, a European trade union coordination group will be set up. The idea is to rally around the same objective all the potential stakeholders: trade union officials from the trade unions concerned, EWC members, the EWC Coordinator and the workers' representatives sitting in the Executive/supervisory Boards. This body will be the driving force behind the European strategy and the establishment of a European and coordinated response.



4. Provide full transparency of information

Creating a climate of trust and confidence among the colleagues in the different countries concerned is the prerequisite for a joint and coordinated response. Full transparency of information should be achieved in this respect. No negotiations will be concluded before trade unions and/or workers' representatives have received sufficient information, have been duly consulted and before a joint strategy has been established at European level.

5. Draw up a platform of common demands

A platform of common demands will have to be drawn up to signal to management and different stakeholders the workers' position and intention to stand together and develop coordinated actions. Basic demands will have to be supplemented by the development of a plausible and coherent alternative concept combining an industrial plan with socially acceptable measures. The possibility of bringing in external experts to assist on this matter should be considered. Where an EWC exists the IndustriAll Europe EWC Coordinator will have a key role to play in initiating such a platform. The platform will be drawn up in cooperation with the national unions and the EWC.

6. Envisage negotiated solutions acceptable for all

The unions, together with the EWC, will seek to promote negotiations either at national or European level guaranteeing that restructuring is managed in a socially responsible manner across Europe. All possibilities to mitigate the social consequences will be explored (reduction of working time, reallocation of work, early retirement, retraining, reclassification, etc.). Minimum standards for a social plan will be defined Europe-wide. No negotiation at national level or within one company will be concluded before the colleagues concerned at European level have been informed and consulted.



7. Develop a communication strategy

Wielding influence is one of the keys to the success of your strategy. First reactions, the political platform, conclusions and decisions should be immediately relayed by the press, the unions, the workers, the politicians, etc. In order to ensure that the campaign is 'worker-based', members and workers must be fully informed. Communicating to the outside world is also essential. Politicians, MEPs or anyone with influence can be rallied to your cause.

8. Envisage cross-border activities

Cross-border actions can be contemplated. Mobilisation should be worker-based and creative. A European day of action is one of many instruments that can be envisaged. Others can be developed in line with national practices and traditions providing they make our cause and our demands more visible.

9. Explore any legal possibilities to ensure that workers are heard

In the event of a merger, workers have the right to be heard in the merger control procedure which is carried out by the European Commission. Through this procedure the European Commission will decide whether the planned merger/acquisition will lead or not to abuse of dominant position. Workers can ask to be consulted by the European Commission on the abuse of dominant position and raise the issue of the social consequences.

10. Binding commitment

Any strategy agreed and any decision taken at European level should be made binding for all the players concerned and implemented at national level.



CHALLENGES TO EWC ARISING FROM THE COVID-19 PANDEMIC

Face-to-face, hybrid, online? The format of SNB, EWC and SE-WC meetings post-COVID-19

Joint Recommendations of the European Trade Union Federations to EWC/SE Coordinators and worker representatives in SNBs, EWCs and SEs, June 2022

As the COVID-19 pandemic prevented face-to-face meetings, SNBs (Special Negotiation Bodies), EWCs (European Works Councils) and SE-WCs (Works Councils in companies with a Societas Europaea status) have operated under extraordinary circumstances over the past two years. Online and hybrid (partly online, partly physical) videoconferencing served as a temporary solution to pursue social dialogue with management and secure continuous information and consultation on key issues for European workers.

Now that social distancing and travel restrictions are being lifted, the European trade union federations maintain that face-to-face meetings are the norm to build up effective SNB, EWC and SE-WC work and robust communication among delegates. In some countries, like Germany, decisions and votes by the EWC are only valid if they are made at a physical meeting. Although useful in exceptional circumstances, and as an opportunity to convene more meetings than planned in your EWC/SE agreement, digital tools, like videoconferencing and hybrid meetings, must not replace the basic SNB, EWC or SE-WC's right to face-to-face meetings.

In no instance should the management unilaterally decide on the format of a meeting!

The European trade union federations therefore recommend:



To resume SNB, EWC and SE-WC meetings face-to-face

Face-to-face meetings remain the normal way for SNBs, EWCs and SE-WCs to operate. Preparatory and debriefing meetings with the employee representatives of the EWC/SE-WC should also be held in person, with the assistance of professional interpreters who should be present in the meeting room, too.

The European trade union federations believe it is not advisable to resort to hybrid or online meetings for plenary EWC or SNB meetings, especially at the starting phase of a negotiation when members do not know each other particularly well.

2 To limit the use of online or hybrid meetings to smaller groups and extra meetings

Online or hybrid meetings could be envisaged for the meetings of the EWC/SE-WC working groups (if any), or for the EWC or SE-WC select committee, provided these online/hybrid select committee meetings help more frequent meetings to take place, in addition to those already planned in your EWC/SE agreement.

The decision to convene a meeting either online or hybrid must be subject to the EWC/SE-WC members' agreement, and decided on a case-by-case basis.

Should you decide to resort to online/hybrid meetings on a permanent basis for the EWC/SE-WC working group meetings, and any additional meetings of the select committee, you may want to consider adapting your EWC/SE agreement accordingly. Should that be the case, please liaise with the trade union expert/coordinator who is assisting your EWC/SE-WC, and with your European trade union federation.

To ensure good quality online or hybrid-meetings, the European trade union federations recommend the following principles:

1. Agree formally with the management about the rules and specific conditions for the use of online or hybrid meetings. The first goal is to ensure that all delegates benefit equally from the same high-quality working conditions, and that no one will be disadvantaged (e.g. either by not having access to proper IT equipment or by not being present in the room at a hybrid meeting).



2. Request the best quality videoconferencing/hybrid system, i.e. one which provides for:

- Participation by video, with the possibility of seeing every participant on the screen
- Simultaneous interpretation in all required languages, provided by professional interpreters
- Possibility for all participants to request the floor
- A chat room, where delegates can interact during the meeting with all due confidentiality
- Participation of external experts and trade union coordinators who assist the EWC/SE-WC
- A high level of cybersecurity and privacy protection, while ensuring that firewalls and other network security devices do not prevent delegates from convening meetings between themselves (without the management), or prevent the involvement of external experts and trade union coordinators.

3. Secure access to and training in the use of the videoconferencing system for all delegates. EWC and SE-WC members must have access to the necessary equipment (computer/tablet, high-speed internet connection, headset, webcam) and to a dedicated office or (home) room to allow for their meaningful participation in the meeting. A training session on, as well as a test of, the chosen videoconferencing system must be carried out before the first online/hybrid meeting takes place.

Of course, it is for the SNB, EWC or SE-WC delegates to decide, together with their trade union federation, what is best, depending on their own specific situation, provided social dialogue is maintained under high-quality conditions. The trade union expert/coordinator nominated to assist your SNB, EWC or SE-WC, as well as the European trade union federations, remain at your complete disposal should you have any questions.

It should be noted that the position of the trade unions (the European industry federation IndustriaAll) outlined above is seen by most employers' organizations as a too restricting, situation should be managed on case by case basis.



OTHER CHALLENGES: JUST TRANSITION AND DECORBANISATION; ARTIFICIAL INTELLIGENCE, DIGITALISATION, EQUAL OPPORTUNITIES

**Just transition and decarbonisation: practical recommendations to
SNBs, EWCs, SE-WCs, Brussel 23 June 2022**

- Develop your own trade union strategy
- Get involved in your company
- Discusses with the management

An online mapping of good national, sectoral and company practices is available on the industriAll Europe website.

Check it here: <https://justtransition.industriall-europe.eu/>

Good practice

- Request to receive the annual report, including the sustainability report, and to have a discussion about it with management.
- When (re-)negotiating your EWC agreement, add decarbonisation to the list of topics for information and consultation.
- Be critical concerning the information you will receive and flag up attempts at green washing!



Example

EDF EWC

Energy sector

EWC since 2001

In 2021, the preamble of EDF EWC agreement was revised as follow: The Signatories undertake to the implementation of EDF's new "Raison d'être" Mission Statement over the Group's entire European scope, as well as contributing to its construction, in particular to monitor the commitment of the Group and its European subsidiaries to combating climate warming, its consequences on operations and on jobs, and to support the ambitions of the EDF Group Corporate Social Responsibility Agreement signed unanimously on 19 June 2018.

In this perspective, the EWC is an ideal venue to analyse and share views regarding the challenges and opportunities of the major trends occurring in the energy industry, whether technological or legislative, in particular EU-level legislation, to assess their economic and labour impacts on the Group's subsidiaries, and therefore to evaluate the changes in the environment where the Group deploys its strategy.

In view of the social and labour challenges of the energy transition and the imperative requisite of a just transition in line with the European Green Deal and the Paris Climate Accord, the EWC must be a forum of dialogue about professional transitions and skills development issues linked to changes brought about by the energy transition, consistently with the requirements of a just transition.



Example

CEE Domo Chemicals

Chemical sector

EWC since 1996

The European Works Council agreement which was renegotiated in 2021 includes clear reference to the right to be informed and consulted on the company's green strategy.

Art. 2.2 Information on the general functioning of the Group
[...]

Information presented to the EWC includes:

- Structure of Domo Chemicals and its governance,
- Economic and financial situation (such as an annual report),
- Evolution of the business including production and sales,
- Safety, health and environmental policy,
- Corporate Social Responsibility (including a code of conduct) and Sustainable Development,
- General directions of the social policy of the Group and Human Resource projects

Art. 2.3 Information and consultation on transnational matters
[...]

This would include:

- Significant evolution in terms of employment,
- Strategic investments undertaken at group level or involving several countries,
- Substantial changes regarding the group's organisation,
- Introduction of new working methods or new processes of production,
- Transfers of production and transfers of technology,
- Mergers, acquisitions, downsizing or closure of undertakings or establishments, or significant parts thereof the collective redundancy plans.
- Evolution of safety, health and environmental policy



Example

Tata Steel Europe EWC

Sector metalúrgico básico

CEE desde 2000

Discussions about the impact of decarbonisation on the company's strategy and operations have been going on for some years. On the request of the Tata Steel Europe EWC, a 'decarbonisation working group' has been set up and met for the first time in June 2021. It is composed of 15 members: 7 company representatives who are leading on decarbonisation, and 8 trade union representatives from the UK and the Netherlands. The external economic expert who is assisting the EWC on a regular basis is also taking part in the decarbonisation working group.

The decarbonisation working group fosters a transparent debate, exchange of best practices and helps trade unions discuss with management about the decarbonisation scenarios of the Tata Steel group in Europe that they have developed on their own.

·IndustriAll Europe practical recommendations on artificial intelligence, Brussel 18 October 2022

Attempts to regulate the development and usage of AI have emerged in recent years. At global level, UNESCO has adopted recommendations on the ethics of artificial intelligence (2021), while the OECD has elaborated AI principles (2019) which focus on how governments and other actors can shape a human-centric approach to trustworthy AI. At the European level, the European Commission's high-level expert group on AI issued ethics guidelines for trustworthy AI (2019).



Good practice

Request a mapping of all AI systems in place in your company, or about to be implemented (Where? Which one? What for?).

Ask the management to develop an impact assessment of the AI system to be introduced at the workplace, with specific regard to the impact on fundamental rights (e.g. risks of discrimination) and on employment (e.g. number of jobs affected, skills needs). Suggest to the management the creation of a position of a data accountant, whose duty is to control and report annually on the use of AI systems, in the way a financial accountant controls and reports on the financial situation.

Without waiting for the final adoption of an EU AI Act, trade unions, including company-level representatives, should be on the offensive to shape a lawful, non-discriminatory and just AI at the workplace which abides by the following principles:

- The human must always stay in command and fully in control. The scope for AI action must be clearly defined and transparent, both for the human and the machine;
- Adaptivity and error tolerance must be clearly defined;
- The decisions taken by the algorithm must be transparent and contestable, specifically through meaningful and permanent worker consultation;
- Unreasonable targets must not be imposed;
- AI must help relieve human labour. It must augment human labour, rather than substitute it;



- Room must be made for more creative tasks in a safe work environment.
- All workers need to have the right skills at their command to work with the AI and a re- and upskilling strategy should be developed that secures a just digital transition for all.
- Let's shape digitalisation in multinational companies, Recommendations to EWC/SE coordinators and worker representatives in EWCs and SEs, Brussels, December 2020

The COVID-19 crisis has further accelerated the digitalisation of our jobs: telework has spread throughout Europe, online education and training has started to be common practice, and videoconferencing has gradually become a feature of our daily lives. Digital technologies continue to support social distancing at the workplace, thanks to smart protective personal equipment, mobile digital devices for remote work, advanced collaborative tools, etc.

The digital transformation of our industries is not a new phenomenon. It is taking place before our eyes. As highlighted by the COVID-19 crisis too, it brings as many opportunities as it does risks.



Example

MERCK Euroforum

Pharmaceutical industry

EWC (named Euroforum) since 1996

Inspired by the joint industriAll Europe / ECEG (European Chemical Employers Group) project on the digital transformation in the chemical industry in which Merck actively participated, the management and EWC jointly decided to put the topic on the EWC agenda. On the occasion of the July 2019 annual meeting, EWC delegates and management representatives took the time to discuss the impact of digitalisation at Merck during four workshops. The need to accompany the transition through training policies and worker involvement was deliberated. A digital expert supported the following plenary discussion and conclusions. Since then, talks are ongoing to follow-up on this initiative.

Example

SAFRAN EWC

Aerospace sector

EWC since 2008

SAFRAN company adopted a comprehensive digital strategy called "Factory of the future" some years ago. Early in the 2010s, the group embraced the full integration of digital technologies in its production processes: virtual reality, augmented reality, cobotics, additive manufacturing, closed-door machining, non-destructive testing; big data; digital continuity. Safran EWC took the initiative to commission a study by external experts on how the "Factory of the future" strategy is implemented in different countries. The study was delivered in November 2018.



Ejemplo

ENGIE

Energy sector

EWC since 2001 (with the founding company Gaz de France)

In November 2019, ENGIE European Works Council and ENGIE CEO signed a joint statement on the anticipation and management of the social, economic and organisational consequences of digitalisation in the company. ENGIE management and the EWC stress the need to:

- Assess the impact of digitalisation on jobs and skills and devise a strategic training planning
- Ensure a proper work-life balance, including through the implementation of the right to disconnect
- Respect legislation regarding employee data protection
- Protect strategic data and sensitive information
- Engage in social dialogue in the workplace to avoid any negative impact of digitalisation on working conditions

The joint statement was reached after two years of intensive activity by a working group set up by the EWC to assess the impact of digitalisation on work and working conditions. Following the joint statement, ENGIE management and EWC announced their intention to launch a negotiation process with the European Trade Union Federations with a view to reaching a European Framework Agreement, initially planned in 2020.



· Practical recommendations on Equal Opportunities

Equal opportunities, diversity and non-discrimination,
Recommendations to coordinators & worker representatives in SNBs,
EWCs and SEs, Brussels, July 2022

IndustriAll Europe promotes equality, diversity and non-discrimination for inclusive and safe workplaces for all:

- **Equality** is about ensuring everybody has an equal opportunity, and is not treated differently or discriminated against because of their characteristics.
- **Diversity** is about taking account of the differences between people and groups of people, and placing a positive value on those differences.
- The principle of **non-discrimination** seeks to guarantee that rights are exercised without discrimination of any kind.

The principles of equality, diversity and non-discrimination are all enshrined in the EU Charter of Fundamental Rights. They thus apply all across the EU and are enforceable before courts.

EU CHARTER OF FUNDAMENTAL RIGHTS

Article 20 - Equality before the law

Everyone is equal before the law.

Article 21 - non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.



Article 23 - Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

[...]

Article 26 - Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Good practice

- Request to receive the annual report, including the sustainability/non-financial report, released by your company, and to have a discussion about it with management.
- When (re-)negotiating your EWC agreement, add equal opportunity policy to the list of topics for information and consultation.
- If your company is headquartered in a country with strong requirements for equality plans (e.g. Spain or France), request that a similar exercise is carried out for all sites and countries.

Example

ENGIE

Energy sector

EWC since 2001 (with the founding company Gaz de France)

In 2017, the European trade union federations, industriAll Europe, EPSU and EFBWW, acting upon the mandate of a European trade union negotiation group, signed a European agreement with Engie management on **professional equality between women and men**. The European agreement goes beyond recruitment, training and career development to also address, e.g. gender-neutral parental leave or equal pay for equivalent qualifications and positions. It contains provisions on changing attitudes and preventing sexual harassment and sexist behaviour.



Example

SILGAN WHITE CAP EWC

Metal and plastic packaging sector

EWC since 2009

The Silgan White Cap EWC agreement states (art. 3.1):
The EWC shall be established at the level of the Silgan White Cap GmbH Central Management and shall have its place of business in Hannover, Germany. It shall be composed of employees of the undertaking who have been elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees in accordance with national legislation or practice. Men and women should, as far as possible, be represented on the EWC in proportion to their numbers.

CONCLUSIONS

As one knows, work is currently underway to modify the EWC directive. The impetus for them were the reports that arose in the European Parliament (the report of Gabrielle Bischof and Dennis Radtke). The European Commission has taken up the expectation expressed by the Parliament and is entering into consultations with European social partners. The work is aimed at strengthening EWC institutions (among other things, access to the court) and creating an effective sanctions mechanism. For these reasons, it is advisable to follow the development of legislation in the area of EWC.

Annex 1 -Position of ETUC and BusinessEurope in the first stage consultation

Background - launch of a process on the need to amend the EWC Directive

Undoubtedly, the right to information and consultation is firmly rooted in EU law¹ and European law², as well as being reflected in the European Pillar of Social Rights.

¹ Article 27 of the Charter of Fundamental Rights provides: Workers and their representatives must be guaranteed, at the appropriate levels, information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

² Article 21 of the European Social Charter states With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to take or promote measures to enable workers or their representatives, in accordance with national legislation and practice:



There is no space here to elaborate on the issue of the right of employees to be informed and consulted on an individual or collective basis. The primary reference in secondary law is Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community. Numerous questions can be raised regarding the right to information and consultation. The first question is whether the Directive provides for an individual and/or collective right to information and consultation? It is not clear whether information and consultation must be or can be provided to the individual employee (whether we are dealing with a 'direct' or an 'indirect' right to information and consultation). The question also arises as to whether Member States have to provide some kind of consultation mechanism in case workers do not set up (show the initiative provided for by law) a representative body³.

At this point, it is necessary to turn to the institution of European Works Councils (hereafter EWCs) - i.e. the right to information and consultation on a transnational basis. The ongoing processes in this area in the EU should also be presented.

a. To obtain, on a regular or timely basis and in an accessible manner, information about the economic and financial situation of the enterprise employing them, on the understanding that certain information, the disclosure of which could be detrimental to the enterprise, may not be disclosed or will be disclosed on a confidential basis;

b. and to be consulted in good time on decisions envisaged which may significantly affect the interests of employees and, in particular, those decisions whose effects may have a serious impact on the employment situation in the undertaking

³It should be noted that the Court of Justice of the European Union (CJEU) has held that where the protection provided by EU law (in this particular case, collective redundancies) depends on the right to information and consultation of workers through their representatives, a Member State is in breach of EU law if it does not have an effective possibility to designate workers' representatives[1]. In other words, such designation is necessary for the information and consultation mechanism to be effective. In some countries (for example Belgium, France and Luxembourg), the creation of employee representation bodies by the employer is mandatory by law. In other countries, this is regulated by collective agreements (e.g. Czech Republic, Denmark, Sweden). Still in other countries, the law defines the thresholds (minimum number of employees) required to start the procedure leading to the establishment of a representative body. A question that arose in 2011, but still remains relevant, is whether the voluntary representation rights currently prevailing in the Member States are sufficient to achieve the objective expressed in the Directive[1]. The above comments have served to signal the diversity of models for the right to information and consultation on a national dimension.



In 2019, The European Parliament has decided to prepare two own-initiative reports in relation to employee involvement at company level as a means of fostering democracy in the workplace and, in particular, strengthening the functioning of EWCs.

The first report is a non-legislative report on democracy in the workplace, published in December 2021. (2021/2005 (INI))⁴ 36. It covers the areas of information, consultation and participation of workers, trade unions, works councils, as well as some aspects of company law and corporate governance.

The second report is a legislative own-initiative report on the revision of the European Works Councils Directive (2019/2183 (INL)), which was adopted by the European Parliament on 2 February 2023. It aims to 'strengthen EWCs'. It aims to "strengthen EWCs and their capacity to exercise their right to information and consultation, and increase the number of EWCs, while taking into account the different industrial relations systems in the Member States". The document includes an annex outlining proposed legislative amendments to the recast directive, including, inter alia:

- a broader concept of 'transnational matters' on which EWC information and consultation should take place;
- a revised definition of 'consultation', i.e. the requirement for EWCs to receive a reasoned response to their opinion before management adopts a decision, and the assurance that this opinion must be taken into account by management;
- requiring Member States to provide for injunctive relief, whereby a company's decision can be suspended in the event of a breach of information and consultation requirements, and to impose financial sanctions of up to €20 million or 4% of annual turnover, as well as exclusion from public procurement and grants;

⁴ European Parliament resolution of 16 December 2021 on democracy at the workplace: European framework for the rights of employee participation and revision of the European Works Council Directive



- requiring companies to provide the EWC with objective criteria for determining whether a matter is confidential and for how long, and requiring companies to ensure the confidentiality of information and consultation;
- stricter deadlines for the establishment of EWCs (up to 18 months to negotiate an agreement establishing an EWC);
- the removal of the exclusion of undertakings which concluded agreements before the entry into force of the Directive from its scope and the extension of the amended provisions to undertakings which have concluded all types of existing information and consultation agreements.

On 1 March 2023, in a reply to the European Parliament, the European Commission welcomed the European Parliament's resolution on the basis of Article 225 TFEU. In line with the political commitment made by President Ursula von der Leyen in her political guidelines for resolutions adopted by the European Parliament under Article 225 TFEU, the Commission is committed to present a legislative proposal in full respect of the principles of proportionality, subsidiarity and better regulation⁵. As indicated by the European Commission, the European Parliament's proposals, including the specific proposals set out in the annex to the resolution, will be assessed in the light of ensuring legal certainty for workers and employers and protecting and promoting employment and industrial activity in the EU.

⁵ Supplementary information:
 Launch of public consultation process with European social partners https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2141
 Basic data on EWCs in the European Union <https://www.ewcdb.eu/>
 Position of the European Parliament- https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.html
 Evaluation of the Directive carried out in 2018. - <https://ec.europa.eu/social/main.jsp?langId=en&catId=707&furtherNews=yes&newsId=9102>
 10 demands of the ETUC - <https://www.etuc.org/en/document/etuc-position-paper-for-modern-ewc-directive-digital-era>



This evaluation will include data and evidence gathering and a comprehensive assessment of the problems and factors associated with existing EWCs, as well as the issues highlighted in Parliament's resolution. In its response, the Commission further indicated that it will initiate a two-stage consultation of the EU social partners in accordance with Article 154 TFEU and that the social partners may also decide to act through agreements under Article 155 TFEU. This action of the European Commission allows to proceed to the presentation in paragraph 2 of the Comparative Report of the views of the EU representation of workers in the form of the European Trade Union Confederation, on the one hand, and the EU representation of employers in the form of BusinessEurope, on the other.

Position of ETUC and BusinessEurope expressed in the first phase of consultation.

BusinessEurope's position

In BusinessEurope's view (position of 25 May 2023 expressed in the first phase of the consultation by the European Commission), the philosophy behind the EWC Directive is and should remain to give the social partners at company level, who know their company best, the space to negotiate arrangements that suit their situation, rather than imposing a standard template on everyone.

BusinessEurope stresses that the best EU policy approach to further advancing EWC practice is to encourage and support EWC practitioners to help them set up more EWCs within the scope of the directive and improve the practice of existing ones. The organisation highlights that many member federations and sectoral associations at EU and national level that are members of BusinessEurope are already providing extensive support to their member companies in setting up and running EWCs. This includes, for example, the production of step-by-step guides that outline the functioning of EWCs, summarise current legislation or make specific recommendations.



According to the organisation, the European Parliament's report adopted at the EP plenary in February 2023 did not take into account business realities. In addition, and judged negatively, the European Commission chose to respond to the European Parliament by opening the way for consultation with the social partners, which is in stark contrast to its own 2018 report, which highlighted that the vast majority of Member States had correctly transposed the recast (recast) EWC Directive. The EU policy debate on EWCs should therefore address whether and how a revision (recast) of the existing EWC Directive could lead to an improved functioning of EWCs from the perspective of both companies and employees. Furthermore, a clear distinction should be made between the role of law and the role of contract in the establishment of EWCs, so that the social partners at the company level have the freedom they need to adapt their practices to the changing situation of the company.

Unfortunately, the Commission's consultation document does not address issues important to the business community, such as:

- Create more space for the social partners at the company level to develop their own solutions to improve the functioning of EWCs in practice;
- Improving the way EWCs actually work, for example by reconsidering some of the arrangements for EWC meetings set out in the Directive in order to provide more flexibility for companies and EWC members, reduce the costs involved and make good use of the opportunities created by improved digital communication.

BusinessEurope regrets that the European Commission's consultation document focuses largely on the main areas raised in the European Parliament's report. BusinessEurope is deeply concerned about the European Parliament's main proposals, which will further weaken the competitiveness of European companies and damage the smooth functioning of EWCs.



Instead of fostering a social dialogue based on trust, the European Parliament's approach poses a significant risk of administrative or judicial orders imposed on companies to freeze or delay decision-making, leading to disproportionate penalties, undermining companies' trust in EWCs and undermining the role of social partners at company level. In particular, BusinessEurope stresses that the regulatory framework of the Recast Directive, based on Article 153 TFEU, does not allow the EU to instruct Member States on the exact level of sanctions to be applied. This should be decided by Member States in accordance with national laws and practices. Fines at the level proposed by the European Parliament will not play any positive role in labour relations and will seriously damage cooperation and trust between the social partners at company level and increase the risk that social dialogue will become full of contradictions. In the organisation's view, the potential revision of the EWC Directive should create a safe harbour for pre-existing EWC agreements (e.g., in particular agreements prior to the entry into force of Article 14(1)(a) of the Directive) by ensuring that they remain outside its scope in future.

Finally, the quality and coordination of EU and national information and consultation processes depends mainly on building an environment of trust, cooperation, positivity and commitment. It is important to preserve the spirit of the 1994 Directive and not to seek to turn it into a co-decision-making body that does not correspond to a possible governance model. In order to improve the functioning of EWCs in practice in a way that respects the autonomy of the social partners at company level, BusinessEurope encourages the European Commission to present an alternative approach to the European Parliament's proposal, either in the form of a Commission recommendation or by issuing a code of conduct.

Position of the European Trade Union Confederation

ETUC (position adopted and forwarded to the European Commission on 22 May 2023) would like to stress that the European Parliament has struck the right balance in its choice of issues, with its proposal focusing, on the one hand, on better defining the rights guaranteed by the 2009 Directive and, on the other hand, on ensuring their effective enforcement.



. Unfortunately, the European Commission's consultation document does not address all these important points.

In practice, the application of workers' rights to information and consultation within the EWC is often inadequate, late and meaningless. The EWC demands effective enforcement of EWC rights and considers the issues of proper enforcement and access to justice to be very important. The European Commission rightly stresses that sanctions must be effective and dissuasive. The European Parliament's resolution agreed with this and called on the EWC to exercise its 'right to apply to the national courts or other competent authorities for a preliminary injunction to provisionally suspend the enforcement of management decisions pending a procedure for informing and consulting the EWC at the appropriate level of management and representation and in a manner that allows for a reasoned response from management in accordance with this directive'. The ETUC supports the call for the right to temporarily suspend company decisions in the event of breaches of information and consultation procedures and even to annul company decisions in the event of repeated breaches, with the prerogative of national trade unions. The experience of Member States that have implemented such a system clearly shows that the deterrent effect alone is sufficient to induce companies to comply.

In addition, there is the issue of financial penalties. The Commission's 2018 evaluation report has already shown that in most Member States, multinationals face maximum fines of several thousand euros. In Germany, the Member State with the highest number of EWCs, the maximum fine is €15,000. Such low fines are not effective and dissuasive and may even be seen as an incentive to disregard EWC rights. The ETUC supports the European Parliament's position to provide penalties in relation to the turnover of a company or group of companies. Inspired by the RODO, the European Parliament calls for penalties of up to 2% of global turnover. The ETUC considers these penalties to be a deterrent.



However, the best sanctions are ineffective if the plaintiff's route to court is impossible or difficult. The Commission has already noted in its 2018 evaluation report the general weaknesses of the existing measures to enable EWCs to enforce their rights. ETUC regrets that at that time the Commission decided not to act despite the clear evidence presented to the Commission by, among others, ETUC. The ETUC disputes in the Commission's consultation paper that the level of litigation was low, while making no reference to the many obstacles that EWCs have to face in order to gain access to justice. Based on credible scientific evidence, the ETUC has already shown that the low level of litigation is due to the many obstacles placed on EWCs, which have de facto led to a lack of effective access to justice for EWCs. The ETUC and its affiliates have repeatedly reported to the Commission blatant violations of EWC rights since the entry into force of the Recast Directive (e.g. Caterpillar, ArcelorMittal, Nokia, Legrand, Whirlpool, GKN, Honda, Nissan, etc.). If these cases have not translated into litigation, it is because of the challenge of going to court all too often. For these reasons, the ETUC believes that action should be taken to address the lack of effective access to justice for EWCs and recalls that the European Parliament rightly calls on the Commission, as guardian of the Treaties, to ensure effective access to justice for EWCs. This includes, inter alia, the recognition of the legal personality of EWCs, the need for central management to provide the necessary financial support for judicial proceedings.

The Commission correctly identifies the definition of 'consultation' as another issue to be addressed. The ETUC supports the position of the European Parliament, which noted that: "the timeliness of consultation remains an issue where the opinion of the workers' representatives may be requested or provided at a time when no meaningful consideration can be undertaken or when a management decision on the proposed measure has already been taken". This observation is supported by academic research conducted by the ETUI and by complaints made by EWCs to the ETUC and European industry federations.



The ETUC stresses that information and consultation must be an integral part of a company's decision-making process at all levels: local, national and international. Before management makes a final decision, the international information and consultation process must be properly conducted and completed. Meaningful consultation must therefore take place in good time so that the EWC has sufficient time to carry out an in-depth evaluation of the information provided, including with the support of experts if necessary, and to consult with national and regional employee representatives in order to obtain an informed opinion. Sufficient time and resources are also needed to prepare an EWC opinion depending on the potential impact of the planned measure. The opinion should be taken into account by management and the EWC should receive a reasoned response before taking a final decision. The current provisions of the Directive do not provide sufficient legal clarity on these essential steps and must be strengthened to reflect this principle. ETUC stresses that the European Parliament's proposal to amend Article 2 of Directive 2009/38/EC is a viable way to strengthen the consultation procedure.

The concept of 'transnationality' needs clarification. The current Directive already provides a comprehensive definition in Recitals 12 and 16: "Appropriate provisions should be adopted to ensure that workers (...) are properly informed and consulted when decisions which affect them are taken in a Member State other than the one in which they are employed." (Recital 12 of Directive 2009/38/EC) and further: 'The transnational character of a case should be determined by taking into account both the extent of its potential impact and the level of governance and representation at which it is situated.'



' To this end, cases that involve an entire company or group or two or more Member States are considered transnational. They include cases which, irrespective of the number of Member States involved, are of importance to the European workforce in terms of the extent of their potential impact or which involve the relocation of activities between Member States." (Recital 16 of Directive 2009/38/EC). However, not all Member States have transposed the recitals into national law and, contrary to what is described in the Commission's consultation document, the recitals are not read together with Article 1(3) and (4). Practice shows that there are often disputes with central management on how to define transnationality. The ETUC therefore proposes, as requested by the European Parliament, to consolidate and incorporate the provisions of the recitals into the body of the directive. This would provide legal clarity in the interests of both management and workers. There must be an enforceable, comprehensive right for EWCs to be informed and consulted on transnational matters throughout the decision-making process, and legal certainty must be ensured.

The ETUC strongly emphasises the importance of guaranteeing access to the knowledge of recognised trade union organisations, not only for the special negotiating body, but also for the EWC in its daily work. Drawing on the most accurate knowledge of the industry, sector and transnational issues, as well as an in-depth understanding of the functioning of EWCs, European and national trade unions provide valuable and accurate expertise, including legal advice where appropriate. Although the current Directive provides for the possibility for EWCs to appoint experts and explicitly refers to trade union representatives as possible experts for the special negotiating body, most Member States limit this possibility to only one expert, as referred to in the supporting requirements. In practice, this very often means that trade union representatives are simply excluded from participating in any meeting of the special negotiating body or the EWC. The ETUC regretted that the European Commission's consultation paper does not analyse the position of trade union representatives in detail and only deals with them in the framework of other issues.



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