

EWC Negotiations: Main Priorities Procedure and Content

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European Works Councils have been a cornerstone of the three industriAll European Trade Union¹ founding organisations' work and this will not change in the new organisation. Alongside coordinating the 530 EWCs and supporting the thousands of trade union representatives sitting on EWCs, industriAll Europe will continue to give priority to the negotiations and the renegotiations of quality EWC agreements.

The Directive 2009/38/EC creates opportunities to strengthen the powers and the effectiveness of EWCs. It offers a real opportunity to play a more active role in multinational companies, to defend employment and to better anticipate change.

In order to rise to the challenges of the new Directive and help EWCs and workers ensure that they get the most out of it, industriAll Europe has already produced a set of documents which provide guidance for EWC negotiations or renegotiations (see enclosed two documents).

These documents focus on the steps to be taken to establish EWCs as well as on the content of an EWC agreement.

In general, industriAll Europe policy focuses on:

- Ensuring transparency of information between the unions concerned
- Ensuring that both SNB and EWC members are representative
- Taking pro-active initiatives to start new negotiations
- Ensuring quality EWC agreements

Regarding the procedure to establish an EWC agreement, industriAll Europe focuses on:

- Coordinating initiatives to launch negotiations with the support of the industriAll Europe Secretariat
- Informing all the unions and checking legitimacy of SNB members

¹ industriAll European Trade Union is abbreviated as industriAll Europe

- Securing the presence of an industriAll Europe expert throughout the negotiation process

As far as the content of an EWC agreement is concerned, industriAll Europe focuses on

- Arrangements to be negotiated (article 6)
- Information and consultation rights
- Transnational matters
- Linking national and European levels of information and consultation processes
- Training rights
- Adaptation clause
- Subsidiary requirements, such as minimum standards

Encs:

- Negotiating EWC agreements: guidelines for procedures and contents
- Checklist for negotiations and practical assistance regarding the content of EWC agreements

**Negotiating European Works Council
agreements:
industriAll European Trade Union²
binding guidelines for procedures
and contents**

² These guidelines are the former EMF ones

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1. Introduction

European Works Councils (EWCs) are an important pillar of the industriAll European Trade Union Company Policy because they play a key role in promoting information and consultation rights at transnational level in Europe and in fostering a mutual commitment to work together in order to defend workers' interests in companies at cross-border level.

The new EWC Directive adopted on 6 May 2009, which was to be transposed into national legislation by June 2011, creates opportunities to strengthen the powers and the effectiveness of European works councils. It offers EWCs a real prospect to play a more active role in multinational companies.

With these guidelines and recommendations, industriAll Europe aims at ensuring that from 6th June 2011 onwards:

- All new and renegotiated agreements are in line with the content of the new Directive.
- All existing agreements benefit from the Directive's improvements.

THE LEGAL BACKGROUND

Since 6th June 2011, the new rights and provisions of EU Directive 2009/38/EC apply to:

- Any negotiations and/or agreements concluded as from that date.
- All Article 6 agreements (i.e. those signed after 22 September 1996), provided they were not concluded or revised during the legal transposition period which ran from June 2009 to June 2011. Such Article 6 EWCs will not need to renegotiate their agreements in order to be able to apply the new rights and provisions. These apply automatically. For instance, the new definitions of information and consultation, as well as the new provision on training, automatically apply to any Article 6 agreement as long as it has not been signed or renegotiated between June 2009 and June 2011.

Certain provisions of the new EWC Directive also apply to the so-called Article 13 agreements (i.e. those signed before 22 September 1996).

Despite the fact that many provisions of the new EWC Directive may not apply directly to all EWC agreements, industriAll Europe and its affiliated organisations can and will work politically with the new standards and rights for all EWCs. As experienced during the transposition period, the new standards and rights can be successfully included in any agreement, thus enabling them to live up to the spirit of the recast EWC Directive.

The European Commission also set up an Expert Group composed of national experts in order to exchange information and coordinate the national transposition process. The report of the group of experts on implementation of Recast Directive 2009/38/EC on European Works Council provides an extremely useful interpretation of some of the sensitive issues of the new Directive. This report, as well as all EU documents relating to

European Works Councils, and especially the national transposition laws, can be downloaded from the EU internet site. (For the direct link click [here](#) or go via www.ec.europa.eu/social/).

2. How to establish an EWC? The procedure

Negotiations with a view to concluding an agreement establishing an EWC have to be carried out between central management and a Special Negotiation Body (SNB). The SNB represents the interests of the employees of the company as a whole and is set up for the specific purpose of negotiating an EWC.

The industriAll Europe strategy and agreed procedure is to take steps to start EWC negotiations:

1. IndustriAll Europe affiliates or workplace representatives approach management to open negotiations by formally requesting the establishment of a Special Negotiating Body (SNB).
2. National affiliates must inform the industriAll Europe Secretariat, which will co-ordinate the involvement of all countries concerned and the nomination of delegates to the SNB.

The industriAll Europe Secretariat will clarify with other European trade union federations (ETUFs) the question of who will take the lead in case a company is covered by several union federations.

3. It is the obligation of local management to provide all the necessary information needed to open negotiations, in particular regarding the structure of the company, the size of the workforce and its distribution across Europe (Art. 4 of the Directive 38/2009).

It is also the obligation of management to notify the European Trade Union Confederation (ETUC) of the composition of the SNB and of the start of the negotiations. As agreed between the ETUC and BusinessEurope this notification shall be made to the following central address: ewc@etuc.org. The SNB should make sure that the central management fulfils this obligation (Art 5.2.c. of the Directive 38/2009).

4. The SNB should request assistance by a trade union expert. The new Directive explicitly recognizes the special role the European trade unions have played in supporting negotiations by providing assistance to the SNB. It clarifies the fact that representatives of competent ETUFs have the right to participate in the negotiations, at the request of the SNB and in an advisory capacity (Art. 5.4 of the Directive 38/2009).

As a rule, the industriAll Europe expert will come from the country of the company headquarters. His/ her designation will be approved and supported by the industriAll Europe Company Policy Committee (CPC). It will be communicated to the affiliates, whose responsibility is to inform the SNB members of the nomination of the trade union expert.

S/he will inform the industriAll Europe Secretariat on progress throughout the negotiation process.

The tasks and profile of the trade union expert are to:

- guide and assist the SNB members in the negotiation process
- make sure that industriAll Europe guidelines are understood and accepted
- inform the industriAll Europe (CPC) on the progress made
- act as the contact person for all SNB members and trade unions in the company
- be able to play a leading role
- be able to act as the SNB spokesperson if requested by the SNB
- be able to present a draft agreement
- be able to inform and prepare SNB members on their role and on EWCs
- take part in pre-meeting and negotiation sessions with management.

It is the responsibility of the affiliated unions to assist/support the trade union experts so that they can fulfil their task.

5. The SNB is entitled to preparatory and debriefing meetings. The SNB meets with interpretation, but without the employer being present (Art 5.4).

6. Affiliates must ensure that SNB delegates understand and accept the industriAll Europe guidelines.

7. industriAll Europe and the industriAll Europe CPC will offer guidance and, in the case of particular difficulties, arbitration and mediation.

8. Ratification

- An agreement that does not meet the industriAll Europe guidelines should not be signed.
- The industriAll Europe CPC or the industriAll Europe Secretariat may issue a recommendation where the situation requires this, especially if the draft agreement is below the industriAll Europe requirements or if the agreed industriAll Europe procedure has not been followed.
- It is highly recommended that industriAll Europe be a party to the agreement and that the expert sign the agreement as well.
- The industriAll Europe expert will make sure that a copy of the agreement is sent to the industriAll Europe Secretariat.

9. An industriAll Europe coordinator for the EWC has to be rapidly identified after the conclusion of the agreement. S/he will be the point of contact between industriAll Europe and the EWC. S/he will be designated in accordance with the rules laid down in the industriAll Europe resolution on the role of trade union coordinators in existing EWCs.

3. Content of an EWC Agreement

The new Directive establishes a number of principles and obligations which will have to be followed by companies with EWCs negotiated under the provisions of Article 6 of the EWC Directive, irrespective of the actual content and outcome of the negotiations. They govern the functioning of the EWCs. Even if the wording in the agreement is different from the Directive's, the rights stemming from those principles (definitions of information and consultation, for instance) will be secured. Their integrity is enshrined in the law.

In the agreement itself, it might therefore prove easier to express the intention behind those principles in clear and simple language and integrate the full wording of the Directive in an appendix.

In summary, the new Directive considerably strengthens the general principles of transnational information and consultation. At the same time, the new EWC Directive makes it clearer that the main role of the negotiating parties is to define the practical arrangements on the implementation of the EWC rules contained in the Directive. The EWC Directive thus provides the welcome opportunity to define highly specific structures and processes which are tailor-made to suit each particular company, while still safeguarding the basic principles that are to be respected.

3.1. New definitions

Several fundamental principles are defined by the new Directive.

Since 6th June 2011, they govern any negotiations and/or agreements concluded as from that date. They also directly apply to any existing Article 6 agreements (i.e., those signed after 22 September 1996) provided they have not been signed or revised during the legal transposition period (June 2009 to June 2011).

3.1.1 Information

Broken down into its key components, the new definition of Information (Art 2.1f): means

- The transmission of information
 - at such a point in time,
 - in such a way, and
 - with such content as is appropriate
- to enable the EWC to
 - become acquainted with the subject matter and examine it,
 - undertake an in-depth assessment of the possible impact

- and prepare for consultations

3.1.2. Consultation

Broken down into its key components, the new definition of consultation (Art 2.1g) means:

- the exchange of views and establishment of dialogue between the EWC and management
 - at such a point in time,
 - in such way, and
 - with such content
- that the EWC is in a position to express an opinion about the proposed measures which may be taken into account in management's decision-making process.

3.1.3. Transnational matters (Art 1.4)

As a general principle, a matter becomes transnational and thus subject to the involvement of the EWC whenever it exceeds the competences of the local/national management. The underlying idea is that the EWC is meant to act as a bridge between national information and consultation, in particular regarding issues or measures which are beyond the reach of information and consultation procedures at the local or national level.

As a working definition, transnational matters are thus matters that concern the group as a whole or at least two establishments situated in two different member states. However, when it comes down to it, it is not so much the number of countries formally concerned which counts but rather the potential cross-border effect of a measure and the level of management which makes the key decisions. If a decision is to be taken at a cross-border managerial level and the national-level employee representative structures would thus not be able to intervene at a formative stage, then dealing with the issue falls under the competence of the EWC.

industriAll Europe recommends that the original text of the EWC Directive be included in an appendix to EWC agreements in order to ensure full clarity about these principles.

3.1.4. Article 6 (arrangements to be negotiated)

Article 6 specifies what SNBs have to negotiate into an EWC Agreement. The arrangements to be negotiated by the parties are:

- **The scope of the EWC agreement:** which countries are covered by the agreement. (As in the Directive, the scope of the agreement should be all EEA countries.)

However industriAll Europe attaches great importance to the inclusion of workers' representatives from Switzerland, as well as representatives from accession countries, as full members. If full participation cannot be achieved it is recommended to include them as observers.)

- **EWC composition / distribution of seats** across countries, parts of the company, etc. The aim is also to reflect the balance of the workforce (e.g. in terms of gender, category, job type) whenever possible.
- The venue, frequency and duration of **EWC meetings**, including both meetings with management as well as internal meetings of the employee representatives on the EWC and the Select Committee.
- **Select committee**: the agreement must define how it is composed, its functions, its rules of procedure, and its means of working (including resources for travel, interpretation, etc).
- **Duration and renegotiation**: beginning and duration of the agreement, arrangements for amending or terminating the agreement, and the procedure for renegotiation.
- The financial and material **resources** to be allocated to the EWC.
- Arrangements for **linking** information and consultation procedures at **national** and **European** levels

4. The content of a EWC agreement: industriAll Europe minimum standards and recommendations

As noted above, the new EWC Directive defines certain fundamental principles that govern the work of EWCs negotiated under the provisions of Article 6. Beyond that, it is the task of the SNBs to define the actual workings of the EWC for their specific company.

Over the past two decades, the European trade unions have amassed valuable experience about the kinds of rules and standards which EWCs need in order to work effectively. In the following section, some minimum standards are defined and some further recommendations are laid out as references for EWC agreements.

For many provisions, the Subsidiary Requirements laid out in the appendix to the Directive which would apply in the case of failure of SNB negotiations, provide a clear blueprint along which SNBs and management can orient their negotiations.

4.1. Topics to be dealt with by the EWC:

The appendix to the 2009 EWC Directive lists the topics on which the EWC is to be informed and consulted.

The information of the European Works Council shall relate in particular to:

- the structure, economic and financial situation,
- probable development
- and production and sales of the Community-scale undertaking or group of undertakings.

The information and consultation of the European Works Council shall relate in particular to:

- the situation and probable trend of employment,
- investments,
- substantial changes concerning organisation,
- introduction of new working methods or production processes,
- transfers of production,
- mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and
- collective redundancies.

These lists should be taken on in their entirety in any new EWC Agreement. In addition to these, industriAll Europe recommends that the list of issues to be dealt with by the EWC be extended to include the following:

- Health and Safety
- Environmental issues
- Training policy
- Corporate Social Responsibility
- Equal opportunities

4.2. Meetings

4.2.1. Ordinary meetings

The EWC must be able to hold at least one ordinary meeting per year. The agenda for the meeting(s) is worked out between the Select Committee of the EWC and management. The official EWC meeting with management should last at least one day.

However it is our recommendation to have two ordinary meetings of the EWC a year in order to ensure as much as possible a continuity in the work of the EWC.

4.2.2. Pre-meeting and debriefing meeting

Workers' representatives must be entitled to an adequate pre-meeting the day before the plenary meeting of the EWC with management and a debriefing meeting after the plenary meeting.

4.2.3. Exceptional circumstances and extraordinary meetings

Where there are exceptional circumstances or envisaged measures potentially affecting the employees' interests to a considerable extent, particularly in the event of relocation, the closure of establishments or undertakings or collective redundancies, the Select Committee or, where no such committee exists, the European Works Council shall have the right to be informed and consulted.

It shall have the right to meet the central management, at its request, so as to be informed and consulted (in the sense of the new definitions). The decision whether to hold an extraordinary meeting in the case of exceptional circumstances shall be a unilateral decision of the EWC.

Those members of the European Works Council who have been elected or appointed by the establishments and/or undertakings directly concerned by the circumstances or envisaged measures shall have the right to participate where a meeting is organised with the Select Committee. Representatives of sites directly concerned by the circumstances or envisaged measures but who are not members of the EWC shall also have the right to attend.

The consultation shall be conducted in such a way that the employees' representatives can meet with the central management and obtain a response, and the reasons for that response, to any opinion they might express.

The information meeting shall take place at the earliest possible moment on the basis of a written report drawn up by the central management. The information provided must enable workers' representatives to conduct an in-depth assessment of the envisaged measures. During that meeting, workers' representatives and management will agree on a consultation process. This includes matters of the time scale, the necessary interlinking with ongoing parallel information, consultation and negotiation processes at the national and local levels, and the role of the expert in helping the workers' representatives develop their opinion.

On the basis of the agreed timing, the consultation meeting shall take place with a view to allow workers' representatives to engage in discussions with management and deliver their opinion.

It would be useful to secure the right to an additional meeting, following the consultation meeting, so as to allow management to respond to the EWC opinion (Subsidiary Requirements, 1a), of the Directive 38/2009).

The Directive stipulates that consultation shall take place within a reasonable period of time. industriAll Europe also recommends not defining a fixed time limit applicable to all consultation processes. Instead, it should be specified that the time available for consultation is to be decided on a case by case basis depending on the scale of the envisaged

measures. The guiding principles are flexibility and viability of the process. Consultation is not to be understood as an obstacle to the decision-making process but as a contribution to effective company decision-making. (This objective is clearly stipulated by Article 1 of Directive 2009/38/EC.)

4.3. Select Committee

The workers' representatives within the EWC must have the right to elect a Select Committee consisting of employee representatives only. The Select Committee is responsible for the day-to-day business of the EWC between meetings. Simultaneous interpretation must be available for Select Committee meetings as needed and the Select Committee must have the right to hold meetings fully or partly without management being present. (Other names for such a committee include "Steering Committee", "Presidium", etc.)

The EWC agreement must define the powers and responsibilities of the Select Committee so that it at least contains the following rules:-

- It discusses and agrees with management on the location, agenda and structure of the plenary meeting with management.
- In co-operation with management it discusses and agrees on the minutes and statements of the plenary meeting with management.
- The Select Committee must have the right to hold regular meetings financed by the company.
- It must be informed and consulted by management in good time especially in the period between official meetings if and when transnational issues arise.
- The rights of the Select Committee members emanate from the agreement and the mandate of the full EWC.
- The composition of the Select Committee shall preferably represent the different countries and the different businesses.

4.4. Rules of procedure and the need to define a legal mandate as necessary

The EWC agreement should provide for the right of the EWC to define its own autonomous rules of procedure. These Rules of Procedure should be a separate document adopted by the EWC in which the EWC members define the ways in which they intend to work together, and the precise powers and responsibilities of the Select Committee. The Rules of Procedure should also define the ways in which the EWC takes collective decisions, for example by majority vote. They should also provide for a clear method of mandating a person to take legal steps on behalf of the EWC should this ever become necessary.

4.5. Linking national and European levels of information and consultation processes

The EWC agreement should ensure that national and European levels of information and consultation are more effectively linked and coordinated with each other. National and European levels of information and consultation bodies have to play complementary and effective roles. In other words, information and consultation processes shall take place at the relevant level of decision-making **without compromising the autonomy of any level**.

More precisely, the agreement should make clear that depending on the nature of the proposed measures,

- the EWC will be informed earlier or at the same time as the national bodies;
- national consultation processes should not be concluded before the process has been completed at the European level;
- information and consultation processes should be conducted at all relevant levels, and the new obligation cannot be used to undermine existing national rights.

Understandably, this enhanced role of the European information and consultation processes may give rise to some concern, since it will inevitably impact on the ways in which information, consultation and negotiations are conducted in each respective country. Our experience has shown however, that even if it can be quite challenging, it is in the interests of the whole European workforce to pursue a genuinely European approach which is firmly anchored in the national level of employee representation. In today's interlinked and highly-integrated companies, each level benefits from the information and consultation processes conducted at the other levels: at the national level, the trade unions can apply the information gained at the European level in order to strengthen their bargaining position at the local level. The European level can never replace national-level information and consultation, but it provides an ideal forum in which to coordinate union strategies, pool the strengths and balance the weaknesses of each site affected by a measure, and thereby contribute to generating a solution which is fair for all. In other words, it is not a zero-sum game: when each level plays its appropriate role, nobody loses and everybody wins.

It is our recommendation to clarify this link in the agreement. However if the agreement fails to provide some provisions in this respect the mechanism foreseen by the Directive and transposed in national laws will apply (Art. 12).

4.6. Interpretation

Simultaneous interpretation from and into all relevant languages must be provided as necessary for the official EWC meeting with management as well as for the internal pre-meeting and de-briefing meeting and the meetings of the Select Committee. The provision of language training cannot be used to restrict simultaneous interpretation and translation where these are needed in order to enable the active participation of all EWC members

regardless of their language skills.

4.7. Experts

The EWC and the Select Committee must have the right to invite experts of their own choice to all meetings, including the meetings with management. Management should be informed of this. It is however not acceptable for experts to only be invited to be present during certain pre-determined points on the agenda. The EWC agreement must ensure that management covers the cost of at least one expert.

4.8. Rules of confidentiality

The rules for confidentiality can only cover such information as has been explicitly and reasonably designated as a business secret. The rules of confidentiality must not apply to members of organisations that are already covered by national rules of confidentiality. Infringements of the rules of confidentiality can only trigger sanctions on the basis of the respective national laws, rules and traditions.

4.9. Costs related to the EWC functioning

All necessary costs in connection with the work of the EWC must be met by management.

4.10. Working facilities

EWC members shall have access to communication facilities (telephone, fax, e-mail)

4.11. Providing information at local and national levels about the content and outcome of information and consultation processes in the EWC (Art. 10.2)

The new Directive establishes the obligation for the EWC members to report to the employees' representatives, or in the absence of appropriate structures, to the workforce as a whole, about the work of the EWC.

This implies that the management has to provide EWC members with the appropriate means to communicate with the workforce at national level, including giving access to the different sites as necessary.

Of course, such processes and arrangements will be needed to be developed at the company level for each country depending on the constellation of sites and any existing structures. But it is important to recognise that this obligation to report on the work of the EWC represents a very good opportunity to better anchor the work of the EWC into the work of the local trade union and employee representation and to make it more visible to the whole workforce.

4.12. Training (Art.10.4)

EWC members shall have the right to receive appropriate training and be released from work to follow training. Training and related costs (including interpretation) should be borne by management. EWC members must have the right to determine the content of the training and choose the trainers.

Our recommendations include ensuring that a provision is made in the agreement for both individual and collective training for EWC members (workers' representatives only) at least once in a mandate period.

4.13. Duration of the agreement and renegotiation procedure

An agreement can be of unlimited duration or be for a fixed term. In any case it should contain a clause which clarifies how it can be terminated by either side thereafter with due notice and how the EWC can update the agreement. The rules governing renegotiations should specify the following: Who has the right to renegotiate the agreement, and within what timeframe. The existing EWC must explicitly be assigned the right to take up negotiations. Rules governing renewal must ensure the validity of the existing agreement during negotiations. A time limit for the completion of renewal negotiations should be included, after which date - in the event of failure to agree on a new agreement - the subsidiary rules of the then applicable Directive enter into force.

4.14. Adaptation of the EWC in case of change of structure

The Directive 2009/38 (Art 13) clarifies that where the structure of a company changes significantly, due to a merger, acquisition or division for example, the existing EWC must be adapted.

This clause foreseen by Article 13 of the Directive 2009/38/EC applies to all agreements including Article 13 agreements of the 1994 Directive and Article 6 agreements which were signed or revised during the transposition period. This clause gives the opportunity for renegotiation of those agreements under the terms of the new Directive provided that they do not already contain provisions dealing with the change of structure or in case of conflict between the provisions in two EWC agreements.

IndustriAll Europe feels that the new universally applicable procedure for renegotiating EWC agreements in the case of significant structural change is the most fair and transparent approach to future uncertainties. It is therefore essential that while renegotiating Article 13 or 6 agreements, the clause on the change of structure is written in such a way that it does not prevent the possibility of renegotiating those agreements under Directive 2009/38.

5. Closing remarks

The industriAll Europe Company Policy Committee will continue to monitor the implementation of the new EWC Directive on a regular basis and provide advice and recommendations to ensure that workers get the most out of the new Directive. industriAll Europe is also committed to continue supporting its member organizations in their effort to advise EWCs and EWC members.

6. Important and useful links

➤ European Institutions

- European Commission http://ec.europa.eu/index_en.htm

EWC Directive

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:122:0028:0044:EN:PDF>

Employee Involvement

<http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=211>

➤ Trade Unions

- industriAll European Trade Union <http://www.industrial-europe.eu/>

industriAll Europe Company Policy Committee <http://www.industrial-europe.eu/news/newsx.asp?job=cpcmt&mloc=pc>

European Trade Union Confederation – ETUC www.etuc.org

➤ Research Institute

- European trade union institute – ETUI <http://www.etui.org/>

Worker participation <http://www.worker-participation.eu/>

Notes

A Start for European Works Councils
industriAll European Trade Union
Checklist for negotiations and practical
assistance
on the content of EWC agreements

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A. Preface: Explanations concerning the Checklist

This Checklist with its explanations is meant to be an aid to all those colleagues who are involved in (re)negotiating European works councils with the employers. It is based on experience that we have gained with the negotiations on EWC agreements and at meetings of existing EWCs. Thus it has no claim to be exhaustive.

Nearly 15 years after the release of the EWC Directive (94/45/EC), the renewed directive (2009/38/EC) was published, coming into force on 5 June 2009. We hope that this will be reason enough to set up missing EWCs in European transnational companies as well as to renegotiate existing agreements. Our joint aim should be to implement the standards set by Directive 2009/38/EC and thus to enhance the practice of EWC work.

We have decided not to draw up a so-called sample agreement. Our experience has shown that companies, multinational decision-making structures and external circumstances such as trade union density and shop-floor practice are too different to be able to fit into a pattern.

The items addressed may not all have to be included in an agreement. But they all have to be taken into account. It is only then that a decision can be taken as to whether and how they are settled.

These Europe-wide negotiations are still a rather new challenge for most of us. We have to integrate and respect the traditions and experiences of colleagues and sisters and brothers from the most varied European countries. Procedures that are usual for one country can seem quite strange to representatives from other countries. The situation has become even more complicated than it was in the early days of EWC negotiations: The directive now covers 30 Member States since the extension of the European Union in 2004. It is more important than ever to recognise that one system is neither better nor worse than any other – it is merely different. And we as trade unionists and shop-floor representatives can learn from each other. The point is not to harmonise the models of representation in Europe. But the opportunity does exist to achieve effective, social and reliable labour relations in Europe with the effective support of continuous EWC work.

In our view, some of the items in the Checklist presented here are indispensable if an EWC is to be able to contribute to these developments. These include:

- involving all employees' representatives from the EU and countries in the European Economic Area (EEA), Switzerland and the EU applicant countries,
- adhering to the election or appointment procedures on the basis of national regulations in coordination with the trade unions,
- holding at least one meeting – and ideally at least two – a year,

- holding extraordinary meetings in exceptional cases,
- placing an obligation on central management to provide reports and written documents, and to conduct consultation,
- setting up a management committee,
- the possibility of permanent communication with each other inside the employees' representatives' body,
- preparatory meetings and follow-up meetings for the employees' representatives,
- provision for experts/trade union officials to attend, and the payment of remuneration and expenses for these,
- interpretation at meetings and translation of documents,
- infrastructures, financial provisions and procedures,
- regular training for the whole EWC and all of its members,
- information and consultation procedures at least following the new 2009 rules for the legal EWC,
- the definition of transnational decisions which result in consultation of the EWC by the central management,
- the obligation upon all EWC members to report to their national employees' representatives and the right of the latter to inform their workforce about the results of EWC meetings,
- termination of the agreement, renegotiation and transition mandate.

What is decisive is to set up the EWC in such a way that a permanent exchange can take place of experience and objectives in terms of "good practice" in EWC work. It is only on the basis of constructive and continuous dialogue that it will be possible to eliminate the existing preconceptions and reservations and develop a joint strategy to effectively and efficiently represent workers' interests at European level.

B. Content of the agreement

1. Which countries are represented in the Special Negotiating Body (SNB)?

- a. Member states of the European Union and States belonging to the European Economic Area (Norway, Liechtenstein, Iceland) are obligatory. Switzerland should likewise be included even though it is not covered by the Directive.
- b. Other States: What is decisive from our point of view for the inclusion of these States (e.g. applicant countries or neighbouring countries) is whether they have production sites and whether they are counted as belonging to Europe in the corporate decision-making structures (for example in connection with investment decisions, plant shifts, etc.).

Colleagues from third countries can likewise be included in the SNB insofar as this has been agreed by the parties. Not all countries represented in the SNB must also be

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represented in the EWC – but of course this should be the aim. Check whether several small sales offices in several countries might not be better represented by a single joint delegate!

2. Which companies and plants have to be included in each country?

- a) According to the Directive and the transposition laws as well as the case law of the European Court of Justice (ECJ), the company is obliged to make available to the employees' representatives a complete list of all (subsidiary) companies, to enable them to see which companies belong to them. This also includes the addresses of the sites, each set of employment figures and the shareholding or the reason behind the dependency.
- b) Joint ventures have always been a problem. 50/50 shares still do not have to be included, but an attempt should be made to allow them to participate in the negotiations, meetings and communication procedures of the EWC. On the other hand, joint ventures can set up their own EWCs if they meet the requirements laid down in the Directive. If they are not too small to be covered by the Directive, an attempt should be made to at least include the employees' representatives in the EWC as observers (there are already examples of this).
- c) A specimen of an application to start negotiations on an EWC is attached at the end of this Checklist.

3. How is the company/group structured?

Many companies covered by the Directive (at least 1000 employees including more than 150 each in two different countries) operate in very different branches. These branches can be managed completely separately from each other within the corporate group. If, for example, a company operates both in the oil industry and in cosmetics Europe-wide, the basic decision on whether money is available for investment is most likely to be taken by the central management. But what is really sold or restructured, and when, is for the individual division to decide. In these cases it might be more sensible to set up several EWCs for the different branches instead of one central EWC. As a rule, it might be sensible to group these divisional EWCs together under one overall EWC or cooperation committee. This body could then be made up, for example, of the chairs/vice-chairs of the divisional EWCs and meet regularly with the top management of the overall group.

If divisional EWCs are not sensible, then consideration could be given to setting up committees inside the EWC (see item 11).

In any case, it is advisable firstly to analyse the structure of the group and then, together with the SNB members, to discuss a suitable structure for the EWC. It will then be necessary to check whether this target might be achievable with the central management.

4. Which countries should send how many members to the EWC?

- a.) Here the principles of representativeness and proportionality have both to be respected. The countries should be adequately represented according to their employment figures. For this, the formula for the legal composition of the EWC can be used as a guide (subsidiary provisions in the attachment to the Directive, transposition law: EWC pursuant to the law). Frequently, however, this percentage formula will not lead to a satisfactory result. That is why the actual relationships and circumstances have to be considered (firstly the number of employees per country, secondly the number of sites and divisions, thirdly cooperation at national level, and the number and strength of the unions represented), and then appropriate criteria can be developed. The existing EWCs mostly have 15 to 25 members.
- b.) In many cases, it will not be possible for every site in a country to have a representative in the EWC. Then it has to be guaranteed at national level that all sites are informed properly about the meetings (national network). Check with the national transposition law of Directive 2002/14/EC on information and consultation of employees at national level. Transfer of information at national level is likewise defined as an obligation in the EWC Directive. In practice, a meeting with representatives from every national site should be held to inform them about the results of the EWC meetings, with the cost of such meetings to be borne by the employer. An obligation should also be formulated for the local representatives to inform the staff in the plants.
- c.) All countries in which the company is represented must be taken into account adequately in the framework of the EWC for information and consultation purposes. It must be guaranteed that every country where elected representatives exist is entitled to membership of the EWC. Delegation of representatives of individual countries should only be restricted if it is otherwise secured that the staff in these states are properly and completely informed about the outcome of the EWC work and consultations. Consideration might be given, for example, to whether a country has only a small sales office.
- d.) Since companies and plants are always being bought and sold, it is recommended that an adjustment clause be included. It must be possible to add new countries, and the number of delegates must be adapted when changes occur. Provision likewise needs to be made to ensure that national representatives can be replaced or first elected at any time if the country in question does not yet have a seat on the EWC. Where major

structural changes are made, consideration might be given to adapting not only the number of mandates, but also certain substantive aspects. Where a company with its own EWC agreement joins, a new joint one may need to be negotiated.

5. Who can be a member of an EWC?

- a.) In those countries covered by the Directive, EWC membership is governed by national regulations. It is only if there is a desire to deviate from this, which is certainly only rarely the case, that a regulation must be agreed upon.
- b.) There should be no minimum period of employment as a prerequisite of membership unless this corresponds with national regulations. Part-time workers and workers on fixed-term contracts may be members and should not be excluded.

6. How are the members elected/appointed in each country?

- a.) The procedure for election or appointment of members is regulated in every Member State. The general rules are laid down in the national transposition laws or collective agreements. They rest upon different traditions and structures for workers' representation. It is proposed that these rules should generally be applied.
- b.) Difficulties can arise in countries where the Directive is not valid and which therefore do not have any transposition law (e.g. Switzerland). Wherever there are elected trade unions or employee representatives, they can appoint delegates. But different arrangements can be made for the appointment between central management and the trade unions on the basis of election or nomination procedures if desired. In any case, this should be clarified with the respective national trade unions concerned.
- c.) It has become apparent that in many EWCs, women are greatly under-represented relative to their share of the employees. That is why a clause should be considered to provide for greater involvement of women. For example, it could be stipulated that in countries with more than one delegate, a balance should be achieved between men and women. In large companies or groups, it should also be possible to have other groups among the staff represented.
- d.) An EWC mandate can remain valid only as long as it is confirmed at national level, regardless of how long the regular terms of office last in the EWC. Here it is important to know that terms for elected office vary from two years (France) to five years (Luxembourg). In this context, it is important to provide that if an EWC member loses his or her mandate, a successor will be appointed. As this is not always the case by law, such a rule must be included in the agreement.

7. How many ordinary meetings should be held per year?

- a.) At least one ordinary meeting should be held per year, as provided also by the subsidiary rules for the legal EWC, attached to the EWC Directive. More than one meeting a year is, however, more appropriate, and should be the aim. There are already plenty of examples of agreements in which two or more regular annual meetings of the whole EWC and four meetings of the select/managing committee are provided for.
- b.) What is absolutely necessary are pre-meetings and follow-up sessions which are held without management presence. Experience to date has shown that about one whole day is necessary for the pre-meeting, and after the meeting with management some hours are necessary for summary and follow-up, maybe followed by a meeting of the select committee. It is also best to hold the meetings in different countries and to tie them in with meetings with the local employees' representatives. This raises the profile of the EWC locally.

8. What are the preconditions for an extraordinary meeting?

- a.) It is necessary to agree on arrangements for extraordinary meetings. Within a group, decisions of importance to employees are not planned only before the regular meetings, which can then duly report. Measures which trigger the information obligation are planned all year long. It is necessary to decide and to define what circumstances call for an extraordinary meeting, who takes the final decision on holding an extraordinary meeting, and who attends such a meeting.

Extraordinary meetings should be held when circumstances arise that have transnational effects on workers' interests. Examples might include shifts in location, closures or mass redundancies. But plenty of other examples are feasible. 'Transnational' in this context means that a decision has cross-border effects. The number of countries concerned is not decisive (the renewed EWC Directive 2009/38/EC clarifies this for the future. A measure is equally transnational if the decision affecting one country is taken in another country). A clause that would be more restrictive by stating the prerequisite of at least two countries concerned by the decision would fall behind the current clause and should be avoided. The employer, the select committee/presidium and/or most of the countries involved should separately or jointly be entitled to apply for an extraordinary meeting.

- b.) So far it has often proved impossible to call for an extraordinary meeting if decided only by workers' representatives. The decision cannot just be up to management, either, however. The management must be committed to organise extraordinary meetings in exceptional circumstances. The employees' representatives must nevertheless be given

the right, irrespective of that, to insist on extraordinary meetings. One sensible arrangement could be for the presidium/select committee to decide on the organisation of the extraordinary meeting together with the employer. If no agreement is reached, conciliation or mediation would have to be called (see item 23).

- c.) The participants may be restricted in such cases to the members directly or indirectly concerned – and in addition, if appropriate, national employees’ representatives from plant level – and to the presidium/select committee (for example if it is a question of a plant moving from Belgium to France it is not necessary for the Germans to participate unless this plant transfer has an indirect impact on the German sales structure). Wording should be found to allow for sufficient flexibility. It must be possible to invite internal and external experts to the meetings, too (as also foreseen in the Directive).

9. Who attends joint meetings from the employer’s side, and who chairs them?

- a.) Aside from the manager/CEO, the major decision-makers from the management side should be present at joint meetings, for example the European officers in the different divisions. The internal decision-making and competence structure of the company determines who that is. The agenda of the meeting should also serve as a guide here. The presidium would have to agree beforehand with management or the HR department on who exactly would be attending.
- b.) The question of the chair of joint meetings should also be addressed. In the case of EWCs with a German main headquarters, this will generally be the president of the EWC. If the employers’ side has the chair (because of national structures, for example always in France and Belgium, but also in some other countries), it is all the more important for the employees’ representatives to have a good internal structure (see item 11) including the necessary resources.

10. Which topics are the object of information and consultation?

- a.) As far as the topics are concerned that management provides information and consultation on, the list of topics in the attachment to the Directive on the legal EWC can be used as a guide, and the renewed text of Directive 2009/38/EC should also be referred to. These topics can be supplemented with themes such as the environment, sustainability, equal opportunities, continuous training, CSR etc. It must not be forgotten that the list of topics is never intended to be exhaustive, but that the topics are only examples – so care must be taken that the list is not formulated exhaustively.
- b.) As a matter of principle, information must be provided on all topics of interest to workers that have a transnational aspect. Information and consultation has to be

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provided in time, which means that the position of the EWC must be able to influence a decision. The text of the renewed EWC Directive 2009/38/EC helps here, too – one may just copy the procedural rules that are now stated in the official text, or even better, take the text of the Directive for employee participation in the European Company (Directive 2001/86/EC; supplementing the Statute for a European company with regard to the involvement of employees, § 2.10, 11).

- information in due time, before any decision is taken;
 - information of national employees’ representatives, according to the national regulations;
 - opportunity for the EWC to place their statement, which can be taken into account in the decision-making process;
 - decision-making by management takes account of the statement of the EWC;
 - second consultation with the EWC to secure agreement if the management decision differs from the EWC’s opinion – employer has final right of decision.
- c.) It should also be agreed that management provide the delegates with a written report before the meeting on the most important items. Otherwise it may happen that management might present a lot of facts *ad hoc* that the EWC will not be able to overview and analyse in a short time at the joint meetings. It is also necessary that all documents presented to the shareholders are also sent to the EWC members. This can make it easier to prepare the meeting. It may be worthwhile agreeing on having certain economic data submitted in writing on a quarterly or half-yearly basis even without joint meetings taking place at the same time (anyway, nearly all companies publish their economic data at such intervals).

11. How should the communication among the employees’ representatives or between workers and employers be structured and coordinated?

- a.) As a matter of principle the workers’ side of an EWC should not only have a chair/speaker but also a select or managing committee made up of representatives from several countries. This body is responsible for preparing for the meetings, possibly together with management, for example drafting and laying down the agenda, making arrangements, approving the minutes on a preliminary basis, coordinating the work in progress and acting as the contact for the employees’ representatives and management alike. The precise tasks can be described in standing orders. In order to do justice to these tasks, the select committee has to be able to meet outside the meetings. It may be necessary to have interpretation for that too, because such a committee should also be made up of employees’ representatives from different countries. The committee should – if appropriate for representative reasons – consist of no more than five people, in order to be flexible and workable.

- b.) It is desirable for the select committee to meet at least two to three times a year outside the regular plenary meetings. Experience in past years has shown that this is often a turning point and cornerstone of effective EWC work. It can convene quickly, coordinate the transfer of information throughout the year and clarify European –based conflicts locally. It has emerged that it is of particular benefit for the work if members can communicate without the need for interpreters; however, a single language is not a fundamental for good committee work.
- c.) Important documents such as reports (see item 10) or individual documents on agenda items must be presented in translation to the delegates in advance in order to enable the meeting to be prepared appropriately at national level. The agenda must not be set by management alone under any circumstances. This is why it is important for the delegates to be able to meet at national level before and after the meetings (for example to report on the meeting to the national employees’ representatives, see item 15).
- d.) In order for the members of the EWC to remain in contact with each other during the year it is also important for them to have access to modern modes of communication such as telephone, email, internet and intranet. Altogether thought has to be given to what infrastructure is necessary for the continuous communication of the select committee and the European Works Council. At this point it is evident that a clear agreement with management is necessary in order for the costs incurred to be covered. This is why it is important to describe the basic work arrangements either in the agreement itself or in the standing orders.
- e.) In this context, the handling and transfer of information for the employees and their national representatives also needs to be addressed. The national and European legal frameworks have to be borne in mind here. Use should be made of the wider opportunities offered by the transposition of Directive 2002/14/EC on information and consultation of employees at national level.
- f.) Aside from the select committee it may be sensible to set up divisional committees (see item 3) or working groups on specific topics suitable to the company or group structure.

12. What has to be borne in mind when preparing for meetings?

- a.) The regular meetings of the overall body, which should be held twice a year, the extraordinary meetings (in the event of transnational measures which have serious repercussions on workers’ interests) and the meetings of the select committee are only effective if they are prepared adequately. The venue and the date of the meeting should be set and announced as soon as possible. It has to be laid down who decides on

that. In general, this should be the select committee together with the management side.

- b.) The agenda also has to be set finally by the select committee and the management. It is completely unsatisfactory for the workers' side to only make proposals for the agenda, but for the employer to have the final say. In this connection, thought should be given to which topics are covered by the general information from central management, which topics are the focus of the meeting, and which additional information is necessary (from experts or trade union officials). It is sensible to settle the issue of attendance by experts/trade union officials as soon as possible.

The agreement or the standing orders should indicate the deadline by which the delegates have to communicate the topics that they would like to see on the agenda to the select committee.

- c.) As soon as the agenda is finally set (in due time before the regular meeting), the documents to be sent to the participants with the final agenda ought to be indicated too (documents on the individual items on the agenda, reports, economic data, etc.). Documents should be comprehensible and complete, in order to facilitate proper and efficient information and communication between management and employee delegates.
- d.) The agreement must clearly spell out the responsibility for organisation, arrangements for invitations and preparation of meetings as well as prior information.
- e.) As far as extraordinary meetings or meetings of the select committee are concerned, the same basic arrangements are valid. Here, though, it will be necessary to manage with shorter deadlines and perhaps also with less preparatory material. For extraordinary plenary meetings at least, detailed papers on the theme of the extraordinary meeting in the languages required for the participants will still have to be available. Complete and understandable documentation is even more important in extraordinary situations, as then there is less time for preparation, and common understanding of the issues is indispensable in order to achieve the joint outcome of the consultations.

13. Who can be invited to EWC meetings? Who decides on that?

- a.) The agreement has to define who has the right or the obligation to attend, and who apart from the EWC members and the employers has the right to attend the joint meetings.

As far as extraordinary meetings are concerned, participants will often be reduced to the select committee and the delegates from the countries in question, but on the other hand the national unions and experts may also be included.

- b.) Corporate Identity is often used by management to create the feeling that trade unions are only a disruptive element in our nice, confidential, European talks. But the point is that the EWC will not work without the support of the trade unions. And trade union officials should be prepared to explain the advantages of a functioning EWC for transnational corporate communication to the delegates as well as to the management side.

The European trade union federations (such as EIF) will also be entitled to attend if the delegates so choose. This right may be delegated to the competent national trade union that will be nominated by the European level to safeguard the right of the representative European trade union. In any case, this should be fixed in the EWC agreement.

- c.) Experts, who can also attend EWC meetings by invitation, should take the floor on specific agenda items at the joint meetings and in particular at the internal meetings. It should be clarified in the agreement that the cost for such experts' attendance will be borne by the management, and how many experts are to be regularly funded.

The participation of experts should not be restricted in the agreement. For the European Works Council based on law, experts are only restricted to the extent that the employer is generally only bound to bear the costs for one expert, if the respective national transposition law so provides. Experts can furthermore be trade union officials, which is expressly stated in some countries in the legal regulations – and of course this can be clarified in the agreement, too.

- d.) Where the agreement so provides, or it has been agreed on a case-by-case basis, other guests can of course also participate in the internal or joint meetings. It is obvious that the same rules apply to such guests in connection with confidentiality, secrecy, etc. as for the titular delegates and experts according to the national legal regulations. If the decision is taken by consent, then a settlement for conflicts also has to be agreed upon.

14. Preparatory and follow-up meeting for employees' representatives?

- a.) It is indispensable to agree on a pre-meeting and a follow-up session for the employees' representatives in connection with the joint meetings (EWC and central management). In the subsidiary rules for the EWC based on law, mention is only made of a pre-meeting which refers to preparation for the joint information meeting with central management. The experiences gained up to now with European employees'

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representatives show, however, that a follow-up meeting is just as important as a pre-meeting. Ultimately the point is for the employees' representatives to discuss the information received from central management and if necessary provide central management with a position on this information. A decision can then be taken as to what to do next with the information received and what new tasks arise in the near future for the select committee.

- b.) The European Works Council sends out the invitations to the internal meeting itself. It can also decide freely what agenda should be dealt with at the internal meeting. In keeping with that, the EWC can also invite such trade union officials and other experts as may be required. The obligation to bear the costs on the part of the company may, however, be limited (see item 13), so the details have to be agreed on and should be clarified in the agreement.

15. Passing on information to national employees' representatives?

- a.) The passing on of information received in the EWC to national employees' representatives, and the right of the national employees' representatives/workers to approach the members of the EWC or the EWC (or the select committee) have to be laid down in the agreement. It should be clear that the delegates have the right as well as the obligation (Art. 10 par 2, Art. 12 together with recital 33 of renewed EWC Directive 2009/38/EC) to inform the employees' representatives at national/local level. It goes without saying that the local/national employees' representatives also have to have the right to approach their EWC delegates or the select committee.
- b.) On the one hand, the minutes contain information about the contents of the joint meeting. But minutes are often not understandable on their own, but serve more to jog the memory. That is why it is necessary for the employees' representatives in the different establishments to be informed about the contents and results of the EWC meetings. The arrangement of national pre-meetings and follow-up sessions (with employees' representatives and the unions represented on the shop floor) must be made possible. And it should be possible to hand out written information to the employees or to inform these via intranet as far as available and accessible for the employees in the establishment. These issues must be resolved in the agreement.

16. What has to be borne in mind for interpretation arrangements?

- a.) Nothing can remain unclear, because it can sometimes be a question of detail that could raise unease – this should be explained to the employers. That is why it is necessary to provide simultaneous interpretation at all joint meetings as well as at the

internal meetings of the employees' representatives and at the meetings of the select committee, if not all employees' representatives really do have first-class language skills and can do without translation voluntarily. It is thus not sufficient at all to just provide language training to the employees' representatives, as is often claimed by management representatives. It is also advisable that the same interpreters be always hired once they have proved to be a suitable team for the EWC. This can be achieved only if the EWC is entitled by the agreement to order the interpreters, perhaps after consultation with the central management.

- b.) The language problem is something that should also be borne in mind in the make-up of the select committee. For the purposes of this body, which is involved continuously in communication, language skills, if possible in one common language (usually English), are even more significant than for the EWC as a whole. For this body at least, it will be necessary, if the employees' representatives do not already have these skills, to arrange intensive language training, if the desired objective of continuous communication is not to be missed. Following Art. 10 par. 4 of Directive 2009/28/EC, this language training is part of the training that EWC members are entitled to receive.
- c.) Furthermore it is important to present all documents to be dealt with in an understandable (i.e. translated) form. In order to reduce the trouble and expense to a minimum, an agreement can provide for making a summary of the results available or the documents sent beforehand in all languages, with the complete text only provided in English. In order to reduce the amount of text to be translated, superfluous prose can be eliminated. That makes it easier to live with wording such as "translation if necessary." Here, too, it is true that documents that are not understood do not need to be sent.

17. Where should the meetings be held?

Neither the Directive nor the transposition laws states where the meetings should be held. It is thus up to the negotiators to decide whether the EWC meetings should always be held at central corporate headquarters or whether they should be held at the different sites of the company in the different European countries in turn. The latter has the advantage that over time, the employees' representatives can gain an insight into different sites, production processes and prevailing working conditions and environmental standards. Obviously, all EWC members must have access to the locations. This should also include the opportunity to present themselves to the local employees' representatives. There is all the difference in the world between hearing a description of working conditions in another country and seeing the situation with your own eyes. It is sensible to provide in the

agreement that the meetings should be held at the different sites in Europe. The venue for the meeting must be decided on by the select committee and management (see item 12).

18. What are the qualification requirements? How can they be met?

- a.) EWC members have a legally enshrined right to training. This includes language classes. Language skills primarily serve the purpose of enabling communication to happen between the employees' representatives outside the official (internal and joint) meetings. The fact that language skills are particularly crucial for the members of the select committee has already been mentioned in connection with that body. Under no circumstances should language training replace simultaneous interpretation, but the point is rather to have these two types of communication complement each other.
- b.) Training is also necessary in other areas. This includes knowledge of the negotiating and representation models at shop-floor and corporate level in the countries represented in the EWC, training on communication methods, intercultural competency, training on team-building and the setting of objectives, training in economic and business areas, and if necessary in occupational health and safety and the environment.
- c.) Although the right is legally enshrined, there is no harm in also having it embedded in the individual agreement, thereby making it clear that the EWC as a joint body can carry out training jointly. Experience shows that collective training significantly improves contact and collaboration.

19. Who bears the costs?

- a.) What has to be laid down is the obligation for the employer to bear all costs involved in the EWC work and not just the costs involved in attending meetings. Specifically, this can refer to the costs for experts, travel, training (particularly language training), costs for employees' representatives communicating with each other and with central management, resources for infrastructure, personnel for the technical office of the EWC, fax machines, communication equipment, etc. This must be regulated by the agreement, even though it is legally guaranteed.
- b.) What also has to be settled in connection with the costs is that the employees' representatives have to be released with pay for the time necessary to attend the EWC meetings as well as for other activities in this connection during the year. It is likewise desirable to cover the costs involving the regular participation of (European) trade union representatives at the EWC meetings and as appropriate the select committee. The agreement also needs to stipulate that the costs for experts are equally covered.

20. How are the EWC members protected against disadvantages?

- a.) An anti-discrimination clause has been included in the Directive on European Works Councils as well as in the national transposition legislation. But this is not automatically valid for employees' representatives from countries where the Directive does not apply (for example Switzerland or other countries outside the European Union or the European Economic Area – see explanations under 1). Therefore an item should be included in the agreement to the effect that the employees' representatives in the EWC are protected against all forms of discrimination or disadvantages, and that central management and the EWC have the joint obligation to safeguard this provision.
- b.) It is often stipulated that the delegates are afforded at least the same protection that they would have as national employees' representatives. But it is also well worth citing the prohibition on discrimination explicitly, because national protection for employees' representatives can be very weak. One idea might be to fortify the protection against dismissal, perhaps by restricting it to extraordinary grounds. It may also be agreed that before a dismissal or other measure is announced, the managing/select committee must always be notified and the grounds explained to it. Such transparency can offer a great deal of protection.

21. Which information should be handled confidentially?

- a.) Of course, all participants at EWC meetings who gain access to confidential information have to adhere to the same obligation of confidentiality. The fact that the internal meetings are attended by different people to the joint meetings does not imply any restriction of the employers' duty to provide information. The internal meeting must enable the employees' representatives to conduct a free exchange of information among themselves.
- b.) It must in any case be possible for the EWC delegates to organise preparatory and follow-up meetings for employees' representatives at national level to inform them about the results of the joint meetings or the documents distributed. There is no obligation of confidentiality between EWC members and national employees' representatives, as laid down in Art. 10 of the Directive and § 35.2 and 3. However, the national employees' representatives are then also bound by confidentiality.
- c.) In general, employers take a lot of trouble to lay down the obligation to secrecy and confidentiality, in order to penalise breaches. Such clauses can end up being very lengthy. In order to do justice to the obligation to secrecy, it is sufficient to refer to the

legal regulations on secrecy and in particular not generally to list the information that has to be considered to be confidential or kept secret in general.

- d.) It may be advisable to agree that information has to be kept confidential for a certain jointly agreed length of time. This can be useful for example where sensitive information that has to be submitted to the stock exchange in advance is involved.

22. How long should the agreement be valid?

- a.) The agreement must also state how long it is to be valid or what the notice periods are. The basic structure for the terms of the agreements and the possibility of amending them can be quite different. Most agreements are concluded for an unlimited term, with a notice period. But limited-term agreements also exist. Notice periods should not be longer than one year. Where both parties wish to make an amendment, this is also possible outside any deadlines. Amendments can always be made by mutual agreement.
- b.) As a matter of principle it should be laid down that no time should arise when no EWC is in charge and valid, neither after cancelling an indefinite agreement nor after the end of a limited-term agreement. Not every transposition law guarantees this at present. Both types of agreement can provide in their wording that the EWC continues to be valid until a new agreement is concluded, and reference can be made to the text of Art. 13 of the renewed EWC Directive 2009/38/EC. An application for new negotiations should always accompany the notice of termination of the EWC agreement. The negotiating period can last up to another three years. If no agreement has been concluded in that time, the provisions on the legal EWC are valid automatically.

23. How should conflicts be settled?

- a.) How conflicts should be settled should also be included in the agreement. It is above all in situations which depend on decisions being taken quickly (for example the need for information in the case of serious corporate decisions, the necessity of assistance by experts, decisions on the agenda for meetings, calling extraordinary meetings, assistance from guests, advisors and representatives of the employer at the EWC meetings, questions of confidentiality and secrecy of information, drawing up joint minutes and the necessary adjustment to changed corporate structures, etc.) that the legal procedures usually applied are too cumbersome and not appropriate to deliver constructive solutions.
- b.) That is why it is sensible to agree on corporate conciliation (joint committee with a neutral chair) and/or mediation in the case of disputes, before entering the legal

procedure before a court of justice. On the one hand this guarantees that a quick and appropriate decision is taken, also in an acceptable amount of time, and on the other hand less damage is done with this than if the courts were called in. Moreover, many other kinds of conciliation can be agreed, as mentioned above with regard to the joint committee. Several countries have such conciliation/mediation procedures for national conflicts, and they could be appropriate for the EWC too.

24. Which court of law has authority?

It may be, of course, that voluntary or obligatory mediation/conciliation will not lead to an honest and reliable solution accepted by both parties. In these cases, consideration should be given to applying for a ruling from a court. It must be clear which national law is applicable to the agreement. If the company's headquarters is located in a European country in which the Directive is applicable, then the latter's laws shall apply. If the headquarters is in a country outside the EU or the European Economic Area (e.g. Switzerland, Turkey or the USA), then either the law of the country in the area of application with the highest number of employees shall apply, or else company management shall determine a country.

C. Application to start negotiations on an EWC in keeping with Art. 5, para. 1 of the Directive

From (workers' representation)

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Management (local or national)

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Please pass on to central management of the enterprise/group in Europe

European Works Council

Ladies and Gentlemen,

Employees' representativeshave decided at their meeting on.....to apply for negotiations on the establishment of a European Works Council (creation of a special negotiating body, Art. 5, para. 1 of Directive 2009/38/EC, Art./§ of the national transposition law). The employees' representatives represent.....workers.

We ask you to pass this application on to central management without delay and to send us a copy of the relevant letter.

Central management is called upon to inform the workers' representatives as well as the unions present on the shop floor about the date of the receipt of the application and the subsequent negotiation meeting. Furthermore we request information on the average total numbers of employees and their breakdown among the Member States, firms and plants as well as the structure of the enterprise/group (Art./§of the national transposition law) and the respective local/national employee representation.

We would like to inform you already that we shall be assisted by an expert. The name of the expert will be communicated in good time before the start of the negotiations.

Yours sincerely,

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