

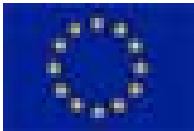
# Handbook for fostering communication and coordination among European Works Councils' members



2nd Edition, April 2008

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The Handbook was elaborated by the Training Team of the Training Centre of Comisiones Obreras (CC.OO.) in collaboration with CGIL Lombardia, CGTP-IN, DGB and KNSB in the framework of the project "IN.CON.PAR\_able"

*"Sole responsibility lies with the author and the Commission is not responsible for any use that may be made of the information contained herein"*

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## Introduction

Over the last few decades the world has been undergoing ever-increasing *globalisation*. This term, coined for the first time in 1985 by Theodore Levitt, North American economist and lecturer at Harvard Business School, is used to refer to the process by which national borders lose their former importance and boundaries (territorial, legislative, economic, social and cultural) take on a global dimension.

In fact, the change from a primitive hunter economy to an agricultural and farming economy, or the industrial revolution itself in the 19th century perhaps had more economic and social effects than those entailed by the current globalisation process. What is probably different and, therefore, being extensively discussed, is the role that must be played by workers and the organisations representing them: a role that, even more than in the past, needs to acquire strength, centrality and capacity. There are still many pages left to write on this issue but what is true is that, along with capitalism, workers and their working conditions have also changed, requiring the trade union context to bring itself up-to-date and in line with the present situation.

Among the various factors that have contributed to this change, of note are the new information and communication technologies, fruit of the technological revolution and the consolidation of the Information Society.

Access to virtual information via the Internet and other communication channels is a global reality, changing the lives of millions of people the world over. Broadening and multiplying the possibilities to obtain and pass on information, the barriers to scientific, economic and social knowledge have been removed.

Without forgetting that this flow of virtual information is in addition to a flow of material information, thanks to the rapid evolution of transport, now fully accessible due to the parallel reduction in costs.

And commercial flows have also multiplied along with the information flows, it now being possible for firms to manufacture in places very far from the final point of sale or the strategic and political centre of their commercial activity. Direct foreign investment is on the rise; companies are taking on a transnational dimension, abandoning their traditional markets to embrace a globalised world. The flow of capital, services and, of course, people (migrations) within a European market and within a global market go to make up a reality that is becoming increasingly intense.

The characteristics of our societies have also changed. And, with them, the problems we have to face. Without denying the benefits involved, globalisation also has drawbacks which social agents must tackle. The wealth generated by this process is distributed unfairly: the rich are increasingly richer and the poor are not enjoying the benefits of removing barriers to economic trade. The traditional differences between north and south are getting worse and the rift is widening. The globalising process is not improving the living conditions of most of the population on the planet, who are living under the poverty threshold. If anything, it is making them worse.

During the last few years, some movements have arisen to oppose globalisation per se (perhaps forgetting that we cannot fight reality, we can only attempt to reign it in, guide or transform it along different lines). The most organised convergence of anti-globalisation protests came together at the WTO Summit in Seattle in 1999 (visibly opposing the meeting) and established their definitive structure at the World Social Forum in Porto Alegre in 2001. At this meeting, under the famous slogan of "Another world is possible", numerous groups from very different origins

came together to debate the phenomena produced worldwide over the last few decades by capitalist globalisation and its consequences for the most disadvantaged.

Within these contexts, the repercussions that this global phenomenon could, can and might have on the world of work are evident. Internationalisation, mergers, takeovers and relocations form part of the common framework of the restructuring process that many companies have had to face over the last few years.

Workers are being subjected to a degree of uncertainty hitherto unknown; decisions are taken by entities very far from the work centres, to which traditional representative bodies have no access. Companies branch out, open up subsidiaries in various countries and can easily take advantage of more flexible labour legislation.

On the other hand, states have gradually lost control of the business world. The freedom of movement of capital has left many firms free to carry out transactions at a world level. It is not unheard of for a company from one country to manufacture in another and sell its products in a third (and in most cases it's impossible to know the identity of the shareholders). Hence the control exercised by public administrations on a company's activities will always be partial.

Within the European Union, the characteristics of a globalised society are even more accentuated. Given a European Union that proclaims the free circulation of capital and workers, companies have been able to take advantage of the opportunities offered by a new framework that has opened up a market with 300 million consumers.

In this changing and globalised environment, labour relations could not remain unaltered, just as union organisations must be able to adapt to the new times in order to play the role that society expects of them, as workers' unions.

Workers must adapt to the new conditions and defend their rights in the appropriate forums, at the power centres of corporations, where the decisions are taken that can ultimately affect the whole workforce.

At an EU level, European institutions have established certain measures to allow workers to participate in decision-making in companies, such as the creation of European Works Councils, as per Directive 94/45/EC, for the information, participation and consultation of workers in corporate procedures. Moreover, under the umbrella of the European Company Statute (a step towards a global company within the European Union), the right of participation ("involvement") is recognised for workers at opportune moments, such as a company crisis.

But there is still a long way to go in this new context of the globalised world in which we live. Front-on opposition to globalisation could not be hidden under the aforementioned slogan of "Another world is possible", a globalisation that is no longer merely economic. Quite the opposite - it is fundamental for us to be aware of the changes being introduced into our societies by this phenomenon, to identify its strengths and weaknesses as well as the challenges it represents, and to learn to work together with other similar organisations in other countries around us, with European and international organisations because, if the problems are global, they will mainly require global responses.

The greatest challenge consists of taking advantage of the globalised world to continue to make progress in the correct direction, towards a fairer society. In short, given the changes and restructuring occurring, the capacity of the world trade union movement must be reinforced, but without it losing its local perspective and closeness, to be able to defend workers' interests to the full.

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**Part I**

**IN.formation, CON.sultation and PAR.ticipation  
in European Works Councils**

## 1. THE BACKGROUND

### 1.1 Why this Guide exists

Economic globalisation and the far-reaching technological and cultural changes occurring in the world today are increasingly affecting all contexts in which society operates.

Companies are not immune to these transformations, and neither, of course, are labour relations in companies increasingly less conditioned by borders when taking decisions that facilitate restructuring and the changes required by the situation.

Precarious employment conditions, geographic mobility, relocations and far-reaching changes in production all have an effect, and often a very worrying one, on the living conditions of workers. Transnational firms are changing at an accelerated pace, both in their national, European and global strategies for investment, production and the market, as well as in their capacity to impose rules of play in labour relations that provide them with the maximum benefit.

However, the organisations that represent workers are also adapting to these changes, drawing up proposals and offering solutions to mitigate the traumas that can be involved in such far-reaching transformations and restructuring. In order to establish effective, innovative responses that guarantee a better quality of life and work within the context of this new situation we face as workers and as social bodies, training and research must be present in trade union actions more than ever.

For decades the development of worker participation in firms has been strengthened and encouraged by EU institutions. The approval, on 24 September 1994, of the directive on a procedure to inform and consult workers, better known as the European Works Councils or EWC Directive, was a significant step forward in the European dimension of labour relations. In April 2000, the European Commission issued a report on the application of this Directive, although without proposing, at that time, any amendment to it.

Three years later, the Commission announced a proposal to reform the Directive. Undoubtedly a significant influence had been the request made for such a reform by the European Parliament and the European Trade Union Confederation (ETUC), among others.

But the main reason lay in the huge changes occurring since the Directive had been created: the spectacular rise in the transnationalisation of investment and firms; the acceleration and change in nature of corporate restructuring, so much in the news recently; the enlargement of the EU; significant changes in the legislative context, such as the directive of October 2001, which completes the European Company Statute with regard to worker involvement, or the directive of March 2002, establishing a general framework for worker information and consultation in the European Community.

In spite of the need to reform the Directive, European works councils (EWCs) are a reality. Companies within the scope of application of the European Directive, where multinationals with a workforce of over 1,000, with a minimum of 150 workers in two more EU Member States are defined as "community-scale undertakings", number 2,264 and employ over 23,600,000 workers (average workforce 10,700). Of these only 36%, with an overall workforce of 14,500,000 workers, have an EWC (data updated to April 2008).<sup>1</sup>

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<sup>1</sup> ETUI-REHS database on EWC agreements (<http://www.ewcdb.org>).

In the methodological Guide, we have collected together information that allows us to analyse how the Directive has been transposed in Spain, Portugal, Bulgaria, Germany and Italy, and to compare good practices in EWCs within the legal framework, in particular regarding actions concerning the right to information, participation and consultation. There is no doubt that the correct implementation of these rights form the basis for the good functioning of a works council and that, to strengthen these rights, it is vital to encourage coordination and improve communication between members of the same council.

The last intention of this Guide, aimed at union members responsible for works councils in their organisations and at workers' representatives in EWCs in all sectors, is to strengthen trade union action in councils and reinforce their unionisation.

In addition to comparing legislation and good practices in five European countries, the Guide also has content and tools for communication and coordination, as well as providing case reports on this issue aimed at members of European works councils.

## **1.2 From the TRACE project to the IN.CON.PAR\_able project**

The first edition of the Guide was the main product of work carried out by the Spanish trade union *Comisiones Obreras* (CC.OO.) in collaboration with the Portuguese trade union *Confederação General de los Trabalhadores de Portugal* (CGTP) as part of the project entitled TRACE - Anticipation of trade unions to changes in Europe (2004-2006). This project, run by ETUI REHS (European Trade Union Institute – Research, Education, Health and Safety), involved 18 members, including national and European federations and confederations of 10 Member States, in order to reinforce the capacity of European trade unions to defend the interests of workers in the face of economic and industrial change. In particular, the action carried out by *Comisiones Obreras*, number 10 out of the sixteen planned by the project, aimed to identify the coordination and communication needs among EWC members and other members of other workers' organisations, with the experimentation of instruments that could help to meet these needs, such as the planning and setting up of an online network for EWC members.

The IN.CON.PAR\_able project - "Anticipating changes in Europe: strengthening information, consultation and participation in EWCs through coordination and communication" (2007-2008) represents the ideal continuation of the TRACE project. Funded by the Directorate General of Employment and Social Affairs of the European Commission, the proposal of the "IN.CON.PAR.able" project (i.e. "information, consultation and participation able") was to promote among five European countries (Spain, Italy, Portugal, Bulgaria and Germany) and five national trade unions (CC.OO., CGIL-Lombardia, CGTP-IN, KNSB and DGB) the exchange of information and good practices regarding the application of the rights to information, participation and consultation in agreements for European works councils. More specifically, the project's aim, which has articulated and developed the conclusions reached in 2004-2006 from a transnational perspective, is to strengthen these rights by improving communication and coordination between council members to ensure they are capable of responding more effectively to restructuring.

## **1.3 Actions of the IN.CON.PAR\_able project**

In its initial phase, IN.CON.PAR.able gathered and compared national experiences concerning the transposition into national legislation of Directives 94/45/EC, 97/74 EC and 2002/14/EC; as well as identifying good practices and producing a comparative report.

As part of the project, a transnational workshop was held in Madrid aimed at 20 EWC representatives, five from each country, to exchange practical experiences. During the workshop the talks given by experts and EWC members were recorded and collected together on a DVD entitled "Encouraging the communication and coordination of members of European works councils". The project ended with five national seminars, organised by each member in its own country and aimed at 15 members or potential members of European Councils, with a conference to present the results.

In addition to the DVD and the national and international workshops, the project has also focused on updating and publishing this Guide as didactic material for current or potential members of



EWCs. The Guide contains instruments, proposals and sheets developed throughout a year of activity on the part of the five members, coordinated by the Pedagogical Team of the *Escuela Sindical Confederal* (CC.OO.).

We hope that the findings from this project can be useful to improve the level of current European Councils, since proactive and anticipatory trade union action is required in order to respond to the new challenges, involving an improvement in the right to information and consultation. We hope that they also contribute to perfecting and improving the community legislative provisions for worker information and consultation (the Directives on European Companies, Information and Consultation, European Councils).

#### **1.4 Methodological suggestions for trainers**

How to use this Guide

This Guide can be both an informative text on European and national legislation and good practices related to the implementation of the right to information, consultation and participation within European councils, and also a training and self-learning tool to reinforce these rights by improving coordination and communication between EWC members.

With regard to training, below we explain a number of operational criteria aimed, in general, at all organisations involved in training focusing on the activity of European councils and, in particular, at trainers, tutors or those in charge of training. In the case of self-learning, the reader can use the Guide as a source of information and individually put the activity sheets into practice.

##### **1.4.1 Methodological criteria**

The criteria to be followed are not definitive or obligatory instructions but can help to choose the most appropriate methodology and techniques in each specific case. The order in which they are explained does not necessarily indicate any priority, as this will depend on the situation in question.

##### **CRITERION 1 – The methodology should be coherent with the objectives**

The specific objectives proposed are to improve the coordination of European works councils and especially the communication between them. As the key concept is precisely "communication", trainers or tutors should focus on this when using this and other training tools. "Communication" cannot be taught in isolation.

##### **CRITERION 2 – The group is a fundamental instrument**

The above requires the group and its interactions to become an essential methodological element. Successful communication is often related to the possibility of using a common language fluently. In those cases where there is no common language, it is very important to overcome members' difficulties in a practical and specific way, looking for the most agile and appropriate solutions. The trainer should also emphasise the importance of the different types of communication: verbal, in person, remote, physical and intercultural.

##### **CRITERION 3 - Use a specific reality as a basis**

The idea is to use reality as a basis rather than the theory (what European Councils "should be", what the regulations say, etc.). The reason for this is that, although necessary, the theory might be based on a "perceived" reality of EWCs.

##### **CRITERION 4 – Learn by doing**

By experimenting with the instruments proposed via the activity sheets, EWC members can establish immediate and entrenched connections with each other that go beyond the time the training lasts.

##### **CRITERION 5 – Select and analyse problems of coordination and communication in European councils**

This develops and completes Criterion 2. Improving both the coordination and communication of councils in practice is possible only if we first identify the problems and look for innovative and effective solutions. It is the reality (e.g. restructuring processes) that challenges our capacity to

respond. And this capacity will be inoperative, "by rote" (in other words, useless) if it is not based on an analysis of all the factors involved in the problem(s). This analysis can be carried out in many different ways: e.g. analysing the weakness and threats (problems) occurring in a specific situation, or examining the good practices (solutions) in a sector or a place where these have been successful.

**CRITERION 6 – Develop an assessable action plan that is based on practice**

We have already pointed out how important it is for the group per se to come to conclusions that are taken on board as common to everyone and, with the help of the necessary theoretical concepts, for the group to identify the main problems and their possible solutions. However, if an Action Plan, agreed by everyone, is not drawn up, a plan that is specific and made up of criteria to assess its performance while being implemented, then all this effort would be merely to our individual advantage.

**CRITERION 7 – Training should be an experience of a new trade union reality**

This criterion is closely related to the others. We are referring to the objectives implicit in any trade union training. It is not a question of merely acquiring theoretical knowledge about regulations related to European councils or acquiring skills to improve specific communication between the members of European councils. It is also a question of "building organisation" at a new level: European. And this is achieved by using the appropriate didactic strategies to encourage a sense of belonging and a common identity.

## 2. LEGAL FRAMEWORK

In this chapter we focus on a study of the EU Directive regulating the rights and procedures of information and consultation recognised for European Works Councils in order to carry out their representative functions, referring to the corresponding *national reports* to analyse, in detail, the processes and content of their transposition into the national law of the five countries represented in the *IN.CON.PAR\_able Project*.

### 2.1 Directive 94/45 of 22 September 1994

Council Directive 94/45/EC of 22 September 1994 (hereinafter, the Directive)<sup>2</sup> aims to improve the right to information and consultation of employees in community-scale undertakings and community-scale groups of undertakings. With this aim in mind, article 1 provides that “a European Works Council (EWC) or procedure for informing and consulting employees shall be established in every Community-scale undertaking and every Community-scale group of undertakings”, these being defined as follows:

- Community-scale undertaking: any undertaking with at least 1,000 employees within the Member States and at least 150 employees in each of at least two Member States.
- Group of undertakings: a controlling undertaking and its controlled undertakings. A controlling undertaking means "an undertaking which can exercise a dominant influence over another undertaking by virtue, for example, of ownership, financial participation or the rules which govern it".
- Community-scale group of undertakings: a group of undertakings with the following characteristics: at least 1,000 employees within the Member States; at least two group undertakings in different Member States; or at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State.

The central management of the company is responsible for starting this process, either on its own initiative or on the formal request of a minimum of 100 workers or their representatives from at least 2 companies from 2 or more Member States. To this end, the Directive provides for the creation of a negotiating body, whose composition will be regulated by the legislation in force in each Member State.

The negotiating body and the central management must negotiate an agreement in writing that, without prejudice to the autonomy of the parties, will include the composition, scope, functions and terms of office of the European works councils or the arrangements for implementing a procedure for the information and consultation of employees. However, the Directive also establishes a series of subsidiary requirements, applied when the following situations occur: when the central management and the special negotiating body so decide; when the central management refuses to commence negotiations within six months of the request; or when the negotiations do not reach an agreement within a period of three years. These subsidiary requirements contain rules that regulate the composition and powers of EWCs, the following being of particular note:

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<sup>2</sup> Directive 94/45/EC is applied to all EU Member States with the exception of the United Kingdom. Directive 97/74/EC was adopted on 15 December 1997, extending the application of Directive 94/45 to this country.

- The competence of the European works council shall be limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States.
- It shall be composed of employees of the Community-scale undertaking or Community-scale group of undertakings elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.
- It shall have a minimum of three members and a maximum of thirty. Where its size so warrants, it shall also elect a select committee from among its members, comprising at most three members.
- In the election or appointment of EWC members, it must be ensured: firstly, that each Member State in which the Community-scale undertaking has one or more establishments or in which the Community-scale group of undertakings has the controlling undertaking or one or more controlled undertakings, is represented by one member. Secondly, that there are supplementary members in proportion to the number of employees working in the establishments, the controlling undertaking or the controlled undertakings as laid down by the legislation of the Member state within the territory of which the central management is situated.
- The EWC shall meet with the central management once a year "to be informed and consulted". This information and consultation shall be carried out "on the basis of a report drawn up by the central management" and this must cover "the progress of the business of the Community-scale undertaking ... and its prospects".
- When there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, 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 meet, at its request, with the central management.
- Whenever necessary, the European works council or the select committee may request the assistance of experts of its choice.

Regarding the setting up of an EWC, the negotiating body may decide not to initiate negotiations or to terminate the negotiations already initiated. A new request to convene the special negotiating body may be made at the earliest two years after the abovementioned decision unless the parties concerned lay down a shorter period. In this case, the subsidiary provisions in the Directive shall not apply.

Another aspect worthy of note is that the members of the negotiating body, of EWCs and experts are obliged to keep secret the confidential information they have been given.

Finally, it should be noted that the Directive stipulates that those Community-scale undertakings and groups of undertakings where there is already an agreement covering the entire workforce and providing for the transnational information and consultation of employees, with a date prior to 22 September 1996, shall not be subject to the obligations in the Directive (article 13). As from this date, the companies must follow the procedure laid down in article 6 of the Directive.

## **2.2 Review of the Directive and potential changes**

In article 15, the Directive establishes that "Not later than 22 September 1999, the Commission shall, in consultation with the Member States and with management and labour a European level, review its operation and, in particular, examine whether the workforce size thresholds are appropriate with a view to proposing suitable amendments to the Council, where necessary".

In April 1999, a conference was held in Brussels on "European Works Councils: practices and development", with the participation of social intermediaries (ETUC, UNICE and CEEP) and the support of the European Commission, which had analysed the problems detected in the legal and practical application of the Directive. <sup>3</sup>

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<sup>3</sup> Of particular note are the following:

In the final resolution of its ninth congress (Helsinki, June-July 1999), the European Trade Union Confederation (ETUC) had underlined the need to speed up the review of the Directive, proposing, among other aspects, to reinforce the right to consultation, the introduction of effective sanctions for undertakings violating the Agreements and to strengthen the role of trade union experts.

On 20 February 2008, just under fourteen years after Directive 94/45/EC had been approved, the European Commission issued a Consultation (C/2008/660) of European social partners, announcing that it would present a "social package" that would include the revision of the EWC Directive.

This is the third phase in a cycle of consultations started in April 2004 by the Commission that, right from the start, benefited from the contributions and alternatives of the European Trade Union Confederation, although the opposition of employers' associations and the reticence of some Member States blocked its development. In 2004, two important events had significant consequences on EWCs: on the one hand, the enlargement of the EU to new countries, which has involved extending the Directive to new geographical perimeters; and, on the other hand, the Communication of the European Commission (April 2004), which would formally initiate consultation between employers and trade unions to promote the effectiveness of EWCs and which contained a possible revision of the regulation, requested for some time.

The following year, a new community initiative (COM 2005-120) on "Restructuring and employment" encouraged social partners to negotiate an agreement that would allow the mechanisms of information and consultation of European Works Councils (hereinafter EWCs) to be improved, promoting the identification and dissemination of *good practices* in this area.

Afterwards, the European Economic and Social Committee (EESC-1170/2006) and the European Parliament itself, in a resolution dated 20 May 2007 (P6\_TA-PROV-2007-0185), repeated the invitation to the European Commission to update legislation in the area of employee information and consultation, in order to ensure a coherent and effective legal framework, guarantee legal security and improve European social dialogue.

In the first case, the idea is to harmonise the EWC Directive with that regulating how the new European Companies work (Directive 2001/86/EC) and the one establishing the general framework for employees' rights to information and consultation in the European Community (2002/14/EC).

The second reference points to the need to renew a Directive that, although an important milestone in the development of social dialogue (Beirnaert and Stanzani, 2006) and in the progressive configuration of a European area of labour relations (Costa and Araújo, 2007; Köhler and Martin, 2005:585) when initially approved, now shows significant lacks both in terms of quantitative coverage and also qualitative effectiveness.

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- The Directive is based on the principle of the almost absolute priority and freedom of social intermediaries to negotiate appropriate agreements. This focus, which had been effective and had allowed a large number of agreements to be signed until then, did not guarantee an appropriate albeit very low level of transnational information and consultation.
  - In some cases there were two or more European works councils in the new firm or group after a merger of companies or groups of companies. However, the Directive did not allow for existing agreements to contain a clause of adaptation to cover any change in the scope of the company or group, although, according to the spirit of the Directive, agreements should cover the entire workforce at all times. On the other hand, some Member States had planned for the insertion of adaptation clauses in existing agreements.
  - A specific event (Vilvorde case) brought up the problem of whether the current text was sufficiently clear, in order to ensure that information and consultation were carried out "within reasonable periods of time" and, in any case, before a decision is taken.
  - In debates on the practical application of the Directive, several mentions were made of the importance of training for members of the special negotiating body and of the European works council. The main argument given is that the Directive on European works councils is an instrument of transnational representation that opens up new possibilities for representing interests and for transnational communication. Consequently, this requires a certain level of skill from the members of European works councils.
  - Another problem often mentioned during the debates on the practical application of the text was related to the efficiency of circulating information between the different levels of employee representation. In order to exchange information and be truly consulted at a community level, good information and consultation systems were required at a national level, and the different levels of employee representation in companies or groups of companies needed to be connected to each other.

Of the 2,204 *Community-scale undertakings* (multinationals with a workforce larger than 1,000 employees) who should set up an EWC in accordance with that established in the corresponding Directive, 772 have a works council (Kerckhofs, 2006:33), accounting for 35% of all firms, and for 61.2% of the 23.6 million workers employed in them.

With regard to effectiveness, different studies on how EWCs perform (Aragón et al., 2001; Carley and Hall, 2006; Cox, 2005; Martin, 2007; Petrovsky and Paucard, 2006, Waddington, 2007) have highlighted both their potential as well as their limits, in both cases identifying their corresponding strong and weak points, from whose analysis and evaluation have come proposals and alternatives for improvement both of a legislative nature (revising the Directive) and also of an organisational nature (dissemination and application of good practices), helping EWCs to take on the new challenges they are facing in labour relations in these community undertakings.

To this end, for some years now the CES-ETUC has been pressurising community bodies and presenting alternatives (<http://www.etuc.org/a/1121>) aimed at bringing about these changes that, until very recently, had been opposed by European employers' associations who now, nonetheless, seem prepared to initiate negotiations, according to the last community initiative in this area ([www.businessseurope.eu/content/Default.asp](http://www.businessseurope.eu/content/Default.asp)).

In May 2008, the ETUC (European Trade Union Confederation) launched a campaign with the slogan "*On the offensive for stronger European Works Councils*" to make sure the process of revising the Directive is fast and effective.

### **2.3 Towards an updated Directive**

It is even more urgent to revise the Directive if we wish this instrument to be an effective response to the processes of restructuring and relocation that have been increasing with 12 new countries joining the European Union.

The most urgent changes are related to the following aspects:

1. *Achieve a clearer definition of the terms "information and consultation";*
2. *Reduce the company size threshold.* As has been mentioned, the Directive applies to undertakings that employ 1,000 or more works in the Member States or at least 150 workers in each of two different Member States. ETUC's proposal is to reduce this threshold to companies with 500 or more workers, significantly extending the number of companies covered;
3. *Redefine the notion of "confidentiality"* to ensure that EWC members are not allowed to communicate, for example, with their trade union;
4. *Reduce the negotiation period* from three years to one year
5. *Provide sanctions* for companies due to non-compliance (as per Directive 2002/14);
6. *Reinforce the right to training* of EWC members (extending it to training in economic, financial and social matters, as well as languages);
7. *Improve access to experts;*
8. *Include the right to preparatory meetings and subsequent evaluation meetings;*
9. *Guarantee the right of EWC members to access companies, establishments and work centres.*

### 3. EUROPEAN WORKS COUNCILS IN EUROPE

#### 3.1 EWCS in Europe

Having reviewed the legal framework regulating the establishment, competence and functioning of European Works Councils, this chapter focuses on a quantitative analysis of their evolution, structure (coverage, composition, distribution in geographical and sector terms) and on evaluating their competence and functioning, so we will use the statistical information from the corresponding databases (ADS-Infopoint, ETUI-EWC).

As we have already mentioned, EWCs are conceived as bodies that represent, at a European level, the rights of information and consultation of employees in Community-scale undertakings (hereinafter CSUs), whose establishment, composition, competence, functioning, etc. are regulated by the legislation in force in each case and are subject to registration and monitoring by the corresponding institutions, whose most relevant data we will analyse below.

#### 3.2 EWCs Evolution: agreement according years and phases

This is a relatively recent mechanism and unique of its kind, so its establishment and functioning are based on the "learning effect". Taking into account the dates of establishment (*table 1*), three broad phases can be distinguished in terms of the legal cover for EWCs:

- a *prior phase*, before the Directive was passed, when the first "pioneer" agreements were tested in recognising the rights to information and interlocution
- when the Directive was passed in September 1994, a two-year transition period was established for the definitive commencement of its provisions, aimed at facilitating its transposition into the corresponding national laws. During this *intermediate phase* there was a significant avalanche of "voluntary" agreements (335 according to the *Infopoint* data, accounting for 43.9% of all agreements currently in force), taken out under "article 13" of the Directive which allows companies to reach agreements to create EWCs which did not necessarily have to observe the recommendations thereof nor respect the obligations resulting from its transposition into the legislation of each member country.
- since the end of 1996 to date, a further 406 agreements have been signed to set up EWCs (accounting for 53.3% of all 762 currently in force), governed by EU Directive article 6)<sup>4</sup> and the corresponding national legislation.

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<sup>4</sup> Article 6. *Content of the agreement*. 1. The central management and the special negotiating body must negotiate in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements for implementing the information and consultation of employees. 2. Without prejudice to the autonomy of the parties, the agreement referred to in paragraph 1 between the central management and the special negotiating body shall determine: a) the undertakings of the Community-scale group of undertakings or the establishments of the Community-scale undertaking which are covered by the agreement; b) the composition of the European Works Council, the number of members, the allocation of seats and the term of office; c) the functions and the procedure for information and consultation of the European Works Council; d) the venue, frequency and duration of meetings of the European Works Council; e) the financial and material resources to be allocated to the European Works Council; f) the duration of the agreement and the procedure for its renegotiation. 3. The central management and the special negotiating body may decide, in writing, to establish one or more information and consultation procedures instead of a European Works Council. The agreement must stipulate by what method the employees' representatives shall have the right to meet to discuss the information conveyed to them. This information shall relate in particular to transnational questions which significantly affect workers' interests. 4. The agreements referred to in paragraphs 2 and 3 shall not, unless provision is made otherwise therein, be subject to the subsidiary requirements of the Annex. 5. For the purposes of concluding the agreements referred to in paragraphs 2 and 3, the special negotiating body shall act by a majority of its members.

Table 1 - Agreements to set up EWCs, by year, phases and legislation

YEARS		PHASES		
Agreements		Regulation	Agreements	%
			1989	1
1992	1			
1993	5			
1994	14			
1995	39	INTERMEDIATE PHASE Voluntary agreements as per art. 13 of the Directive	335	43.9
1996	296			
1997	32	CENTRAL PHASE Agreements taken out as per the provisions of the Directive (art. 6 and subsequent articles)	406	53.3
1998	52			
1999	43			
2000	60			
2001	42			
2002	41			
2003	47			
2004	36			
2005	26			
2005	13			
2007	13			
2008	1			
<b>TOTAL</b>	<b>762</b>		<b>762</b>	<b>100%</b>

Source: SDA-Infopoint database - 2008

Table 2 – Distribution of EWCs agreements according regulation proceeding

KIND OF AGREEMENT	EWC AGREEMENTS	
	No.	%
Agreement art. 13	433	56.8
Agreement art. 6	322	42.2
Agreement art. 6, 13	5	0.6
Joint declaration	1	0.1
<b>TOTAL</b>	<b>762</b>	<b>100.0</b>

Source: SDA-Infopoint database - 2008

Although there has been significant progress in this third phase, the pace of progression in setting up EWCs is too slow (33 agreements per year on average between 1996 and 2008) and, if this pace were to continue, a further 35 years would be required to cover all 2,204 CSUs currently registered, highlighting the limits and insufficiencies of the legislation and proving the need for it to be revised.

### 3.3 Signatories

From the point of view of trade unions, it is necessary to focus on the signatories of the agreement to set up an EWC on behalf of employees. The Directive establishes the criteria for setting up an ad hoc negotiating body. However, reality has shown that other agents are also involved in this negotiating process, who also sign the agreement. This phenomenon of other agents being involved who are not mentioned in the Directive has a two-fold justification:

On the one hand, the agreements reached before 22 September 1996, as we have already seen, are not subject to the Directive: there is no obligation to limit the negotiating parties and there are no obligations regarding the minimum content of these agreements.

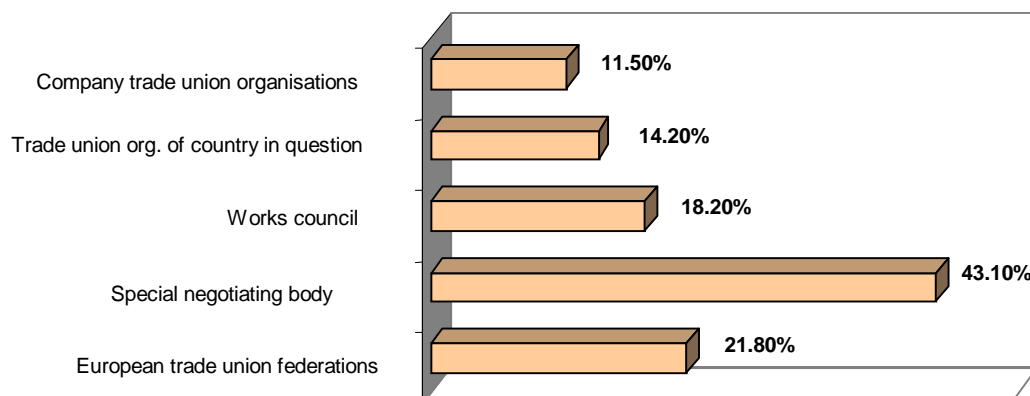
On the other hand, it is usual practice for trade union organisations to be involved in the negotiating processes, and not only as advising experts. Other bodies, such as national works



councils, can also be set up as an ad hoc negotiating body to reach an EWC agreement (Table 3, Figure 1).

Figure 1 – Signatories

Source: <http://www.sda-asbl.org>



We can group the signatories of EWC agreements on behalf of employees into two categories, according to the involvement of trade union organisations:

1) Direct intervention: 38.7% of the agreements have been signed by a trade union organisation. This percentage is broken down as follows:

- European trade union federations: 21.8%
- Country trade unions: 14.2%
- Company trade unions: 11.5%;

2) Indirect intervention: in 61.3% of the cases, trade union organisations do not appear as signatories to the agreement, although this does not mean they have not taken part in the negotiations indirectly. The signatories in these cases are:

- special negotiating body, whose specific composition is based on national legislation: 43.1%
- works council: 18.3%.

Table 3- Signatories of EWC agreements

SIGNATORIES	EWC AGREEMENTS	
	No.	%
European trade union federations	166	21.8
Company trade union organisations	88	11.5
Trade union organisations of the country in question	108	14.2
Works councils	139	18.2
Special negotiating body	329	43.1
<b>TOTAL</b>	<b>762</b>	<b>100.0</b>

Source: SDA-Infopoint database – 2008

### 3.4 Legislation

Which legislation governs European works council agreements?

In general, EWC agreements are governed by the legislation of the country where the company has its head office.

However, it should be noted that the Directive allows EWCs to be set up in non-European companies, i.e. companies whose head office is not in an EU Member State or a member of the European Economic Space (EU plus Norway, Iceland and Liechtenstein), provided they meet the requirements established therein. For example, EWCs have been set up in the United States, Switzerland, Japan, Australia, Argentina, Canada, Mexico, South Korea and South Africa.

In these cases, to determine the applicable national legislation to the agreement, the Directive establishes that the central management can choose to appoint the management of a subsidiary in a Member State to act as the central management. In this case, the applicable legislation will be that of the country where the subsidiary has its offices. If this appointment is not made, then automatically the responsibility for handling the agreement falls on the management of the subsidiary with the highest number of employees, wherever its head office may be (and, of course, the legislation of this country will be applied) (Art. 3.6).

### 3.5 Distribution and coverage

The most up-to-date databases state that, in Europe, European works councils are a reality that has perhaps taken some time to become established but cannot now be ignored.

Table 4 shows the advances made since Directive 95/45 was introduced.

Table 4 – Overall data

Multinational CSUs ( <i>Community-Scale Undertakings</i> ) with a workforce of more than 1,000 employees, with a minimum of 150 in two more EU Member States	2,264
Number of employees	23,600,000
EWCs ( <i>European Works Councils</i> )	833 <sup>5</sup>
Number of employees covered by EWCs	14,500,000
Company coverage rate	36%
Employee coverage rate	61%
Workers' representatives	12,000

Figures 2 and 3 relate, respectively, the number of companies covered by the Directive, with and without EWCs, and the number of employees represented by EWCs compared to the overall number of employees in Community-scale undertakings.

It can be seen that, although the number of companies with EWCs accounts for little more than a third of companies that might have a European Works Council, the number of employees covered by EWCs is higher than two thirds the total number of workers employed by all companies covered by the Directive. The coverage rate is approximately 61%.

Figure 2 – Company coverage rate of EWCs

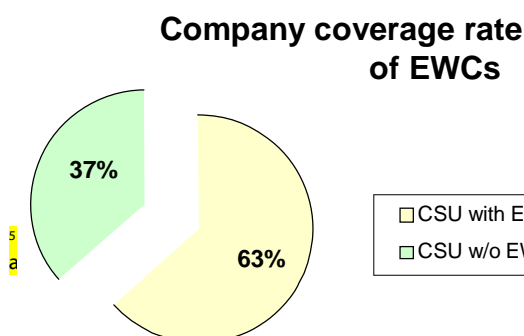
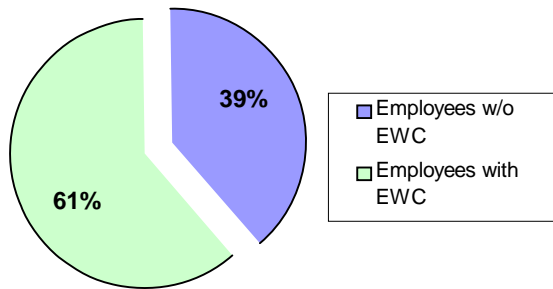


Figure 3 – Employee coverage rate of EWCs

Tables and graphs in this chapter have been created using (depending on availability).

### Employees coverage rate of EWCs



The current coverage rate of the model of EWCs is 36% of all community-scale undertakings that, according to current legislation, should establish an agreement to set up an EWC.

However, this coverage rate is unevenly applied depending on variables of territory, sector, company size, etc., whose aggregate

analysis reveals the existence of organisational patterns, an evaluation of which provides elements to guide strategies for trade union action.

First of all, if we look at the territorial dimension, we must initially distinguish between the country where the CSU's headquarters are located (*Table 5*) and the distribution of the corresponding subsidiaries (*Table 6*). This is no minor issue since, according to that established by the Directive, the location of the headquarters determines the subsidiary legislation applied.

In the first case, the data available on the rate of coverage of EWCs in countries in the European Economic Space allow us to identify the existence of certain common patterns that, in accordance with our hypothesis, correlate with the respective labour relation models.

In effect, if we group countries together according to their coverage rate of EWCs out of the total CSUs, the results are as follows:

- countries with a *high coverage rate* (over 40%): Denmark, Finland, Norway, Sweden and the United Kingdom
- countries with a *medium coverage rate* (between 20 and 40%): Austria, Belgium, Germany, France, Italy, Luxembourg and Holland
- countries with a *low coverage rate* (20% or lower): Greece, Spain, Hungary, Ireland and Portugal

The geographical distribution of subsidiaries of CSUs (*Table 6*) shows their importance in the business structure of the EU and the potential of the EWC model for constructing a European framework of labour relations.

*Table 5 - Community-scale undertakings (CSUs) and European Works Councils (EWC), distribution by country-headquarters and coverage rates.*

COUNTRY	No. OF CSUs WITH HEADQUARTERS IN COUNTRY	No. OF CSU HEADQUARTERS WITH EWC	COVERAGE RATE
AT – Austria	46	17	36.9
BE – Belgium	72	39	54.2
BG – Bulgaria	n.d.	n.d.	---
CY – Cyprus	---	---	---
CZ – Czech Republic	8	---	---
DE – Germany	450	123	27.3
DK – Denmark	60	24	40.0
EE – Estonia	---	---	---
EL – Greece	5	1	20.0
ES – Spain	41	6	14.6
FI – Finland	64	28	43.7
FR – France	210	79	37.6
HU – Hungary	12	1	8.3
IE – Ireland	43	6	13.9
IS – Iceland	---	---	---
IT – Italy	66	25	37.9
LI – Liechtenstein	---	---	---
LU – Luxembourg	5	2	40.0
LV – Latvia	---	---	---
LT – Lithuania	---	---	---
MT – Malta	---	---	---
NL – Holland	133	51	38.3
NW- Norway	22	14	63.6
PL – Poland	11	---	---
PT – Portugal	9	1	11.1
RO – Romania	n.d.	n.d.	---
SE – Sweden	120	57	47.5
SI – Slovenia	---	---	---
SK – Slovakia	---	---	---
UK – United Kingdom	265	109	41.1
<b>TOTAL EES*</b>	1,642	583	35.5
Other non-EES	562	189	33.6
<b>TOTAL GENERAL</b>	2,204	772	35.0

Source: EWC database, European Works Councils. Facts and figures 2006. ETUI

\*EES: European Economic Space (EU plus Norway, Iceland and Liechtenstein)

Table 6 -

Community-scale undertakings (CSUs) and European Works Councils (EWC), distribution by presence of subsidiaries and coverage rates.

COUNTRY	No. OF CSU SUBSIDIARIES WITH PRESENCE IN COUNTRY	No. OF CSU SUBSIDIARIES WITH EWC	COVERAGE RATE
AT – Austria	786	394	50.1
BE – Belgium	1,085	556	51.2
BG – Bulgaria	n.d.	n.d.	---
CY – Cyprus	65	33	50.1
CZ – Czech Republic	636	333	52.3
DE – Germany	1,753	697	39.7
DK – Denmark	666	357	53.6
EE – Estonia	181	101	55.8
EL – Greece	358	221	61.7
ES – Spain	1,167	563	48.2
FI – Finland	503	283	56.3
FR – France	1,539	676	43.9
HU – Hungary	662	334	50.4
IE – Ireland	560	297	53.0
IS – Iceland	50	27	50.9
IT – Italy	1,118	546	48.8
LI – Liechtenstein	20	9	45.0
LU – Luxembourg	274	152	55.5
LV – Latvia	155	84	54.2
LT – Lithuania	162	87	53.7
MT – Malta	56	29	51.8
NL – Holland	1,182	556	47.0
NW- Norway	556	308	55.4
PL – Poland	819	425	51.9
PT – Portugal	617	335	54.3
RO – Romania	n.d.	n.d.	---
SE – Sweden	777	414	53.3
SI – Slovenia	185	108	58.3
SK – Slovakia	340	199	58.5
UK – United Kingdom	1,556	660	42.4

Source: EWC database,  
European Works  
Councils. Facts and  
figures 2006. ETUI

Table 7 – EWC distribution by territory, 2008

COUNTRY	No. of AGREEMENTS		
	Headquarters	Legislation	Subsidiaries
AT – Austria	13	14	296
BE – Belgium	47	85	432
BG – Bulgaria	--	--	17
CY – Cyprus	1	1	17
CZ – Czech Republic	1	1	94
DE – Germany	152	189	580
DK – Denmark	15	15	248
EE – Estonia	--	--	22
EL – Greece	1	1	174
ES – Spain	6	7	429
FI – Finland	28	28	200
FR – France	89	107	513
HU – Hungary	1	1	77
IE – Ireland	10	38	230
IS – Iceland	--	--	23
IT – Italia	33	37	424
LI – Liechtenstein	--	--	20
LU – Luxemburg	4	10	114
LV – Latvia	--	--	19
LT – Lithuania	--	--	20
MT – Malta	--	--	9
NL – Holland	53	64	421
NW – Norway	14	14	202
PL – Poland	--	--	114
PT – Portugal	--	--	257
RO – Rumania	--	--	19
SE – Sweden	45	46	299
SI – Slovenia	--	--	19
SK – Slovakia	--	--	51
SW – Switzerland	31	4	141
UK – United Kingdom	97	100	483
Others	121	--	97
<b>TOTAL</b>	<b>762</b>	<b>762</b>	<b>6,041</b>

Source – SDA-Infopoint Database, 2008

### 3.6 EWCs by size of workforce

Another decisive structural factor in this process is company workforce size. The larger the CSU, the larger the coverage rate of EWCs (Table 8): while only 22.9% of transnational firms with a workforce of under 5,000 employees have this kind of representation/intermediation, this percentage more than doubles in those with over 10,000 employees.

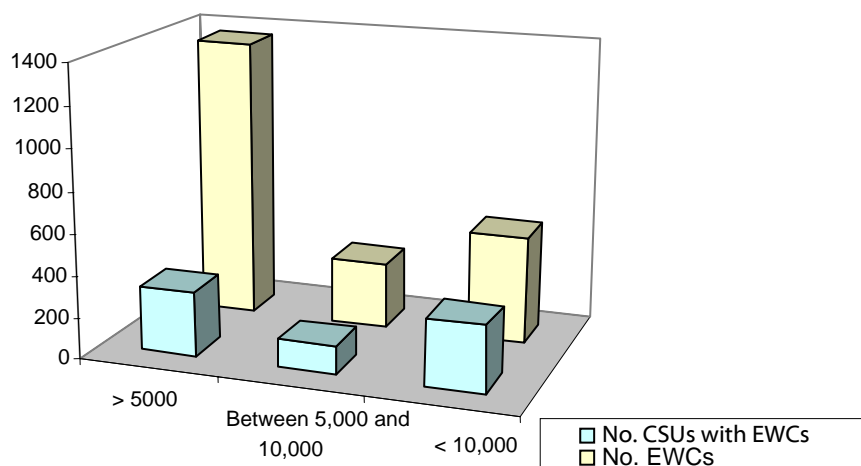
Table 8 - Community-scale undertakings (CSU) and European Works Councils (EWC), by size of workforce

WORKFORCE	No. OF CSUs	No. OF CSUs WITH EWC	COVERAGE RATE
< 5,000	1.361	313	22.9
Between 5,000 & 10,000	321	139	43.3
Over 10,000	522	320	61.3
<b>TOTAL</b>	<b>2.204</b>	<b>772</b>	<b>35.0</b>

Source: EWC database, European Works Councils. Facts and figures 2006. ETUI

Figure 4 – CSUs and EWCs by workforce size

Source: www.sda-asbl.org



### 3.7 Community-scale undertakings (CSU) and European Works Councils (EWC) by business sector

By business sector (*Table 9*), the highest coverage rates of the EWC model correspond in general to industrial firms, far above those for services, which correlate with the different traditions in terms of organisation and trade union action, as well as with the differences in the dominant corporate identity of each sector (Blancke, 2004:395)

The metallurgy sector is the one with most community-scale undertakings (*Table 10*). Of these, to date less than half (41%) have a European works council. The same proportion characterises the chemical sector, while in hotels, restaurants and catering, and also in construction and wood, this figure does not reach 40%. In the textile sector, of the CSUs only 26% have a European works council; in transport, 19 firms out of the 81 community-scale undertakings have an EWC. The most penalised sector is that of services, which has 595 CSUs, of which only 24% have European works councils.

Table 9 - Community-scale undertakings (CSU) and European Works Councils (EWC) by business sector

SECTOR	No. OF CSUs	No. OF CSUs WITH EWC	COVERAGE RATE
Metal	735	302	41.1
Chemical	437	177	40.5
Public Services	595	143	24.0
Hotel, rest. & catering	241	92	38.2
Construction & wood	193	73	37.8
Textile	96	25	26.0
Transport	81	19	24.7
<b>TOTAL*</b>	<b>2,378</b>	<b>831</b>	<b>35.0</b>

Source: EWC database, European Works Councils. Facts and figures 2006. ETUI  
 (\*) Some companies belong to more than sector

### 3.8 Sector distribution of EWCs

As shown by Table 10, EWCs are mainly present in firms from the following sectors: manufacturing, mechanical and metallurgical industry, chemical industry, agri-food, construction, wood and public works, in other words, in those sectors where most restructuring and relocation have been carried out.

Table 10 - Sector distribution of EWCs, 2008

SECTOR	EWC AGREEMENTS	
	No.	%
Leather, Textile-Clothing industry	30	3.3
Banks and Insurance	42	4.7
Mechanical and metallurgical industry	223	24.8
Base industry	9	1.0
Manufacturing, machines and equipment	53	5.9
Production of electrical and electronic equipment	37	4.1
Agri-Food	73	8.1
Chemical industry	196	21.8
Construction, wood and public works	63	7.0
Graphic industry and the media	49	5.5
Public services	1	0.1
Transport	24	2.7
Mines and mining industry	16	1.8
Commerce and services	18	2.0
Wholesale and retail	6	0.7
Hotels and restaurants	13	1.4
Other service activities	24	2.7
Other	20	2.2
<b>TOTAL*</b>	<b>897</b>	<b>100</b>

Source - SDA Infopoint Database, 2008  
 (\*) Some companies belong to more than sector

### 3.9 Conclusions

In this Chapter we have tried to “map” European Works Councils by geographic perimeter, nationality, applicable legislation, regime, sector and size.

Nevertheless, the “IN.CON.PAR\_able” Project - and this handbook, which is one of its main outputs - is focused on the rights to information and consultation stated in the EWCs agreements and its main aim is to strengthen these rights by improving communication and coordination among EWC members.

A right to information and consultation with respect to the company activities and strategies is stated in the majority of the agreements which were signed (96.4%).

What is really going on with this right?

Table 12 – EWC content by EWC functions



EWC FUNCTIONS	EWC AGREEMENTS	
	No.	%
Information and consultation	735	96.4
Information	9	1.2
Opinion	7	0.9
Information, consultation and opinion	5	0.6
Not stated	5	0.6
Adoption of recommendation	1	0.1
<b>TOTAL</b>	<b>762</b>	<b>100</b>

*Source – SDA Infopoint database, 2008*

## 4. INFORMATION, CONSULTATION AND PARTICIPATION

### 4.1 Information

Information on the company and its plans is an increasingly more central right in the lives of European works councils. Good and opportune information is crucial for any kind of union strategy in the case of restructuring transnational companies, i.e. any change that significantly affects employees' working conditions in one or more countries (Table 1). Access to this information means being able to guarantee employee action in the face of changes in company management that might seriously affect them.

Table 1 - Companies undergoing restructuring (merger or takeover) and EWC participation (2002-2004)

Source: EWC database, European Works Councils. Facts and figures 2006. ETUI  
 (\*) Some companies belong to more than one sector

	CSUs			CSUs being restructured	
	Total	Restruc.	%	With EWC	%
Metallurgy	735	123	16.7	82	66.7
Chemical	437	81	18.5	56	69.1
Services	595	128	21.5	53	41.4
Food & Hotels	241	31	12.8	20	64.5
Construct. & Wood	193	32	16.6	20	62.5
Textiles	96	6	6.2	3	50.0
Transport	81	21	25.9	6	28.6
<b>TOTAL*</b>	<b>2,378</b>	<b>422</b>	<b>17.7</b>	<b>240</b>	<b>56.8</b>

It is evident that having basic up-to-date information (e.g. a list of companies and units, number of employees, activities, existence and details of worker representation) is vital in order to take on such a significant operation. This basic information also provides points of reference at an international and sector level, and helps to anticipate possible operations.

In spite of the fact that mergers, takeovers and outsourcing are increasingly more widespread, that these processes are more complex and have crucial consequences on employment and the future of operations, access to information is often refused or arrives late. In other cases only useless information can be accessed. In others, local management does not have such information, and it is therefore vital for European works councils to be able to access central management, even when this management suggests, in some cases, that the issue is not transnational. It is therefore important for a European works council to be able to do the following:

1. Get updated, useful information via the different channels available (including participation on boards and in general assemblies).
2. Analyse this information.
3. Obtain confirmation and details concerning rumours and information in the press (in large operations, rumours or the press often precede information from representatives and it is necessary to be able to distinguish between rumour and fact, remembering that the company's initial plans may be different to what is actually implemented).

### 4.2 Access to information

Evaluating access to information means:

- evaluating the content of EWC agreements regarding the kind of documentation that must be sent by the management council members;
- quantifying how many agreements provide for information and consultation on social, economic and financial issues;
- evaluate the usefulness of the information received and its punctuality.

#### 4.2.1 Type of information

It is important to be able to evaluate what kind of information can be accessed and where this information can be found and, on the other hand, to quantify how many agreements provide for physical access to information.

According to the data in Table 2, the documentation sent includes a statement of activities, work documents, preparatory documents, personnel information, memos and minutes.

Most of the agreements provide for the sending of minutes and preparatory documents; only 1% of the agreements refer to a statement of activities.

Table 2 - Content of EWC agreements by documentation sent to members

DOCUMENTATION SENT	EWC AGREEMENTS	
	No.	%
Minutes	584	76.6
Preparatory documents	354	46.5
Not provided for in the Agreement	124	16.3
Personnel information	42	5.5
Statement of activities (social, economic, financial)	8	1.0
Work documents	3	0.4
Memos	2	0.3
<b>TOTAL</b>	<b>762</b>	<b>---</b>

Source: SDA-Infopoint database - 2008

68% of the agreements provide for a system to communicate information.

Table 3- Content of EWC agreements by communication regulation

COMMUNICATION SYSTEM	EWC AGREEMENTS	
	No.	%
No	523	68.6
Yes	239	31.4
<b>TOTAL</b>	<b>762</b>	<b>100</b>

Source: SDA-Infopoint database - 2008

#### 4.2.2 Quantitative analysis of the information

The information provided by the database from the *Social Development Agency* allows us to carry out a general evaluation of the competence and functioning of EWCs.

First of all, it should be noted that the agreements to establish EWCs record a number of social, economic and financial issues on which the company must inform/consult (*table 4*). This list of issues corresponds overall with the criteria pre-established by the Directive itself, although there are highly unequal levels of regulation. While issues related in general with employment, production and the company's financial situation are stated as being informed and consulted on in most agreements, other areas of interest (health at work, training, equal opportunities, trade union rights, etc.) are included in much lower proportions on the EWC agenda.

*Figures 1, 2 and 3* quantify the percentage of agreements providing for access to information by European works councils with regard to three areas of interest:

1. Social issues (employment, collective redundancies, health and safety, working conditions, training, gender equality, trade union rights)
2. Economic issues (production, market, business sector, relocation, merger, closure, new technologies, environment, research)
3. Financial issues (analysis of balance sheet, investment, joint ventures).

As shown in Figure 1, more than 90% of the agreements provide for access to information on employment, while this percentage falls to half in the case of other social issues, such as collective redundancy, health and safety and working conditions.

Figure 1- Information and consultation on social issues

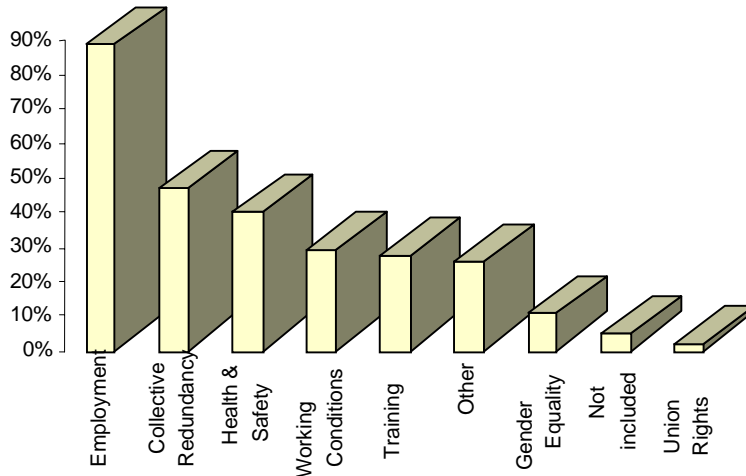


Figure 2 – Information and consultation on economic issues

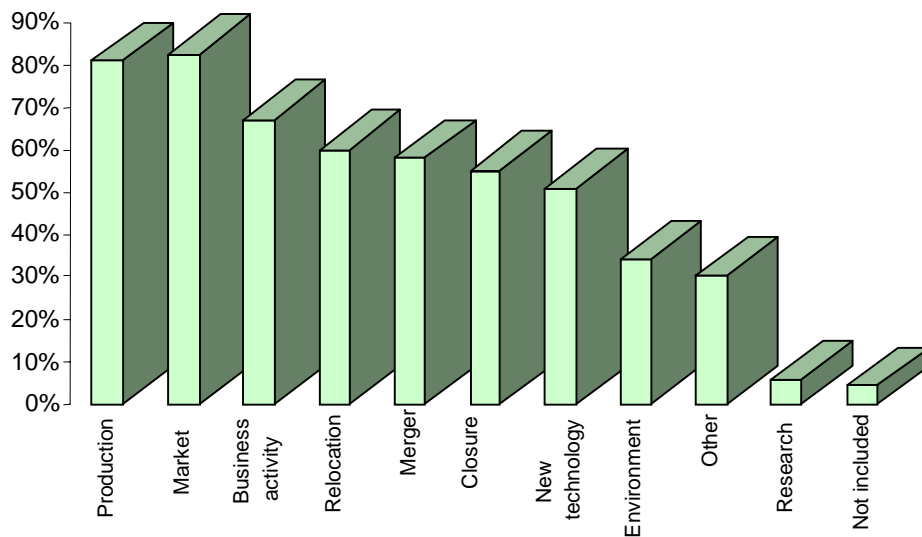
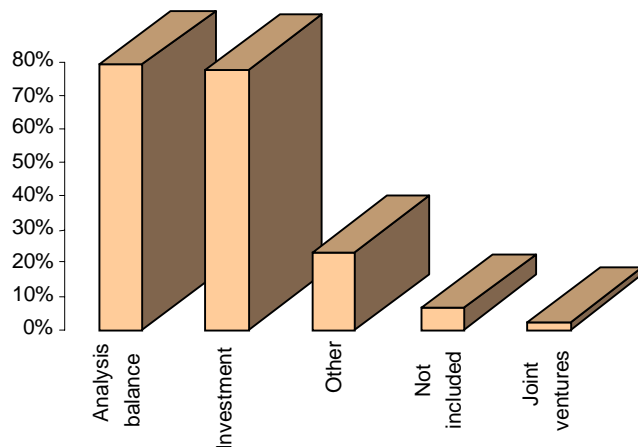


Figure 3 – Information and consultation on financial issues



With regard to economic issues (Figure 2), more than 90% of the agreements provide for access to information on the market and production, and a little more than 50% provide for information and consultation on the issue of relocation.

Finally, the balance sheet and investment are the financial issues mostly provided for in the agreements with regard to information and consultation (Figure 3). Table 4 summarises the percentages

Table 4 - Issues contained in EWC agreements, 2008

COMPETENCES	EWC AGREEMENTS	
	No.	%
<b>SOCIAL</b>		
Employment	676	88.7
Working conditions	359	47.1
Health and safety	304	39.9
Training	222	29.1
Equal opportunities men-women	210	27.5
Trade union rights	196	25.7
Redundancies	81	10.6
Other	39	5.1
Not provided for	15	1.9
<b>ECONOMIC</b>		
Production	630	82.7
Market	618	81.1
Business sector	514	67.4
New technologies	458	60.1
Environment	443	58.1
Merger	420	55.1
Closure	389	51.0
Transfer	260	34.1
Research	232	30.4
Other	44	5.8
Not provided for	33	4.3
<b>FINANCIAL</b>		
Balance (analysis)	602	79.0
Investment	591	77.5
Joint ventures (share in other companies)	176	23.1
Other	48	6.3
Not provided for	17	2.2
<b>TOTAL AGREEMENTS</b>	<b>762</b>	<b>100</b>

Source – SDA Infopoint Database, 2008

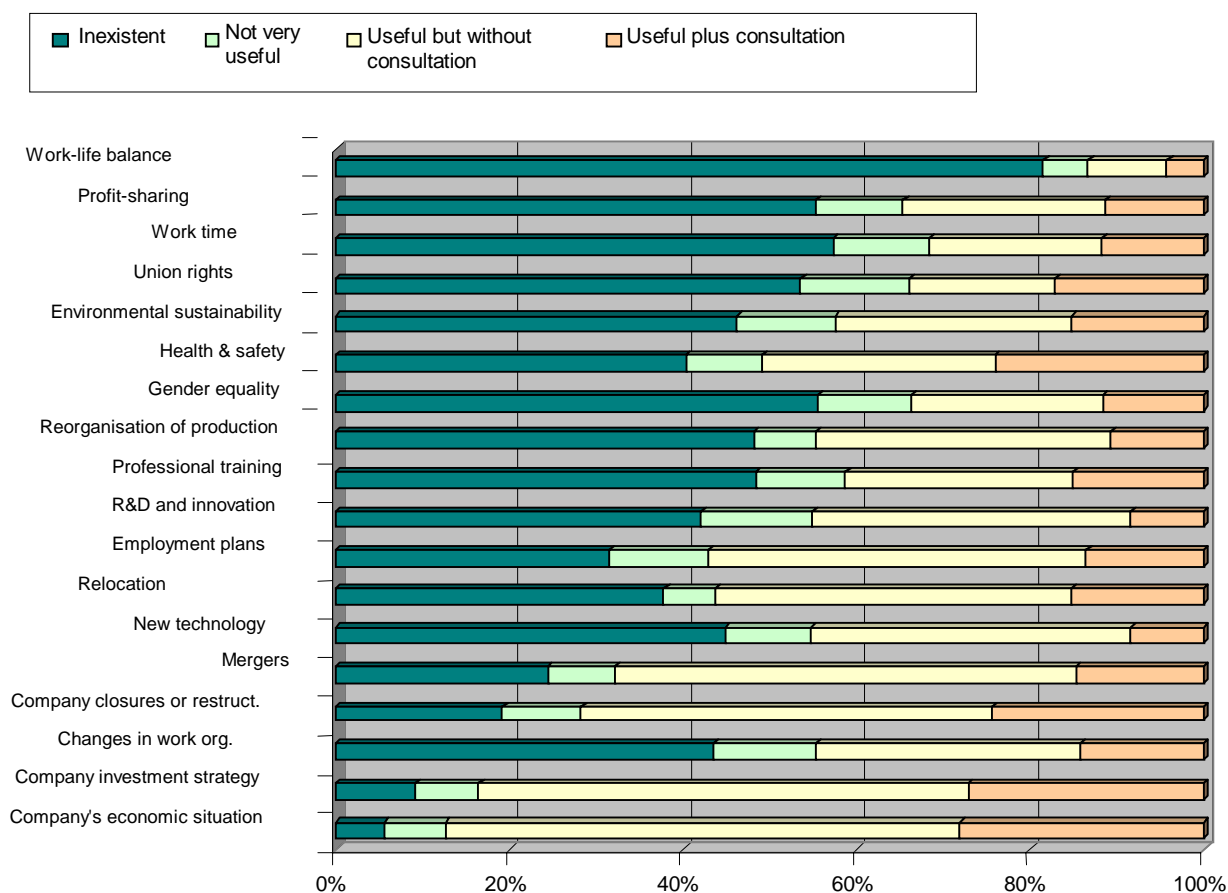
#### 4.3 Effective information and consultation

Accessing information does not provide any advantage if the information is useless. According to research by Jeremy Waddington (*Enquête auprès des représentants de CEE, 2005*), shown in Figure 4, there is no information on many issues, such as work-life balance, gender equality or health and safety at work.

In some areas, such as employment plans, investment-related company strategies or the firm's economic situation, the information is useful and sometimes accompanied by consultation.

In general, we can see that, when there is information, in most cases it is also useful.

Figure 4 - The quality of information and consultation regarding EWCs, 2005



Source: J. Waddington, *Enquête auprès des représentants de CEE, 2005*

#### 4.4 Communication and coordination

In order for the right to company information to become a reality, and to be able to make use of this information, a European works council must have good communication and coordination among its members.

By "communication", we mean the capacity of members from different countries to contact each other, deal with each other and understand each other, in spite of language, cultural or social differences.

As from this point, i.e. the point where members can communicate with each other, coordination is required, i.e. establishing procedures, arranging meetings, keeping up contacts in order to be able to take decisions and tackle the new national or transnational context being created. International coordination and organisation are necessary if workers who are going to take on multinational

companies regarding any issue wish to do so on equal terms. European works councils are playing an important role in achieving this and significant progress has been made in this area in recent years.

In the last chapter we analyse how we might improve these two factors via specific work tools.

Now we are going to quantify the data regarding to key aspects to communication and coordination: the possibility of accessing subsidiary companies (Table 6) and the frequency of meetings (Table 7).

Table 6 – Content of EWC agreements, by access to subsidiaries

ACCESS TO SUBSIDIARIES	EWC AGREEMENTS	
	No.	%
No	632	82.9
Yes	130	17.1
<b>TOTAL</b>	<b>762</b>	<b>100</b>

*Source – SDA Infopoint database, 2008*

Table 7 - Content of EWC agreements, by meeting frequency

*Source – SDA Infopoint database, 2008*

ANNUAL FREQUENCY OF MEETINGS	EWC AGREEMENTS	
	No.	%
1 ordinary meeting	115	15.1
1 ordinary meeting and poss. of another extraordinary	484	63.5
2 ordinary meetings	26	3.4
2 ordinary meetings and poss. of another extraordinary	106	13.9
More than 2 ordinary meetings	15	1.9
Not provided for in the Agreement	16	2.1
<b>TOTAL</b>	<b>762</b>	<b>100</b>

With regard to access to subsidiaries, this possibility is provided for only in 17% of the agreements, visibly affecting coordination and communication among EWC members.

In spite of the fact that most EWC members believe there is a need to hold at least two meetings each year, only 3.4% of the agreements provide for this. 63% provide only for one ordinary meeting, with the possibility of an extra meeting under special circumstances. The frequency of the meetings between EWCs and the central management of firms is also mostly around the minimums established by the Directive: more than two thirds of the agreements provide for a single ordinary meeting per year for information and consultation, with the possibility of a second extraordinary meeting when circumstances warrant, while only 19.2% of the agreements provide for two more meetings per year.

Another fundamental aspect to improve communication and coordination is training, both regarding language - to allow for the exchange of information, and also regarding content (economic, financial or social issues). Training on content is even more important, bearing in mind the fact that many firms do not consent to experts accessing information.

As can be seen in Tables 8 and 9, only 48% of the agreements provide for training for EWC members, and this is fundamentally language training.

Table 8 - Content of EWC agreements, by training provided for

TRAINING	EWC AGREEMENTS	
	No.	%
No	392	51.4
Yes	370	48.6
<b>TOTAL</b>	<b>762</b>	<b>100</b>

*Source – SDA Infopoint database, 2008*

Table 9 - Content of EWC agreements, by area of training

Source – SDA Infopoint database, 2008

AREA OF TRAINING	EWC AGREEMENTS	
	No.	%
Not provided for in the agreement	552	72.4
Language training	176	26.2
Economic	103	13.5
Financial	69	9.0
Social	80	1.0
<b>TOTAL</b>	<b>762</b>	<b>---</b>

This is a significant deficit as these training difficulties constitute one of the main obstacles to EWCs operating effectively (Syndex, 2008: 12).

In order to get over such deficits, the proposal is to use external *experts*, generally linked to the trade union organisations of the headquarters' country represented in the EWC or to the corresponding European federations. Their participation is mostly acknowledged (Table 10), although some limitations and insufficient coverage still persists.

Table 10 - Content of EWC agreements, by expert assistance provided for

Source – SDA Infopoint database, 2008

EXPERT ASSISTANCE	EWC AGREEMENTS	
	No.	%
Not provided for in the agreement	144	18.9
In plenary meetings	92	12.1
Preparatory meetings	73	9.6
Preparatory and plenary	453	59.4
<b>TOTAL</b>	<b>762</b>	<b>100</b>

In addition to having the resources and internal authority to access and process the information and consultation to which they are entitled, EWCs also require external mechanisms and channels in order to suitably carry out their representative and interlocutory functions, as well as the recognition of their right to access the CSU's work centres and subsidiaries.

The aim is to regulate the mechanisms and resources (material, technical, time-related, etc.) required to exercise the functions of information and consultation both vertically (upwards to the company management and downwards to the employees) and horizontally (in the parent companies and with subsidiaries), and to do so directly (visits, meetings with local committees and workers) and/or through the communication systems available (intranet, website, videoconferencing, publications, etc.).

In the first case (Table 11), only 17.1% of the current agreements to establish EWCs recognise the right of their members to normal access to the CSU's subsidiaries, which is totally insufficient for generalised transnational trade union action.

Table 11- Content of EWC agreements, by access to subsidiaries provided for

Source – SDA Infopoint database, 2008

ACCESS TO SUBSIDIARIES	EWC AGREEMENTS	
	No.	%
No	632	82.9
Yes	130	17.1
<b>TOTAL</b>	<b>762</b>	<b>100</b>



This limitation may be only partially covered by use of the available communication systems (Table 12), which is provided for in a third of the agreements to establish EWCs and, on the other hand, highlights the difficulties faced by a large part of these Councils in adequately fulfilling their representative functions.

Table 12 - Content of EWC agreements, by communication provided for

Source – SDA Infopoint database, 2008

COMMUNICATION SYSTEM	EWC AGREEMENTS	
	No.	%
No	523	68.6
Yes	239	31.4
<b>TOTAL</b>	762	100

#### 4.5 Consultation and participation

The right to consultation is another fundamental right for European Works Councils [*Tribunal de Grande Instance* of Nanterre, (4-4-1997 in O.J. 97/00992) and the *Cour d'Appel de Versailles* (7-5-1997)]. Nonetheless, many EWCs feel their right to consultation is much weaker than their right to information. This sensation is undoubtedly the result of a lack of capacity to impose the workers' agenda in the consultation process. The management may consult, but it then implements its original decision irrespective of the outcome of the consultation.

The application (or lack of application) of the right to participation or the right to negotiation also generates confusion. "On the one hand, if key decisions are taken more by the central management, then it is logical that negotiations should take place at an international level. Otherwise we would be allowing companies to act unilaterally, or we would at least be limiting ourselves to rearguard actions at a local level. At least in the case of companies based in Europe, this would place EWCs at the front line. But here we must be careful because, if company negotiations are going to be carried out at a European level, who will lead them? The European works council? Or the European trade union federations or the unions at a national or regional level in the countries in question? If the right to negotiate at a European level is won, then effective coordination will be even more necessary than ever between the EWC and the relevant trade union bodies" (*European Works Councils – Cases of good practices*, CC.OO. Catalonia).

## 5. COORDINATION AND COMMUNICATION BETWEEN EWC MEMBERS

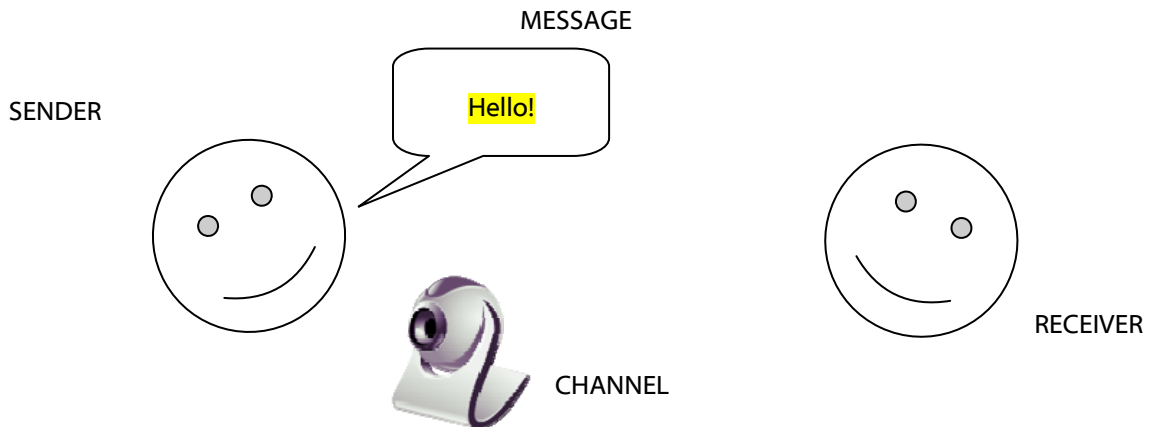
### 5.1 Communicating

Communication and coordination between members of European works councils are essential factors for the right to information, consultation and participation to become a reality.

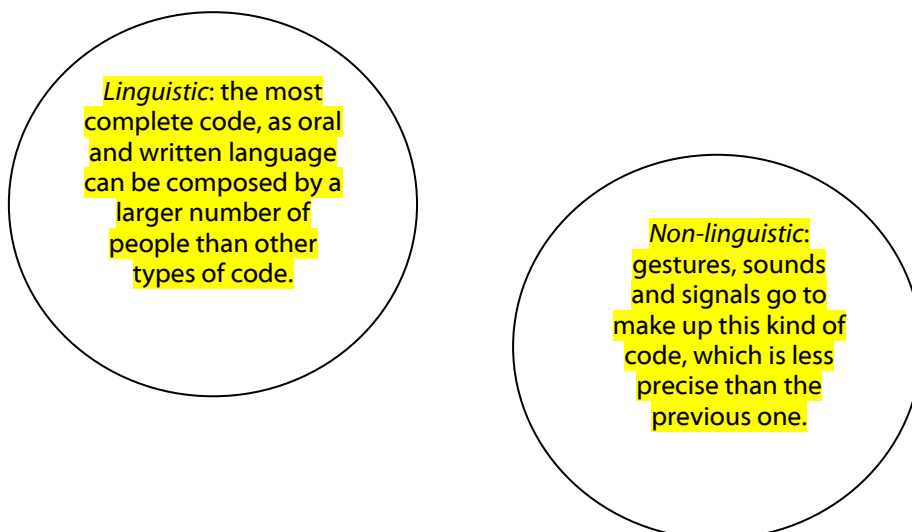
**Communicating** is making our knowledge or thoughts known to other people. For communication to exist there must be a sender, a receiver, a message and a channel via which the message is sent.

**Information:** Issuing a message, without expecting a response.

**Communication:** The process of establishing relations between the sender and the receiver, in the course of which information is exchanged.



If any of these elements fail, interference is said to have occurred and communication cannot be established. To send a message, a code common to the sender and receiver must be used. The code might be:



When we talk to someone, only a small part of the information we obtain from this person comes from the words used. Researchers have estimated that between 60% and 70% of what we

communicate is carried out via non-verbal language: i.e. gestures, appearance, posture, gaze and expression.

## 5.2 Intercultural communication

Communication is effective when it achieves an acceptable degree of comprehension for the interlocutors, i.e. when both interlocutors are capable of understanding correctly what each other means because they share meaning to a sufficient or great degree.

In the case of members of European works councils, communication is "intercultural communication", i.e. between cultures. If each culture is a network of meanings, every time we talk to someone from a different culture we need to enter into his or her network of meanings, or he or she into ours.

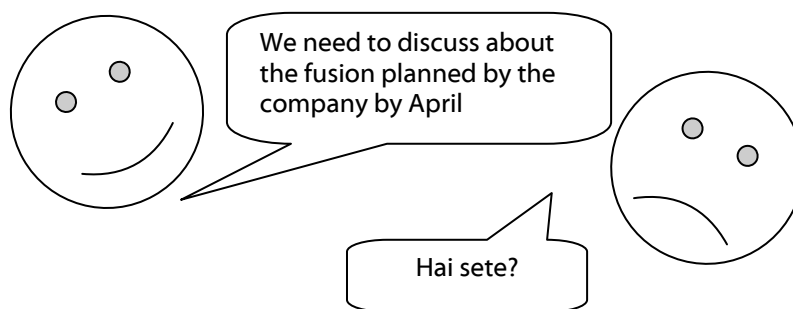
The search for intercultural effectiveness leads to creating communicative competence: feeling capable of communicating with members from another culture (T. Austin Millan).

When there is interculturalism, both verbal communication (or linguistic) and non-verbal communication (or non-linguistic) come up against barriers and difficulties, sometimes technical and sometimes conceptual.

### 5.2.1 Linguistic intercultural communication

"Linguistic" communication can be problematic in a human group that shares the same language, let alone among people from different cultures who are trying to communicate in a "common" language. Each language expresses a visible and invisible perception of the world, of human beings, society and relations between everything that exists. Each language therefore interprets a culture and the words only become completely meaningful via their relations with other words.

On the other hand, we are living at a time when international communication is intensifying and spreading. However, contrary to the effects that globalisation seems to have on certain aspects of the international community, in the area of linguistic communication we are far from achieving a utopia of unity. It is therefore necessary for those talking to each other to share the same collective code that determines meaning.



The experience of many EWC members reflects this situation: the need to communicate within an intercultural context via a collective code, which perhaps also reflects the corporate context in which they live and which they relate with.

To be able to communicate, the members of a European works council need to be able to communicate in a common language or several languages. The use of interpretation services during meetings does not get rid of the language barriers in the intermediate period between two meetings, which in most cases is the period when it is really necessary to "communicate" in order to be informed and take decisions.

It is therefore fundamental, both in the short and long term, to invest in language training for members of European works councils.

### 5.2.2 Non-linguistic intercultural communication

A lot of things can be expressed with the body. Sometimes these things are "intended", while other times they are expressed involuntarily. Although we have just met them, after being alone with

someone and talking to them for a couple of minutes we can reach the conclusion that they can't be trusted or we don't like them, although we might not be able to put our finger on the exact reason. The most we can say is "there's something about him/her I don't like". This "something" almost certainly comes from body language.

Non-verbal language is partly innate, partly imitative and partly learned. Generally, different areas of the body tend to work together to send the same message, although sometimes it's possible to send contradictory messages, such as when someone is telling an amusing anecdote but their facial expression is sad. This can be due, for example, to the fact that they are thinking of something else while they are speaking, perhaps about what they are going to say next, and their facial expression corresponds to what they are thinking rather than what they are saying, confusing their interlocutor. On other occasions, the messages are confused because various emotions can be conveyed at the same time, such as rage, fear or anxiety, which sometimes appear together.

All these difficulties in communication and comprehension are multiplied when we factor in the "intercultural" dimension. Body language changes from country to country and from culture to culture, and it can confuse interlocutors. At a meeting between members of a European works council, an Italian will say "yes" by nodding, while a Bulgarian will say "yes" by shaking the head (which seems more like a "no" to the Italian!). If they agree, German members slap the table instead of applauding (which might mean to Spanish members that they don't agree with the point in question!).

### 5.3 Technical and conceptual obstacles

Both technical and conceptual factors play a part in communication failure.

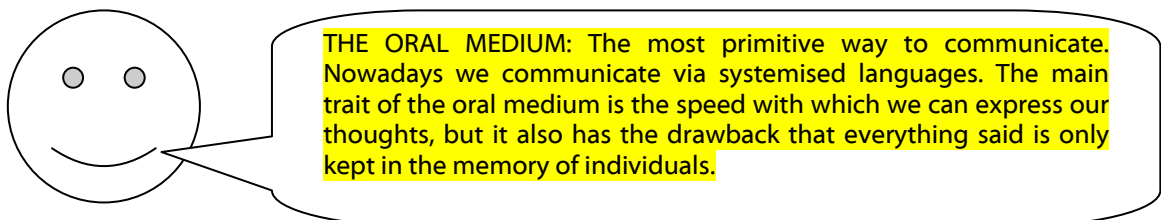
One of the most common technical factors is an interlocutor's lack of knowledge of the other's language or of a common universal language (such as English or French). Other faults relate to a lack of clarity, conciseness or precision in the message we are trying to convey, while others are more related to the volume of the voice, diction or the speed of talking.

These technical faults can easily be overcome with specific training on communication. It is more complicated, however, to overcome those defined as "conceptual faults". By this we mean the following: stereotypes (highly simplified mental images with few details about a group of people who share certain characteristic qualities and skills), generalisations, culture shock or inference.

In order to overcome these kinds of obstacles, we need to initiate a process of "raising cultural self-awareness", assuming that what the other person is doing is as normal as anything that would be normal for us, no matter how strange it might seem (cultural relativity).

### 5.4 Communication channels

We choose how to communicate according to the situation we find ourselves in, i.e. we choose our media and channels:



*THE WRITTEN MEDIUM: Its main virtue is that a text's content remains "intact". Writing led to a huge evolution in communication as it enabled mass information.*

The written medium is the most frequently used in trade union activity, both to convey the message from the trade union, its proposals and publicity as well as in the formal channels of internal communication, especially that between higher and lower levels in the organisation's hierarchy (top-bottom communication).

Another medium of communication that has revolutionised the information society is the DIGIT@L MEDIUM, with its many different channels: Internet, emails, video conferences, chat rooms, etc.



In the case of European Works Councils, communication can be carried out via any of these three media, depending on the context and situation.

Communication is primarily oral during meetings between council members, although written or digital media may help comprehension by reducing failures in understanding related to language diversity. Between one meeting and another communication is both oral (remote communication, normally by telephone) and written or digital. In this respect, the email revolution has been crucial, developing the only horizontal communication that is sufficiently agile to respond, almost in "real time", to the fast-changing world in which multinational corporations operate. The use of corporate email is one of the most important new social rights for which people are currently fighting and winning.

## **5.5 Coordination**

Another essential factor to achieving complete rights to information is coordination between the members of a European works council. Once the basic communication tools have been acquired, it is important to have coordination and cohesion between the members of the same council.

International coordination and organisation are necessary for workers to be able to take on multinationals on equal terms. European works councils are playing an important part in achieving this and, in recent years, have made significant progress.

Coordination means both using preparatory meetings for the annual meeting as a central point for coordination, as well as promoting ongoing coordination throughout the rest of the year.

"Representatives from European works councils have noticed that the company's key decisions concerning production are increasingly being taken centrally instead of by the local or national management, whom they may not even know. This means that it is vital to share information between plants and countries and, very often, it is particularly important to contact representatives working at the company's headquarters" (European Works Councils - Good Practices, CC.OO. of Catalonia, 2001).

## **5.6 Channels of coordination**

Among the key channels of communication are:

- preparatory meetings
- digital communication.

The widespread and increasing use of information technologies has also led to an increase in services provided free of charge to users. Given that participants in European works councils are members of different countries and with different levels and options of access to new technologies, we have opted to choose the best known and most user-friendly service for users, such as those of IT companies that provide a tried and tested global service. This does not mean that members cannot communicate using organisational collaboration suites, corporate portals or other instruments. All these services, today, provide possibilities to communicate and coordinate action that will undoubtedly increase when the implementation of social networks goes global.

Advances are fast in the world of new technologies and we must pay attention to how we can take advantage of these to improve our coordination and communication.

There are different options for coordinating members of European works councils by using information technologies. The classic and most widely used, for the moment, to send and forward information is email.

However, the wide range of services on offer and the competition between suppliers and large companies has meant that any user anywhere in the world (with Internet access) has a tool that can be very useful when it comes to coordinating European works councils.

This tool is known as "groupware" by most large service and content providers, search engines, etc. Among other features, this allows us to share files between members of the group and it facilitates communication via messages in a forum or discussion group. These two elements are becoming the most important factors for coordination, as it is no longer a question of sending information but of sharing it and debating it in private settings managed simply and intuitively.

You can take part in these groups by simply having an email address, many of which can be obtained free from many providers or the address provided by our own ISP.

The Files option allows you to upload files of all kinds, including images, which can be consulted by all the members of the group. When you upload files, normally there is a message alerting members that a new file exists, so that they can access and consult it immediately from wherever they may be at the time, as it is accessed over the Internet.

The Message-Debate option organises messages via threads or themes and can be consulted either via the group website or by email, subscribing to messages so that they are sent to your address as they are written. Both types of consultation and participation are valid and can be used indistinctly.

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## **Part II**

### **Comparative analysis of the transposition of Directive 94/45/EC into national legislation and of EWC agreement good practices in Spain, Italy, Portugal, Germany and Bulgaria**

## **1. COMPARATIVE ANALYSIS OF THE TRANSPOSITION OF DIRECTIVE 94/45/EC INTO NATIONAL LEGISLATION AND OF EWC AGREEMENT GOOD PRACTICES IN SPAIN, ITALY, PORTUGAL, GERMANY AND BULGARIA**

### **1.1 EWCs: comparative analysis of the transposition into national legislation of five European countries**

The Directive established that Member States should adopt the necessary legal, regulatory and administrative provisions in order to comply with it, establishing as a deadline the aforementioned date of 22 September 1996. This deadline was respected by only five States (Denmark, Finland, Ireland, Sweden and, partially, Belgium), which adopted transposition provisions that came into force on this date, while the rest of the States did so afterwards, as is the case of those represented in this Project:

- Germany: 28 October 1996
- Italy: Trade Union agreement on 27 November 1996. Legal transposition on 2 April 2002
- Spain: 24 April 1997
- Portugal: 9 June 1999, and
- Bulgaria: 14 July 2006

in each case incorporating specific procedures and content deriving from their respective legal frameworks and labour relation systems, as analysed in the corresponding *national reports* and as can be seen by the *comparative study* included in this document.



Table 1 .Transposition of Directive 94/45/EC into national legislations. Comparative analysis

TITLE AND DATE OF THE LAW				
SPAIN	ITALY	PORTUGAL	GERMANY	BULGARIA
The EU directive on European Works Councils (EWCs) was transposed into Spanish law via Act 10/1997, of 24 April, on the "Rights to information and consultation of workers in community-scale undertakings and community-scale groups of undertakings", published in BOE (Official Journal) no. 99, on 25 April 1997.	Government Decree No. 74 of 2 April 2002 "Implementation of Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees".	Transposition to domestic law – Law No. 40/99 of 9 June 1999, later revoked by the Labour Code. The current legislation includes: The Labour Code (Articles 471 – 474) and its Regulations, of 29 July 2004 (Articles 365 – 395).	European Workers Council Laws (EWC- Laws) (Europäische Betriebsräte-Gesetz – EBRG) Date of issue 28.10.1996 It became effective on 01.11.1996.	Law on Information and Consultation with Employees of Multinational (Community-Scale) Undertakings, Groups of Undertakings and Companies, promulgated in the State Gazette No 57 of 14.07.2006, in force from the date of enforcement of the Accession Treaty of the Republic of Bulgaria to the European Union, 1.01.2007

DEFINITION OF "INFORMATION" and "CONSULTATION"				
SPAIN	ITALY	PORTUGAL	GERMANY	BULGARIA
(Preliminary Heading, art. 2) Act 10/1997 extends and safeguards the rights to information and consultation of workers' representatives taking part in EWCs, in accordance with the regulations, for the national territory, contained in the revised text of the Workers' Statute (approved by Royal Legislative Decree 1/1995, of 24 March) and the Act on trade union freedom (LOLS 11/1985, of 2 August).	"Information and consultation" mean the provision of data, facts and information and also the exchange of views and establishment of dialogue between employees' representatives and central management or any more appropriate level of management (art. 2, lett. g).	The law does not define "information" and "consultation". It acknowledges the right, while remitting to specific legislation. It namely remits to an agreement the power to establish information and consultation mechanisms. Should an agreement not be attained, then the law lays down some provisions for the exercise of that right: The EWC is entitled to be informed and consulted, in general, on questions related to the whole of the enterprise or group, or as a minimum, to 2	"Information" is defined as Briefing. "Communication" is considered as exchanges of views and establishing dialogs between workers representatives and the governing bodies.	"Information" means the information to the employees' representatives and/or of the body representative of the employees by the competent organ /EWCs or other similar body/ by the management bodies of the respective Multi-national Undertakings, Groups of Undertakings and Companies. "Consultation" means exchange of views and establishment of dialogue between the representatives of the employees and/or the body representative of the employees and the relevant management bodies of

establishments or enterprises belonging to a group, located in different member states.

the respective Multinational Undertakings, Groups of Undertakings and Companies.

## EWCs and SPECIAL NEGOTIATING BODIES: COMPOSITION

SPAIN	ITALY	PORTUGAL	GERMANY	BULGARIA
<p>(Art. 17)</p> <p>1. The European works council will be made up of workers from the undertaking or group, chosen or appointed by and from workers' representatives or, if these are not present, from the workers as a whole, in accordance with national laws and practices.</p> <p>2. The European works council will be made up of the following members:</p> <p>a. One member representing workers from each Member State in which the community-scale undertaking has one or more work centres or where the undertaking is located that controls a community-scale group of undertakings or one or more of the controlled undertakings.</p> <p>b. If relevant, a number of supplementary members representing workers from those Member States where a significant percentage of the total workers in the undertaking or group are located, in accordance with</p>	<p>European Works Council means the council established in accordance with Article 1 (2), Article 9 (6) or the provisions of Article 16 and composed of employees of the Community-scale undertaking or Community-scale group of undertakings referred to in Article 9 (2) (a), with the purpose of informing and consulting employees (art 2, lett. h). Special Negotiating Body means the body established in accordance with Article 5 to negotiate with the central management regarding the establishment of a European Works Council or a procedure for informing and consulting employees in accordance with Article 1 (2). (art. 2 lett. j)</p> <p>Procedures for Setting up the Special Negotiating Body (art. 6)</p> <p>1. In order to achieve the objective in Article 1 (1), a special negotiating body shall be established.</p> <p>2. The members of the special negotiating body shall be appointed by the trade union</p>	<p>The EWC and Special Negotiating Body is composed of:</p> <ul style="list-style-type: none"> <li>- 1 member of each member state where a company or establishment is located.</li> <li>- 1 more member from each member state where between 25% and 50% of the workers are employed.</li> <li>- 2 more members from each member state where 50% to 75% of the workers are employed.</li> <li>- 3 more members from each member state employing 75% or more workers.</li> </ul> <p>The number and distribution of EWC members may differ, according to the agreement's provisions.</p>	<p>Negotiating Councils:</p> <p>The composition of the negotiating councils is regulated in § 10 of the European Workers Council Laws (Europäische Betriebsräte-Gesetz – EBRG). In accordance, a workers representative is elected to the negotiating council from every member country, in which a multivariate or corporate enterprise operating within the EU exists. In member countries, where at least a sum of 25% of the working force of an entrepreneurial group is employed, an additional representative is selected. In member countries with working forces totalling 50% and 75 %, two or three additional members are respectively elected. Assistant members could be elected.</p> <p>European Works Council: (EWS) Europäischer Betriebsrat (EBR)</p> <p>The assembly of the European Workers Council is stipulated in § 22. It comprises of workers representatives from multivariate and corporate enterprises engaged in EU</p>	<p>The European Works Council consists of at least 3 members. Workers and employees of each Member State on which territory operates a multinational (Community-scale) undertaking or group of undertakings shall have at least 1 representative in the special negotiating body. Additional members can be elected in proportion of the number employees employed in the participating legal entities and concerned subsidiaries or establishments, executing business activities on the territory of the Republic of Bulgaria, to the number of employees employed in undertakings and relevant subsidiaries and establishments in all the Member States taken together, by allocating one seat per each portion of employees which equals 25 per cent for Multinational Undertakings and 10 per cent for Groups of Undertakings and Companies. The members of the Special negotiating body are elected by</p>

the following rules:

- One member representing the workers from each Member State where there is 25% to 50% of the total workforce employed of the undertaking or group.
  - Two members representing workers from the Member State where there are more than 50% up to 75% of the total workforce employed of the undertaking or group.
  - Three members representing workers from the Member State where there is more than 75% of the total workforce employed of the undertaking or group.
3. When this has been agreed by both the central management and the European works council, representatives may take part in the meetings of the European works council and in those held with the central management, with voice but without vote, who are chosen by workers from non-Member States where the undertaking or group has work centres or undertakings.
4. The European works council will inform the central management of the undertaking or group of its composition, as well as any other appropriate management level.

organisations referred to in Article 5 (1) and the unitary union structures of the undertaking or the group of undertakings.

3. In establishments and/or undertakings in which there are no employees' representatives, the trade union organisations referred to in Article 5 (1) shall agree with the management referred to in Article 4 on the procedures for the participation of the employees of such establishment and/or undertaking in the appointment of the members of the negotiating body.

4. The procedures referred to in this article shall apply to all elections and/or appointments taking place within Italy.

Composition of the Special Negotiating Body (art. 7)

1. The special negotiating body shall comprise one member from each Member State in which the Community-scale undertaking or group of undertakings has one or more establishments or undertakings. The special negotiating body shall have a minimum of three and a maximum of 18 members.

2. Within the limit of the maximum number referred to in paragraph 1, supplementary members shall be appointed in accordance with the following criteria:

a) one additional seat for each

member countries. A workers representative is elected to the European Workers Council from every member state and from each entrepreneurial group or company with a Workers Council.

Where the working force of an entrepreneurial group or company within the European Union has 10,000 workers and if, in a member state the number of employees reaches 20% of that sum, then an additional member is selected from that country.

From member states with a working forces amounting to 30%, two; by 40%, three; by 50 %, four; by 60%, five; by 70%, six; and by 80%, seven additional members are respectively elected to the Councils.

Should the working force of an entrepreneurial group or company exceeds the sum of 10,000 within the European Union and if, in a member state, the number of employees reaches 20% of that sum, then an additional member is elected.

Member countries having working forces with sums totalling 30%, three; by 40%, five; by 50 %, seven; by 60%, nine by 70%, eleven by 80%, thirteen additional members are respectively elected to the Councils.

Committee:  
If the European Workers Council (EWC) has nine or more members

the General Assembly of the respective subsidiary by simple majority vote of the persons present.

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Member State accounting for at least 25% of all employees in the undertaking or group of undertakings in the Member States;

b) two additional seats for each Member State accounting for at least 50% of all employees in the undertaking or group of undertakings in the Member States;

c) three additional seats for each Member State accounting for at least 75% of all employees in the undertaking or group of undertakings in the Member States.

3. The central management or manager referred to in Article 4 (1) and the local management shall be informed of the composition of the special negotiating body by a joint letter from the trade union organisations referred to in Article 5(1).

Subsidiary Requirements (art. 8)  
Highly qualified employees must be specifically represented within the European Works Council, by appointing one supplementary member - with a separate right to vote and be voted for - for each Member State accounting for at least 15% of the highly qualified employees of the undertaking or the group of undertakings in the Member States.

The European Works Council shall have a minimum of three

then it elects from its centre a committee of three, consisting of an elected Chairperson and two additional members. The members of the committee should be employed in different member countries. The Committee is responsible for running the regular business of the EWC. A EWC with less than nine members could assign the routine business either to a chairperson or to another member of the council.

members and a maximum of 30. Where the European Works Council is composed of at least nine members, it shall elect a select committee from among its members, comprising at most three members. It shall adopt its own rules of procedure.

In the election of the members of the European Works Council, it must be ensured firstly, that each Member State in which the Community-scale undertaking has one or more establishments or in which the Community-scale group of undertakings has the controlling undertaking or one or more controlled undertakings is represented by one member; secondly, that there are supplementary members in proportion to the number of employees working in the establishments, the controlling undertaking or the controlled undertakings as laid down in Article 7(2).

## EWCs MEMBERS' ELECTION OR APPOINTMENT

SPAIN	ITALY	PORTUGAL	GERMANY	BULGARIA
<p>(Art. 27)</p> <p>1. The representatives that must form part of the negotiating body and of the European works council will be appointed via agreement</p>	<p>One-third of the Italian members of the European Works Council and/or those involved in the information and consultation procedure shall be appointed by the</p>	<p>EWC members are, as a general rule, appointed through an agreement between Works Councils and Trade Unions. When there is no agreement to appoint them, they are elected, by direct</p>	<p>In Corporate enterprises, members of the EWC are selected by the Corporate Workers Council (CWC) (Gesamtbetriebsrat), (§ 47, Works Council Bill). In the absence of a</p>	<p>The members of the European Works Council are elected by the General Assembly of the respective subsidiary of the Multinational Undertakings, Groups of Undertakings and</p>

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between those trade union representations which, together, go to make up the majority of the members of the works council or councils and personnel delegates, if relevant, or by majority agreement of these members and delegates. Similarly, the appointed representatives will be replaced in the event of resignation or dismissal and when they no longer represent the workers nationally.

2. In the case of the European works council, the appointment referred to in the previous section must fall on a worker of the undertaking or group that holds the position of personnel delegate, works council member or trade union delegate.

3. That established in the previous sections will be applicable to European works councils set up via agreement when there are no specific provisions contained therein.

trade union organisations referred to in Article 5(1), and two-thirds shall be appointed by the unitary union structures of the undertaking and/or group of undertakings, taking into account the different types of employees (management, white collar and blue collar workers). In establishments, undertakings and groups of undertakings where there are no unitary union structures, the management and the parties concluding national collective labour agreements applied thereto shall define the procedures, criteria and methods for establishing the special negotiating body and the European Works Councils and/or appointing those responsible for the information and consultation procedure, in compliance with the provisions laid down in Article 6(2) and Article 9(6) of this Decree. (art. 9)

and secret ballot, from candidacies presented by a minimum of 100 workers or 10% of the establishment's workers.

CWC, the choice is made within the Workers Council. In a Multicorporate Enterprise Council (MCC), (§ 54, Works Council Bill, (Konzernbetriebsrat, KBR, § 54 BetrVG) the workers representatives to the EWC are selected from its ranks. If in addition to the MCC, a CWC or a Workers Council exists, which is not represented within the MCC, then the number of members of the latter is to be increased to include the Chairperson and the Deputy of the missing council. The Chairperson and the Deputy are therefore considered as members of the Multicorporate Enterprise Council, MCC. In the absence of a Multicorporate Enterprise Council, MCC, members to the EWC are elected according to the following procedures:

a) If there are several MCCs then, at the invitation of the Chairperson of the MCC, representing the most qualified inland voters a general meeting is called at which the members of the EWC are elected. Should any single Workers Council not be represented on one of the MCCs, then its Chairperson and vice-Chairperson must be invited and recognized as full MCC members

b) Should a Workers Council not be represented on Multicorporate Enterprise Council, then the Chairperson and Deputy of the former are

Companies with simple majority of the participants. The candidatures for election of representatives of the employees may be proposed by single employees, by groups of employees as well as by trade unions in the undertakings.

invited to the meeting as official members of the MCC from where the members to the EWC are selected. Should there be only one MCC then it elects the members to the EWC.

c) By the existence of several MCCs then the members of the EWC shall be elected at a general meeting at the invitation of the Chairperson with the most eligible inland voters. The Chairpersons and their Deputies are eligible to be present at the meeting.

D) If only a single Worker Council exists then it elects the members to the EWC.

Females and Males are elected according to numerical proportions.

## ACKNOWLEDGEMENT OF THE ROLE OF TRADE UNIONS

SPAIN	ITALY	PORTUGAL	GERMANY	BULGARIA
<p>(Arts. 26 and 27)</p> <p>Act 10/1997 recognises the role of trade unions in setting up and operating EWCs when it recognises those holding the position of workers' representatives (art. 26), connecting this with national legislation (ET and LOLS) and empowering trade unions to choose the members of these councils (art. 27)</p>	<p>The members of the special negotiating body shall be appointed by the trade union organisations referred to in Article 5 (1) and the unitary union structures of the undertaking or the group of undertakings. In establishments and/or undertakings in which there are no employees' representatives, the trade union organisations referred to in Article 5 (1) shall agree with the management referred to in Article 4 on the</p>	<p>Works Councils and Trade Unions are acknowledged as workers representatives for the purpose of asking for the opening of a bargaining round, for putting in place a EWC or for setting up an information and consultation procedure. They also hold a preferential role in the appointment of EWC members and worker representatives in the Special Negotiating Body.</p>	<p>EWC and its Committees could summon experts of their own choices as long as the involvement enhances the proper fulfilment of their duties. Representatives of the Trade Unions can also be assigned as experts.</p>	<p>Negotiations for establishment of a European Works Council when the Headquarters is in Bulgaria can be initiated by trade union organizations in the respective undertakings/subsidiaries as representatives of the employees according the Labour Code. If the negotiations for establishment of a European Works Council are not initiated by the Unions the central management shall inform them</p>

procedures for the participation of the employees of such establishment and/or undertaking in the appointment of the members of the negotiating body. (art. 6)  
 One-third of the Italian members of the European Works Council and/or those involved in the information and consultation procedure shall be appointed by the trade union organisations referred to in Article 5(1), and two-thirds shall be appointed by the unitary union structures of the undertaking and/or group of undertakings, taking into account the different types of employees (management, white collar and blue collar workers) (art. 9).

for the start of the negotiations. The General Assembly may concede the functions of election of representatives for the EWC and the Special Negotiating Body to representatives elected by the management of the trade unions in the respective subsidiary.

## EWC COMPETENCES REGARDING: INFORMATION , CONSULTATION AND PARTICIPATION

SPAIN	ITALY	PORTUGAL	GERMANY	BULGARIA
<p>(Art. 18.1 and 18.2)            1. The European works council will be entitled to be informed and consulted on those issues affecting the whole of the community-scale undertaking or group of undertakings or at least two work centres or undertakings of the group located in different Member States. In the case of undertakings or groups of undertakings whose central management is not located in</p>	<p>The central management and the special negotiating body may decide, in writing, to establish one or more information and consultation procedures, in addition to or instead of a European Works Council. The agreement must stipulate by what method the employees' representatives shall have the right to meet to discuss the information conveyed to them. This information shall relate in particular to</p>	<p>Company management is obliged to present to the EWC a detailed and documented annual report on the evolution and activities forecast of the enterprise or group of enterprises. This report must include:            Structure of the company or group;            Economic and financial situation;            Activities forecast;            Production and Sales;            Employment situation and</p>	<p>According to § 32, (European Workers Council Laws, EWC-Laws) the administrative body is obliged to annually inform the EWC and the latter to give hearing about the state of business and the prospects of Corporate Companies and Multicorporate Enterprises through timely presentation with the necessary data from entrepreneurial groups within the EU.            The administrative body is</p>	<p>The European Works Council shall receive information and shall carry out consultations on matters of importance to the multinational (Community-scale) undertaking or to the multinational (Community – scale) group of undertakings in general or concerning at least two of its subsidiaries or two undertakings of a multinational Community-scale group of undertakings situated in different Member State of the</p>



<p>a Member State, the competence of the European works council will cover those issues affecting all work centres or undertakings of the group located in Member States or at least two centres or undertakings located in different Member States.</p> <p>2. For the purposes established in the previous section, the European works council will be entitled to hold at least one annual meeting with the central management. The meeting must be called by the central management at least one month in advance, accompanying this announcement with a report on the evolution and perspectives of the activities of the community-scale undertaking or group of undertakings.</p> <p>Notwithstanding other issues that may be dealt with, the annual meeting will analyse those related to the structure of the undertaking, its economic and financial situation, the probable development of the business and of production and sales, the situation and probable employment trends, investments and substantial changes concerning organisation, introduction of new working methods or production processes,</p>	<p>transnational questions which significantly affect workers' interests. (art. 9).</p> <p>The competence of the European Works Council shall be limited, as to undertakings referred to in Article 2 (1) (b) and (d) to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States.</p> <p>The meeting shall relate in particular to the economic and financial situation, the probable development of the business and of production and sales, the situation and probable employment trends, with reference also to equal opportunities, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, including appropriate training for the employees concerned, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies. (art. 16)</p>	<p>forecast; Investment; More relevant changes in organisation, work methods or production processes; Production relocations; Mergers; Company downsizing or company closure (total or partial); Collective dismissals.</p> <p>Also envisaged is information and consultation, on exceptional occasions, namely when workers are transferred or when collective dismissals take place.</p>	<p>According to Article 1, the following are of particular importance to the developments of the state of business and its prospects.</p> <ul style="list-style-type: none"> <li>- The structure of the business or the entrepreneurial group as well as the economic and financial situation.</li> <li>- The expected development of the business, the production, and the market situation.</li> <li>- The prospective employment situation and the expected trend.</li> <li>- Investment (Investment programs).</li> <li>- Fundamental changes in the organization.</li> <li>- The introduction of new production methods and efficient manufacturing processes</li> <li>- The removal of companies, manufacturing industries, fixed asset units, as well as the relocation of production.</li> <li>- Mergers or divisions of companies or manufacturing industries.</li> <li>- Retrenchment and shut down of companies or essential units.</li> <li>- Massive layoffs</li> </ul> <p>While unusual circumstances could have considerable effects on workers' interest the administration must, in accordance with § 33, EWC, in due course inform the EWC through presentation with the necessary data and by if requested to give ear. The</p>	<p>European Union. The European Works Council has the right to be informed and consulted on:</p> <ol style="list-style-type: none"> <li>1. the structure of the undertakings or establishments;</li> <li>2. the economic and financial status of undertakings or establishments;</li> <li>3. the possible development of activities and of production and sales;</li> <li>4. the status and possible development of employment in the undertaking;</li> <li>5. investments and major changes in the organisation, the introduction of new methods of work or new production processes;</li> <li>6. the introduction of new methods of work or new industrial processes;</li> <li>7. the transfer, merger, reducing the volume of work or closure of undertakings, establishments or autonomous parts of undertakings;</li> <li>8. expected collective redundancies;</li> <li>9. any other matters which are of mutual interest for the parties.</li> </ol> <p>Once a year the central management of the Multinational Undertakings, Groups of Undertakings and Companies shall submit to the members of the European Works Council a Report covering the above-mentioned topics.</p>
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transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof and collective redundancies.

following are particularly considered as unusual circumstances.

- The relocation of businesses, manufacturing industries or essential units.
- Shut down of businesses, manufacturing industries or essential units
- Massive layoffs.

As long as a committee exists, its participation, instead of the EWCs, is pursued. Members of the EWC who represent the companies or industries in question are also invited to the meetings and are considered as Committee members.

## EWC MEMBERS' PROTECTION AND GUARANTEES

SPAIN	ITALY	PORTUGAL	GERMANY	BULGARIA
<p>(Art. 21)</p> <p>Within the context of an alternative information and consultation procedure and in exercising their functions, the members of the negotiating body and of the European works council and workers' representatives enjoy the same protection and guarantees as those established for workers' representatives at a national level in the country in which they provide their services, in accordance with that established in national laws or</p>	<p>Members of special negotiating bodies who are employees of a Community-scale undertaking or group of undertakings, members of European Works Councils and the representatives of workers acting within the framework of the information and consultation procedure, if they are employees of an undertaking located in Italy, shall be entitled, in the exercise of their duties, to paid time off of not less than eight hours every three months; this may be increased by mutual agreement establishing more favourable conditions than those provided</p>	<p>They enjoy the same protection and guarantees applied by the Labour Code to all worker representatives in the country.</p>	<p>Members of the EWC, the Committees, and the Negotiating Commissions employed in their home countries are subject to their national rule of law. (§ 37, Article 1 to 5 and § 78 and § 103 of the Works Council Bill as well as §15 Article 1 and 3-5 of the KSchG</p>	<p>With the Labour Code changes is foreseen protection against firing of the members of the Special Negotiating Body, the European Works Council and the representative's bodies of European Companies and European Cooperative Societies. The representatives in these bodies have the right on additional paid leave for executing their functions.</p>

practices.

by the law in force. They shall also be subject to the provisions of Articles 221 and 24 of Law No. 300 of 20 May 1970. (art. 13)

## AGREEMENT RENEGOTIATION PROCEDURE

SPAIN	ITALY	PORTUGAL	GERMANY	BULGARIA
<p>(Art. 14) If there is no agreement regarding its validity, extension or renegotiation, the following rules will apply:</p> <ol style="list-style-type: none"><li>1. The agreement will be considered as indefinite</li><li>2. The central management and the European works council or, if relevant, workers' representatives within the context of an alternative information and consultation procedure, may challenge the agreement at least six months before the date it expires, duly notifying the other party. Should the agreement be valid indefinitely or should there be no fixed period of validity, the challenge may be made at least six months before the date on which every four year period elapses since its initial validity, in this case the agreement being understood as expired once this period has elapsed.</li><li>3. If no specific challenge has been brought by the parties once the life of the agreement</li></ol>	<p>Four years after the European Works Council is established, it shall examine whether to renegotiate the agreement referred to in Article 9 or to continue to apply the requirements set out in this Article. (art. 16)</p>	<p>Should the Special Negotiating Body have decided to end negotiations, workers or their representatives are only allowed to propose a new negotiation 2 years after that decision, unless the parties agree on a shorter period.</p> <p>The agreement which puts the EWC into place or the information and negotiation procedure will regulate the agreement's duration and renegotiation procedure.</p>	<p>Should a guideline for a hearing procedure be introduced, then a written agreement is necessary. It should describe under which provisions Workers Representatives are authorized to discuss transmitted information and how their recommendations and concerns with the central administration and other governing bodies are discussed. The instructions must be able to embrace frontier-crossing matters which might affect workers interests.</p>	<p>In case the Special Negotiating Body may decide, by majority of two-thirds of the votes, not to open negotiations or to terminate the negotiations, which it has already opened. A new request to convene the special negotiating body may be submitted at earliest two years after above-mentioned decision, unless the negotiating parties lay down a shorter period.</p> <p>In case the Standard rules foreseen in the Law are applied, within four years the Established European Works Council can take a decision to follow them or to start negotiations playing the role of Special Negotiating Body.</p>

has terminated, this will be understood as extended for another period equal to that of its original life.

4. Once an agreement has been challenged and has lapsed, it shall remain in force until a new agreement has been reached or until the subsidiary requirements are applicable contained in Chapter II of this Heading, by virtue of that established in article 15 thereof.

5. Replacing the negotiating body referred to in article 8, the European works council will be authorised to renegotiate the challenged and lapsed agreement, also being able to adopt the decisions contained in section 2 of article 10.

As established in article 8, a new negotiating body must be set up when an agreement is being renegotiated regarding the establishment of an alternative information and consultation procedure.

## TRAINING OF EWC MEMBERS

SPAIN	ITALY	PORTUGAL	GERMANY	BULGARIA
There is no specific reference, although the subsidiary requirement concerning this issue is applicable to the	Not mentioned.	Not mentioned.	There are no defined rules concerning training of EWC members. However, in § 30 of EWC Laws In § 30 EWC-Laws	The elected representatives shall have the right to pay leave for education such as may be necessary for the efficient

Spanish members of EWCs, as well as that regulated by the corresponding National Training Agreements for labour, entered into and managed by social agents.

there is the rule of cost unit duty of the administration for arising from activities in conjunction with the EWC.

exercise of his/her duties. The changes of the Labour Code foresee this right only for members of the Representative bodies of the European Companies and Cooperative Societies. For the members of the European Works Councils this right can be negotiated with the Collective Labour Agreement.

## ACCESS TO EXPERTS

SPAIN	ITALY	PORTUGAL	GERMANY	BULGARIA
Act 10/1997 governs the possibility to resort to experts, both on the part of the negotiating body and by the EWCs themselves. (Art. 11.3 and 19.4) "Whenever necessary for the correct performance of their functions, the negotiating body (the European works council and the restricted council) may be assisted by experts of their choice"	For the purpose of the negotiations, the special negotiating body may be assisted by experts of its choice. In compliance with paragraph 7, the costs of experts shall be borne by the central management. Unless the parties concerned agree otherwise, central management shall limit the funding to one expert only. (art. 8)	The EWC and the Special Negotiating Body may be assisted by experts of their own choice.	Fees for experts are taken care of by the central administration, § 30 EWC-Laws.	The members of the European Works Councils and of the Representative bodies of the European Societies may be assisted if needed by experts chosen by them.

## EWC MEMBERS' RIGHT TO ACCESS THE ESTABLISHMENT

SPAIN	ITALY	PORTUGAL	GERMANY	BULGARIA
That established by national legislation applies. (Art. 19.6) Members of European works councils must inform the workers' representatives of	N.d.	They have the right of access to the necessary material means that are necessary for the fulfilling of their mission, including access to establishments and to places	N.d.	The members of the European Works Councils shall inform the employees on the results of the Information and Consultation procedures. Their right on Information and Consultation is

undertakings and work centres or, if these are not present, workers as a whole, of the content and results of the information and consultation procedure carried out, in accordance with that provided for in this chapter, notwithstanding that established in article 22.

where information bills are posted.  
Management must inform the establishment's worker representatives about specific measures which might have been taken. In the absence of representatives they must directly inform the workers.

given in the Labour Code as representatives of the workers and employees.

## RIGHT TO MEET, PARTICIPATE AND FOLLOW UP

SPAIN	ITALY	PORTUGAL	GERMANY	BULGARIA
<p><i>Operational system</i> (art. 19)</p> <p>1. The European works council will adopt its agreements by the majority of its members. It will draw up its own internal rules of operation and can choose its own president.</p> <p>2. If the number of members of the European works council is over twelve, it must choose a restricted council from among its members made up of three members. This restricted council will be responsible for receiving the information and holding the meetings referred to in section 3 of article 18</p> <p>In those meetings in which the restricted council takes part, the members from the European works council chosen or appointed to represent undertakings or work centres directly affected</p>	<p>The European Works Council shall have the right to meet with the central management or manager referred to in Article 4 (1), within the limits set out in Article 13, once a year to be informed or consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly (art. 16)</p>	<p>They are entitled to meeting with the management, at least once a year, one month after the presentation of the annual report.</p> <p>They have the right of meeting with the management, if the EWC asks for the meeting, in order to be informed and consulted on measures which affect the workers, under exceptional circumstances. On these exceptional situations, the EWC must also receive, before the meeting, a detailed and documented report on the measures which management intends to implement. The EWC may then, issue an opinion on that report, during the meeting or afterwards.</p> <p>It may organise its own meeting, before meeting with the management.</p>	<p>The European Workers Council is authorized, in conjunction with the rights of information from the central administration, to summon and invite to meetings.</p> <p>This is also valid by briefings when the circumstances are unusual. The time and place of the meetings are jointly decided with the central administration. The European Council can convene further meetings with the approval of the central administration. The EWC and its committee meetings are not open to the public.</p>	<p>Employees' representatives have the right to meet without central management participation and to discuss the information transmitted to them, which should apply in the first place to multinational matters of major importance to the interests of employees in order to define their common position.</p>

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by the measures dealt with in these meetings will also be entitled to take part.

The restricted council must periodically inform the European works council on its actions and on the result of the meetings in which it takes part.

3. The European works council and the restricted council, if necessary extended to include the members referred to in the second paragraph of the previous section, will be entitled to meet prior to any meeting that must be held with the central management, without the presence of the latter.

*Competences* (Art. 18.3, 18.4 and 18.5)

3. The European works council must be informed, with due advance notice, of any exceptional circumstances that considerably affect the interests of workers, especially in the cases of the transfer of undertakings, closures of work centres or undertakings or redundancies. It will also be entitled to meet, on its own request, with the central management or with any other level of management of the undertaking or group that is most appropriate and with the authority to adopt its own decisions, in order to receive the aforementioned

The management and the EWC must lay down, in a protocol, the procedures regulating the meetings.

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information and to be consulted about it. Any meeting of this type will be in addition to the annual meeting established in section 2 unless, depending on the periods of time in question, it can be incorporated within the content of the aforementioned meeting without endangering the effectiveness of the consultation. The information and consultation meetings referred to in this section will be carried out with the necessary advance notice so that the opinion of the council can be taken into account when adopting or implementing the decisions, based on a report drawn up by the central management or by any other appropriate level of management of the undertaking or group. The European works council can issue a decision at the end of the meeting or within a maximum period of seven days. If the council does not consider a meeting to be necessary, the period of time for issuing the decision will be counted as from the time the information referred to in the first paragraph of this section is received. This meeting will not affect the prerogatives of the central management.

4. The central management

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and the European works council will decide, by common accord, the exact rules concerning the presidency of its joint meetings. If there is no such agreement, the procedures to be employed in order to chair the sessions must be specified in the minutes of the first meeting held. The minutes of the meetings between the central management and the European works council will be signed by a representative on behalf of each of the parties.

5. The central management will inform the management teams of its work centres or undertakings in the Member States of the arrangements for any meetings it is going to hold with the European works council.

## CONFIDENTIALITY

SPAIN	ITALY	PORTUGAL	GERMANY	BULGARIA
(Art. 22) 1. Within the context of an alternative information and consultation procedure, members of the negotiating body and of the European works council and workers' representatives, as well as any experts assisting them, will not be authorised to disclose to third parties any information	Members of the special negotiating body and the European Works Councils, any expert assisting them, and also employees' representatives in the framework of an information and consultation procedure may not disclose any information provided to them in confidence and specified as confidential by	EWC members and experts cannot disclose any information classified as confidential to any third party. Management has to justify why a document is confidential.	The duty of the central administration to inform is applicable only if industrial and business secrets of Corporate and Multicorporate Enterprises are not at stake. Members and assistant members of a EWC are committed not to disclose or utilize secretive industrial and business information obtained as	There is a clause on confidentiality of the information and an obligation not to distribute confidential information, also liability for any damages that may be caused to the respective undertakings as a result of the failure to comply with the request for confidentiality.

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that has been specifically communicated to them in confidence. This obligation of confidentiality will continue even after their mandate has expired and irrespective of the place where they are located.

2. Exceptionally, the central management will not be obliged to communicate specific information related to industrial, financial or trade secrets whose disclosure may, according to objective criteria, hinder the operations of the undertaking or seriously damage its economic stability. This exception does not cover those data related to the undertaking's volume of employment.

the central management or manager referred to in Article 4 (1). This obligation shall continue to apply for three years after expiry of the terms of office. In the event of a breach of this prohibition, without prejudice to civil liability and the provisions laid down in Article 17, disciplinary sanctions of the collective labour agreements in force shall be applicable.

The central management or manager referred to in Article 4 (1) shall not be obliged to provide the information requested where its nature is such that it would seriously harm the functioning or activities of the undertakings concerned or would be prejudicial to them or could disrupt the market.

The contracting parties have agreed that in the event of a dispute concerning the confidential nature of information provided and specified as such, to determine precise objective criteria for identifying information liable to seriously harm the functioning or activities of the undertakings concerned, to be prejudicial to them or to disrupt the market, they will set up a technical conciliation committee. This committee shall comprise three members, appointed as follows:

EWC members and when explicitly described by governing bodies as classified. This is mandatory even after retirement or withdrawal from the EWC. This concealment has no validity among members of a EWC. Further, it has no effect on local representatives of the industrial and business sectors if, on account of the agreements, mentioned in § 18 or § 35 which state that the contents of information and consultations be shared with Workers Representatives on the board of directors, as well as consulting interpreters and experts. The obligation of trust is considered particularly important for:

- Members and assistant members of important negotiating committees
- Workers representatives in the course of briefing and hearing proceedings.
- Experts and interpreters as well as
- Local workers representatives.

Exemptions from the duty of concealment applies accordingly to:

1. Special negotiating committee members' vis-à-vis experts and interpreters.
2. Workers representatives in the course of briefing and hearing proceedings with interpreters and experts, whose supporting services, owing to agreement,

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a) one by the European Works Council or the special negotiating body or the workers' representatives acting within the framework of the information and consultation procedure,  
 b) one appointed by the central management and  
 c) one appointed by the parties, by mutual agreement.  
 The Committee shall deliver its final opinion within 15 days of the appeal by the European Works Council (art. 11).

have been engaged. This includes local Workers Representatives who, because of the agreement (§ 19), are to be informed over the contents and results of the hearings.

## HR CREDITS OF EWC MEMBERS

SPAIN	ITALY	PORTUGAL	GERMANY	BULGARIA
<p>(Art. 28)</p> <p>1. In exercising their functions, workers' representatives who are members of the negotiating bodies and of the European Works Councils or who take part in the alternative information and consultation procedures enjoy the protection and guarantees established in the Workers' Statute, except for that related to hour credits established in letter e) of article 68 thereof, in which case the following sections will apply.</p> <p>2. Workers' representatives referred to in this article will be entitled to the paid leave required to attend meetings held with the central management, as well as those meetings that may be held by these bodies and</p>	<p>The agreement referred to in Article 9 may, because of the expected duration as well as the purpose and venue of the meetings, provide for a further eight hours per year. (art. 13)</p>	<p>- 25 hours credit, every month, for developing their EWC activity;          - Paid hours credit, needed to participate in meetings with the management as well as in preparatory meetings, including time spent in travelling.          If workers belong to more than one workers' representative body their hour credits cannot be accumulated.</p>	<p>The following provisions, (§ 37, Article 1-5, Workers Council Bill) concerning the exemption privileges and the payment of workers representatives in Workers Council, apply. .</p>	<p>There is no special clause. Hour credits are negotiated at undertaking/company level.</p>

representatives previously.  
 3. Irrespective of that established in the previous sections, the members of the negotiating body and of the European works council will be entitled to a credit of sixty paid hours per year to exercise their functions, in addition to any hours they may receive as national workers' representatives. This right will be recognised for European works councils set up by means of an agreement in the absence of any specific provisions contained therein.

## EXPENSES

SPAIN	ITALY	PORTUGAL	GERMANY	BULGARIA
<p>(Arts. 11.4 and 19.5) Expenses resulting from the operations of the European works council and of the restricted council will be met by the central management, which must provide them with the necessary financial and material resources to adequately fulfil their functions. In particular, the central management must cover the following expenses:</p> <p>a. Those resulting from choosing or appointing members of the European works council.</p> <p>b. Those from organising meetings of the European works council and of the</p>	<p>Any expenses relating to the negotiations referred to in paragraphs 1 and 2 shall be borne by the central management so as to enable the special negotiating body to carry out its mandate in an appropriate manner, within the limits laid down in Article 16 (15), unless the parties concerned agree otherwise.</p> <p>In compliance with paragraph 7, the costs of experts shall be borne by the central management. Unless the parties concerned agree otherwise, central management shall limit the funding to one expert only (art. 8).</p> <p>The operating expenses of the</p>	<p>Expenses will be paid for the functioning of the EWC and its Special Body, if it exists, for the organisation of meetings, translations, accommodation and travel and also for experts' remuneration.</p>	<p>All expenditures for establishing and the functioning of a EWC are taken care of by the Central Administration.</p> <p>The Central Administration is liable to pay the cost for training and activities of the EWC and its Committees.</p>	<p>Any expenses relating to the specified activities shall be borne by the central management or the management of the undertaking.</p>

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restricted council, including the expenses of interpretation, food, accommodation and travel for their members. Those resulting from an expert appointed by the European works council or by the restricted council to assist it in its functions.

European Works Council shall be borne by the central management. The central management concerned shall provide the members of the European Works Council with such financial and material resources as are necessary to enable them to perform their duties in an appropriate manner. In particular, the cost of organising meetings and arranging for interpretation facilities and the accommodation and travelling expenses of members of the European Works Council and its select committee shall be met by the central management, unless otherwise agreed. The expenses of only one expert shall be met, unless otherwise agreed (art. 16).

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## 1.2 Good practices

The documentation gathered and analysed in the first two phases of our study, as well as the reports drawn up by the different organisations taking part in the Project, on the structure and functioning of EWCs, have highlighted both their potential and limits, in both cases identifying the corresponding strong and weak points, from whose analysis and evaluation we can derive proposals and alternatives for improvement, both of a regulatory nature (revision of the Directive) and of an organisational nature (dissemination and application of *good practices*), that help EWCs to take on the new challenges facing them in their European labour relations.

In this third part we focus on the specific study of a selection of EWCs of transnational firms with presence in the five countries taking part in the Project, in order to evaluate their activities in terms of representation, intermediation of interests and trade union action and, ultimately, to identify *good practices* that can be disseminated and passed on.

For this purpose, and in accordance with that established in the methodology of the *IN.CON.PAR\_able Project*, around a hundred EWCs (at an average of 20 per country) were contacted, through the trade union organisations involved in them, in order to analyse their structure, composition and functioning and to evaluate their activities regarding information, consultation and participation.

After an initial round, 78 cases were selected, paying attention to the characteristics of the CSUs and their respective EWCs, as well as the quality of the documentation provided by them.

As stated *in extenso* in the corresponding national reports, out of the total EWCs selected, 20 correspond to firms located in Germany, 14 in Bulgaria, 22 in Spain, 9 in Italy and 13 in Portugal.

In global terms, these companies have an overall workforce in the five countries in question of over 1,200,000 employees, represented by around 300 national delegates, out of an approximate total of 2,000 that go to make up all these EWCs.

Through the corresponding channels, the information was gathered and the necessary evaluations carried out to assess the degree of application and compliance with EU Directive 94/45/EC and with the respective national laws regarding the right to information, consultation and participation of workers' representatives.

Following, to this end, the analytical model already tested in previous comparative studies on this area (Waddington, 2007), their rating was recorded concerning the degree of compliance and usefulness of the right to information and consultation of EWCs on the issues and matters regulated by the subsidiary requirements of Directive 94/45<sup>6</sup> and the demands and claims resulting from trade union practice *per se*.

*Table 14* shows the aggregate and relative values of findings from the ratings made by EWCs of the firms selected concerning the quality and effectiveness of the information and consultations to which they have access in their respective CSUs.

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<sup>6</sup> "The European works council shall have the right to meet with the central management once a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly.

The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments and 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".

Table 2 - Quality of the information and consultation, by issue and rating of EWCs surveyed. Overall data

	DOES NOT EXIST	INFO. NOT VERY USEFUL	USEFUL INFO. BUT WITHOUT CONSULTATION	USEFUL INFORMATION AND CONSULTATION
1. Economic and financial situation of the undertaking	4.48	22.39	52.24	20.90
2. Business strategy, investments	2.99	32.84	46.27	17.91
3. Changes concerning organisation	19.12	27.94	39.71	13.24
4. Restructuring of the undertaking	16.42	22.39	44.78	16.42
5. Mergers	25.76	24.24	36.36	13.64
6. New technologies	14.93	25.37	41.79	17.91
7. Transfer of production	22.73	31.82	33.33	12.12
8. Probable employment trends	18.75	28.13	35.94	17.19
9. R & D + innovation	21.88	20.31	42.19	15.63
10. Professional training	28.57	31.75	30.16	9.52
11. Professional classification and promotion	33.85	32.31	23.08	10.77
12. Gender equality	41.79	20.90	25.37	11.94
13. Health at work	14.93	14.93	46.27	23.88
14. Environmental sustainability	17.91	14.93	41.79	25.37
15. Trade union rights	29.85	20.90	28.36	20.90
16. Work time	40.91	28.79	24.24	6.06
17. Profit sharing	53.85	26.15	10.77	9.23
18. Work-life balance	53.73	17.91	16.42	11.94
19. Company benefits	47.69	23.08	13.85	15.38
20. Retirement	62.12	10.61	19.70	7.58

Applying the analytical model used for the Spanish case to the whole of the sample, we have grouped the different issues that may be subject to information and consultation to and by the EWCs into 20 areas, forming two large blocks:

1. the first eight correspond to issues governed by the subsidiary requirements of Directive 94/45
2. the rest correspond to the demands and claims of the trade union movement per se, some of which have been recently added to their negotiating agenda.

A preliminary examination shows that, in general terms and for all the issues as a whole, in only 15% of the cases is the *information and consultation* to which the members of EWCs have access considered "useful" by their representatives for the purposes of action and negotiation, if relevant.

By area, those corresponding to group a), i.e. those required explicitly by Directive 94/45/EC, achieve higher levels of quality in aggregate terms (information + consultation), being valued positively by 57.1% of the EWCs surveyed while, in the second group, the degree of access to useful information and consultation is slightly lower (only 40% of EWC representatives consulted consider them to be useful), with the exception of issues related to health at work, environmental impact and R&D+i, whose presence on the negotiating agenda and in the processes of labour intermediation show significant growth.

At the other extreme, we should note the low rating of information and/or consultation in areas as important as gender equality, work-life balance and the reorientation in work time, while profit-sharing in undertakings and issues related to company benefits and retirement warrant even more critical ratings.

By country (see *Tables 3 to 7*), the EWCs in Germany are those that claim a greater and better access to *information and consultation*, with more than one third of their representatives rating this as "useful", a proportion that practically doubles that of Spain and Italy, positioned at the group's average, while representatives from Bulgaria and Portugal in their respective EWCs claim to be notably more dissatisfied with regard to the quality and usefulness of the information and consultations to which they have access.

This rating is all but repeated in their evaluation of the quality of the information and consultation by issue, although the following significant features should be noted:

- the high levels of quality and usefulness declared by German EWC representatives reflect, on the one hand, the greater consolidated trade union power and the characteristics of the reference legislation applicable to companies with their headquarters in the country
- at the other extreme, the fact that they are usually subsidiaries and the relatively marginal participation of local representatives in their respective EWCs explains the particularly critical rating given by Portuguese and Bulgarian trade unionists
- in the case of these last two countries, of note is the more positive rating given for issues grouped into the second block (health at work, environmental sustainability, trade union rights, etc.), which we believe to be conditioned both by legislation that provides guarantees and a highly trade unionised representation, as well as by their distance from the decision-making centres of transnational firms, making it difficult for them to be involved in other negotiation issues (economic strategy, restructuring of the undertaking, mergers, employment trends, etc.).

*Table 3 - Quality of the information and consultation, by issue and rating of EWCs surveyed. (GERMANY)*

	DOES NOT EXIST	INFO. NOT VERY USEFUL	USEFUL INFO. BUT WITHOUT CONSULTATION	USEFUL INFORMATION AND CONSULTATION
1. Economic and financial situation of the undertaking	0.00	0.00	41.67	58.33
2. Business strategy, investments	0.00	0.00	50.00	50.00
3. Changes concerning organisation	0.00	25.00	33.33	41.67
4. Restructuring of the undertaking	0.00	16.67	41.67	41.67
5. Mergers	16.67	25.00	25.00	33.33
6. New technologies	0.00	8.33	50.00	41.67
7. Transfer of production	18.18	9.09	36.36	36.36
8. Probable employment trends	16.67	25.00	16.67	41.67
9. R & D + innovation	27.27	18.18	18.18	36.36
10. Professional training	16.67	33.33	25.00	25.00
11. Professional classification and promotion	9.09	27.27	18.18	45.45
12. Gender equality	25.00	16.67	25.00	33.33
13. Health at work	8.33	16.67	16.67	58.33
14. Environmental sustainability	0.00	8.33	33.33	58.33
15. Trade union rights	0.00	27.27	18.18	54.55
16. Work time	54.55	9.09	27.27	9.09



17. Profit sharing	63.64	0.00	18.18	18.18
18. Work-life balance	16.67	25.00	33.33	25.00
19. Company benefits	45.45	18.18	9.09	27.27
20. Retirement	63.64	9.09	27.27	0.00

Complementary to this *horizontal analysis* of the competence of the EWCs studied for each issue, it is particularly instructive to evaluate their *vertical dimension*, paying attention to references regarding the lesser or greater usefulness of the *information and consultation* to which they have access.

Table 4 - Quality of the information and consultation, by issue and rating of EWCs surveyed. (BULGARIA)

	DOES NOT EXIST	INFO. NOT VERY USEFUL	USEFUL INFO. BUT WITHOUT CONSULTATION	USEFUL INFORMATION AND CONSULTATION
1. Economic and financial situation of the undertaking	0.00	50.00	50.00	0.00
2. Business strategy, investments	0.00	25.00	75.00	0.00
3. Changes concerning organisation	25.00	0.00	75.00	0.00
4. Restructuring of the undertaking	25.00	25.00	50.00	0.00
5. Mergers	50.00	0.00	50.00	0.00
6. New technologies	25.00	25.00	50.00	0.00
7. Transfer of production	50.00	25.00	25.00	0.00
8. Probable employment trends	50.00	0.00	50.00	0.00
9. R & D + innovation	25.00	0.00	75.00	0.00
10. Professional training	50.00	0.00	50.00	0.00
11. Professional classification and promotion	25.00	25.00	50.00	0.00
12. Gender equality	25.00	0.00	75.00	0.00
13. Health at work	0.00	0.00	75.00	25.00
14. Environmental sustainability	0.00	0.00	75.00	25.00
15. Trade union rights	0.00	0.00	75.00	25.00
16. Work time	0.00	0.00	75.00	25.00
17. Profit sharing	50.00	50.00	0.00	0.00
18. Work-life balance	50.00	0.00	25.00	25.00
19. Company benefits	0.00	0.00	25.00	75.00
20. Retirement	0.00	0.00	75.00	25.00

Table 5 - Quality of the information and consultation, by issue and rating of EWCs surveyed. (SPAIN)

	DOES NOT EXIST	INFO. NOT VERY USEFUL	USEFUL INFO. BUT WITHOUT CONSULTATION	USEFUL INFORMATION AND CONSULTATION
1. Economic and financial situation of the undertaking	0.00	19.05	61.90	19.05

2. Business strategy, investments	4.76	28.57	47.62	19.05
3. Changes concerning organisation	14.29	28.57	47.62	9.52
4. Restructuring of the undertaking	18.18	13.64	45.45	22.73
5. Mergers	33.33	9.52	47.62	9.52
6. New technologies	19.05	23.81	38.10	19.05
7. Transfer of production	23.81	19.05	47.62	9.52
8. Probable employment trends	20.00	25.00	40.00	15.00
9. R & D + innovation	35.00	20.00	30.00	15.00
10. Professional training	30.00	20.00	35.00	15.00
11. Professional classification and promotion	45.00	30.00	20.00	5.00
12. Gender equality	42.86	14.29	28.57	14.29
13. Health at work	23.81	19.05	33.33	23.81
14. Environmental sustainability	14.29	28.57	28.57	28.57
15. Trade union rights	40.91	18.18	13.64	27.27
16. Work time	38.10	38.10	14.29	9.52
17. Profit sharing	55.00	25.00	10.00	10.00
18. Work-life balance	47.62	19.05	19.05	14.29
19. Company benefits	42.86	28.57	14.29	14.29
20. Retirement	52.38	19.05	14.29	14.29

Table 6 - Quality of the information and consultation, by issue and rating of EWCs surveyed. (ITALY)

	DOES NOT EXIST	INFO. NOT VERY USEFUL	USEFUL INFO. BUT WITHOUT CONSULTATION	USEFUL INFORMATION AND CONSULTATION
1. Economic and financial situation of the undertaking	0.00	33.33	50.00	16.67
2. Business strategy, investments	0.00	61.11	27.78	11.11
3. Changes concerning organisation	26.32	31.58	31.58	10.53
4. Restructuring of the undertaking	16.67	38.89	38.89	5.56
5. Mergers	11.11	44.44	27.78	16.67
6. New technologies	5.56	38.89	38.89	16.67
7. Transfer of production	11.11	50.00	27.78	11.11
8. Probable employment trends	0.00	31.25	50.00	18.75
9. R & D + innovation	0.00	35.29	47.06	17.65
10. Professional training	11.11	55.56	16.67	16.67
11. Professional classification and promotion	16.67	50.00	27.78	5.56
12. Gender equality	50.00	33.33	11.11	5.56
13. Health at work	11.11	16.67	55.56	16.67
14. Environmental sustainability	27.78	16.67	38.89	16.67
15. Trade union rights	44.44	27.78	22.22	5.56

16. Work time	50.00	27.78	22.22	0.00
17. Profit sharing	38.89	38.89	11.11	11.11
18. Work-life balance	66.67	22.22	5.56	5.56
19. Company benefits	61.11	27.78	5.56	5.56
20. Retirement	77.78	11.11	5.56	5.56

Table 7 - Quality of the information and consultation, by issue and rating of EWCs surveyed. (PORTUGAL)

	DOES NOT EXIST	INFO. NOT VERY USEFUL	USEFUL INFO. BUT WITHOUT CONSULTATION	USEFUL INFORMATION AND CONSULTATION
1. Economic and financial situation of the undertaking	25.00	25.00	50.00	0.00
2. Business strategy, investments	8.33	33.33	58.33	0.00
3. Changes concerning organisation	33.33	33.33	33.33	0.00
4. Restructuring of the undertaking	27.27	18.18	54.55	0.00
5. Mergers	36.36	27.27	36.36	0.00
6. New technologies	33.33	25.00	41.67	0.00
7. Transfer of production	33.33	50.00	16.67	0.00
8. Probable employment trends	33.33	41.67	25.00	0.00
9. R & D + innovation	25.00	8.33	66.67	0.00
10. Professional training	50.00	16.67	33.33	0.00
11. Professional classification and promotion	66.67	16.67	16.67	0.00
12. Gender equality	50.00	25.00	25.00	0.00
13. Health at work	16.67	8.33	75.00	0.00
14. Environmental sustainability	33.33	0.00	66.67	0.00
15. Trade union rights	25.00	16.67	58.33	0.00
16. Work time	33.33	41.67	25.00	0.00
17. Profit sharing	66.67	25.00	8.33	0.00
18. Work-life balance	83.33	8.33	8.33	0.00
19. Company benefits	54.55	18.18	27.27	0.00
20. Retirement	75.00	0.00	25.00	0.00

For the purposes of this complementary analysis, we will use a classification already established in studies on European Works Councils (Fitzgerald and Stirling, 2001; Lecher et al., 2001; Köhler and González Begega, 2004). We need to distinguish between four *ideal models* of EWCs, according to different factors of configuration, both external (legal framework) and internal (corporate culture of the undertaking and system of industrial relations used), classifiable as follows on a scale from fewer to more competence and from lesser to greater capacity to act:

- *symbolic*: characterised by little operational effectiveness and little access to information/consultation, limiting activities to one simple formal meeting per year with the management of the undertaking

- *service provider*: members manage to generate tentative channels of communication and internal assistance based on the information they can access, whose usefulness, however, in consultation/negotiation terms, they feel is not very relevant, making it difficult to define precise objectives and strategies for action
- *with oriented project*: in addition to achieving the levels of communication and help of the previous model, they have managed to access a flow of useful information that allows them to consolidate internal communication and information systems for workers from the undertaking concerning its plans, in order to promote strategies for demands, although their capacity to pressurise and act are still insufficient in terms of *consultation* and *participation*
- *participative*: this is the most developed model of EWC, in which its members have achieved a high degree of coordination and identity of interests, consolidating their right to consultation and even managing to establish channels and procedures of *negotiation* with the undertaking's central management that recognises them, formally or *de facto*, as qualified intermediaries.

Applying these types to the analysis of the EWCs studied directly, and based on the rating carried out by their representatives concerning the quantity, quality and operational scope of the information and consultation they have access to, we can establish the following classification, albeit provisionally and approximately given the sample's limitations: 29% of EWCs operate in a simply formal and *symbolic* way, 23% operate as *service providers* of coordination, while 33% are in the *oriented project* phase, with only the remaining 15% operating as *participative* EWCs.

By country, the EWCs with German legislative regulation and trade union involvement are those that provide a higher level of quality for the issue of participation (37% identify with this model), while Spain and Italy are around average and Portugal is at the most critical level.

In summary, from the research carried out we can deduce that the quality of the *information* and its impact in terms of *consultation* and *participation* are clearly insufficient, although the EWC model has significant potential for developing trade union action that is renewed in its forms, expansive in its content and European in its coverage.

In its final phase, the *IN.CON.PAR\_able Project* aimed to identify *good practices* in this area. The positive experiences accumulated by the EWCs contacted and analysed as part of this study were therefore selected, evaluated and coded.

To this end, a SWOT analysis was carried out on the 78 EWCs contacted in order to evaluate their weaknesses, threats, strengths and opportunities overall and to select those cases that might represent *good practices* that could be used as benchmark models.

In accordance with the demands and claims presented by the *European Trade Union Confederation* (ETUC) to revise and improve Directive 94/45, four large groups of indicators were selected (rights, resources, competences and trade unionisation) to evaluate the EWCs and select those showing *good practices* in their processes of operation and intermediation in representing workers from their respective undertakings.

The idea was to carry out a detailed analysis of the agreements regulating the EWCs, their structure and functioning, as well as a rating by their representatives, etc. in order to identify, in each case, the existence and effectiveness of the processes of formal regulation and/or informal application that guarantee rights of access to information, consultation and participation, even beyond the limits of current legislation in this area:

- *rights* in the area of representative structure (select committee of the EWCs), how they operate (number and regularity of annual meetings), training, etc.
- *competence* in the area of information, consultation and participation, both procedural and in terms of the issues covered (employment, health at work, professional qualification and promotion, etc.) beyond those established in the Directive's subsidiary requirements

- *resources*: regulation of the participation of external experts, provision of infrastructures and communication
- *trade unionisation*: recognition of the role of trade unions in the formation of the EWC, appointing its members, connection with its databases and with the European sector federations, etc.

In accordance with this methodology, and within the context of the aforementioned theoretical paradigm, each organisation taking part in the Project selected cases and processes of *good practices* in the area of information and consultation of their respective EWCs. This provided a wide range of experiences and histories with regard to rights, competence, resources and the trade unionisation of EWCs but, in spite of these differences or precisely because of them, they can serve as benchmark *good practices* for structuring these significant bodies for worker representation and participation, anticipating the gradual development of the European framework of labour relations.

The information on these *good practices* identified in each case is described in detail in the respective national reports, while here we note the most significant elements that can be most easily transferred.

**1. RIGHTS TO INFORMATION AND CONSULTATION:** As already mentioned, Directive 94/45 omits to define the right to *information* and presents an excessively general concept of *consultation*, leaving it up to the parties to define the scope and application of both rights without clearly fixing the minimums required.

The research carried out as part of this Project, as well as other previous studies, agree that most information passed on by companies is *insufficient* and that the consultation carried out based on this information is *not very useful*. This is usually formal documentation, often transmitted *ex post*, which is difficult to interpret both in terms of substance and language and has little practical use.

That is why it is interesting to see how the most consolidated EWCs have advanced in clarifying, in practical terms, rights to information and consultation, even including, in the use of collective autonomy and negotiating capacity with the company counterparty, a more precise regulation that provides guarantees for both rights in the successive four-year revisions of the agreements. Elements can be derived from the *good practices* accumulated by EWCs that help to improve the reconstruction of an autonomous concept of information and consultation. With a view to revising the legislation, this should then be complemented by an analogical application of the heteronomous regulation, as carried out for both rights in Directive 2001/86/EC on European Companies.

The idea is to provide for access to formalised information prior to the meetings, with documentation on the most relevant company strategies, translated into those languages accessible by the EWC members and with agreed criteria of confidentiality.

**2. COMPETENCE:** The experiences analysed illustrate both the problems and deficits that limit the operational scope of EWCs and thereby the usefulness and effectiveness of their actions, as well as the existence of a learning process and the ongoing improvement of their operational mechanisms in areas that are both structural (creation of select committees and/or secretariats, extending and reinforcing the extent of representation, etc.) as well as procedural (normalised access to all the company's work centres, communication systems, training, use of external experts). In this respect, research activities, debate, participation and the dissemination of experiences and *good practices* carried out within the context of this Project and other similar studies add to this process of learning and transferability.

In short, the idea is to propose strategies for advancement and renovation that facilitate the progressive transition of the corresponding EWCs, in terms of rights, competence and resources, from the model that has been defined as *symbolic* to that characterised as *participative* and with a negotiating capacity, and to do so based on an adequate evaluation of their strengths and opportunities, in each case incorporating those *good practices* that are considered to be most appropriate.

**3. RESOURCES:** It is perhaps in this area where the transferability of the *good practices* identified could achieve the most tangible and effective results. This is a series of clauses to be included in EWC agreements applying, on the one hand, that provided for as a minimum standard in the subsidiary requirements of Directive 94/45 and, on the other hand, as an extension of what is contained in the negotiating agenda, concerning issues such as health at work, work-life balance, training and professional mobility, R&D+i, environmental sustainability, etc.

Firstly, we should note the importance of **training** for EWC members. This right is not explicitly regulated by Directive 94/45 but it does appear in 2001/86/EC on European Companies, and there are significant positive experiences concerning this, designed and developed by a growing number of EWCs in whose constitutive or revised agreements provide for the time, programmes, content (legal, economic, language) and resources (material, time, etc.) required for this right to be applied.

With regard to **experts**, the subsidiary requirements of the Directive only recognise their assistance paid for by the company for one meeting per year, while practice shows that ongoing external advice is required in many cases, particularly in complex negotiations concerning company restructuring. To this end, several of the EWCs consulted state that they have reached agreements with their respective companies (allocation of a budget, permission to access documentation, etc.) to guarantee the permanent availability of an expert, and of a second if the special circumstances so require.

It is a different situation concerning the **communication** possibilities of EWC members, both with each other and with local representative bodies and even with the work centres that go to make up the network of the corresponding transnational company. The *good practices* identified show great possibilities for progress in this field, by means of negotiation and by implementing online communication mechanisms and resources (intranet, website, videoconferencing) and direct interaction with the people they represent, in some cases providing schedules for touring meetings of the EWCs themselves, visits to companies, availability of hour credits to carry out their corresponding representative tasks, etc.

**4. TRADE UNIONISATION:** This is the key factor that most reveals the degree of development and effectiveness of EWCs, as can be clearly deduced from the empirical research carried out under this Project. That is why, as accredited by the *good practices* identified, reinforcing the membership, coordination and structure of trade unions among EWC members, both at a local level (election on the part of national works councils) and also vertically (connection with the European sector federations of the ETUC), is of decisive help in reinforcing their capacity for interlocution with the respective firms and the possibility to incorporate new experiences and strategies.

The main aim of the *IN.CON.PAR\_able Project* has been to help this process, from the time it was initially formulated by the *Trade Union School of CC.OO.* to the subsequent phases of execution (empirical research, seminars, workshops, reports, etc.), in which experts and trade unionists have taken part from the partner organisations, as well as more than one hundred EWC representatives, providing their analyses and alternatives resulting from their respective experiences.

To all of them, our thanks.

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## **Part III**

### **Communication and coordination tools for European Works Council members**

## **1. COORDINATION AND COMMUNICATION TOOLS**

### **1.1 Activity sheets**

To improve and strengthen coordination and communication between members of European works councils, specific activity sheets have been prepared that can be used by trainers on courses aimed at members of European works councils or directly by the latter themselves.

These activity sheets, which entail group or individual work depending on the requirements, focus on the following:

1. Promoting socialisation between members of a European works council or of different European works councils
2. Exchanging good practices between members of different European works councils
3. Helping members of an EWC to handle specific situations of corporate change and restructuring and to generate solutions
4. Strengthening communication
5. Strengthening coordination between members of a European works council or of different European works councils

### **1.2 Communication and coordination technical sheets**

Technical sheets develop specific content to strengthen the knowledge of members of a European works council regarding communication between its members.

Technical sheets focus on the following:

- 1) Verbal and non-verbal communication
- 2) Reinforcing the knowledge of computer tools.

### **1.3 Documents and proposals**

"Documents and proposals" sheets contain the text of the Directive, its subsidiary requirements and proposals, analysis and considerations of the ETUC regarding the revision of the Directive. The aim of these sheets is to improve the knowledge of how an EWC works and of the trade union political focus.



## ACTIVITY SHEET 1 – Let's break the ice!

 45 minutes

### Aims

- Initial ice breaking before working in a multilingual context.
- Better knowledge of the group members: name, country, town, sector.
- Better knowledge of his/her trade union responsibility.
- Better knowledge of his/her experience as a EWC member

### Tasks

1. Each participant in the workshop must make contact with a colleague coming from a country and an enterprise different from his/her.
2. Apart from the others, they will interview each other asking information about: his/her name, town, sector, trade union responsibility, experience as EWC members.
3. The answers given must be written orderly.
4. In plenary, you must introduce your colleague using the data given in the interview

### Time

5 minutes

5 minutes

1 minute for the presentation to the group

## ACTIVITY SHEET 2 – Exchange of good practices

 60 minutes

### Aims

- Exchange among the group members good practices in the EWC activities of communication and coordination
- Consider a good practice for the EWC members the one which enhanced the coordination and communication:
  - in the elaboration and signature of the agreements of the EWC creation.
  - in the solution of a problem in the group,
  - in reaching an increase of the workers' rights
  - or from a global point of view, in all aspects of the EWC functioning

### Tasks

5. Each member of the group analyzes the functioning of his/her EWC and reflects on how does communication and coordination work, during the preparation of the meetings, in the relations between the different subsidiaries, in the solution of some conflict happened between them.
6. After that, he/she tells his/her experience concerning one of the aspects mentioned or the global functioning of the EWC coordination and communication in all of them.
7. The group defines which one of these practices can be presented in plenary as a model of good practice.

## ACTIVITY SHEET 3 – Simulation






 45 minutes

### Aims

To make practice on communication and coordination among European Works Council members.

### Tasks

GROUP A, GROUP B, GROUP C, GROUP D and GROUP E are asked to discuss the practical case which has been assigned to each group and, after a simulation process, to present in plenary a feedback of their main conclusions.

-  Group A – Case Study “A local conflict”
-  Group B – Case Study “Closure and relocation”
-  Group C – Case Study “Experts”
-  Group D – Case Study “Acquisition”
-  Group E – Case Study “Reorganization” 6

\* Cases elaborated in collaboration with ETUI-REHS

### Case Study – A Local conflict

A European group consists of subsidiaries in Germany, Poland, France and Spain. The group's central management is situated in France. The management has announced that the productivity of the German and Spanish subsidiaries is unsatisfactory. A number of common departments will be centralised in either of the two subsidiaries that shows the best productivity growth during the current year.

Faced with this explicit creation of competition between the subsidiaries, the local management of the Spanish subsidiary has called into question a number of benefits previously acquired by the workers :

- coffee break times are no longer counted in the working hours ;
- the time clocks designed to control working hours have been moved from the cloakrooms to the entrance to the work stations.

These benefits have not been called into question at the other sites. The Spanish representatives on the European works council raise this problem at the preparatory meeting.

### Tasks

You are the workers' representatives on the European Works Council. Try to establish a common position.

### Case Study – Closure and relocation

In a German multinational company including sites in France, the UK, the Netherlands, Sweden and Turkey, the board of directors has adopted a strategic development plan which involves centralising some of the computer data processing sites. No firm decision has been reached regarding a relocation or site closure.

The workers' representatives, who are in a minority on the board of directors and subject to the duty of confidentiality, have expressed no reservations about this plan.

In the European Works Council only EU member states are represented. At the ordinary meeting of the EWC, the central management puts forward the strategic development plan, still with no details regarding the consequences of a possible closure and relocation. The arguments enlarged upon by the management on the need for the strategic development plan give rise to only a general discussion.

One month later, the board of directors decides to close the computer processing site in the UK and to relocate those departments to Sweden and France. The British colleagues, who are not represented on the select committee, contact the latter to call for an extraordinary meeting. They ask, in writing, for the British site to be spared at the expense of the Turkish site.

### **Tasks**

You are the French, German and Swedish representatives on the select committee. What do you decide?

### **Case Study – Experts**

On the agenda of the plenary meeting of a European Works Council of a company with head office in the Netherlands, there is a point of information from management concerning the new strategy for the Group.

During the coffee break, right before the theme will be dealt with, the HR-manager tells the European Union Federation expert who is present that he is gently asked to leave the meeting. The discussion is regarded as strictly confidential, which means that only Group employees are allowed.

Pretty soon, it appears that the non-union members, who make up about 1/3 of the employee representatives in the European Works Council, agree with this point of view.

### **Tasks**

You are the members of the select committee of this European Works Council.

How would you respond to this situation?

Determine your strategy and communication:

- towards management ;
- towards the employee representatives of the EWC ;
- towards the expert and the European Union Federation.

### **Case Study – Acquisition**

The workers-chairman of the European Works Council of a multinational company which is based in Germany receives a press release announcing the acquisition of a new branch in Rumania.

He calls the HR director to ask for more information, but the latter insists not to contact anyone in this Rumanian company yet, as the deal still has to be approved by the shareholders.

Moreover, there would not be any workers representation or union presence in this new branch,

so there is no need for any initiative coming from the EWC.

### **Tasks**

You are the Select Committee of the EWC. What do you do with this information?

### **Case Study – Reorganization**

A small Italian branch of a multinational with headquarters in France suffers a huge reorganization. This involves a radical discharge plan, but local management does not have the budgets to finance such a plan.

The Italian workers representatives, who are not a member of the European Works Council themselves, contact the Select Committee and appeal for the support of the EWC.

### **Tasks**

You are the members of the Select Committee. How will you respond to this call from the Italian colleagues?

## ACTIVITY SHEET 4 – Communication

 45 minutes

### Aims

To discuss and make suggestions on how to improve communication among the members of a European Works Council

### Tasks

GROUP A is asked to reflect on “long distance communication”:

- what does it mean, weak and strong points,
- how can long distance communication improve communication among EWC members,
- how can it be developed and increased, etc.

GROUP B is asked to reflect on “face to face communication”:

- what does it mean
- what does it mean in a multicultural context
- how face to face communication can improve communication among EWC members,
- how can it be developed and increased, etc.

GROUP C is asked to reflect on a “basic glossary” for EWC members:

- a basic glossary could improve communication among EWC members?
- Which words should be included in a basic glossary?
- Should a basic glossary be Multilanguage or in a common language?

Group A, B and C will be asked to present a feedback of their discussions and conclusions in plenary.

## ACTIVITY SHEET – Coordination






 45 minutes

### Aims

To discuss and make suggestions on how to improve coordination among the members of a European Works Council

### Tasks

GROUP A , GROUP B and GROUP C are asked to reflect and discuss about “how to build a network among EWC members”, taking in consideration:

-  the intercultural challenge
-  the ITC tools
-  training and information
-  databases
-  other kind of tools.

Group A, B and C will be asked to present a feedback of their discussions and conclusions in plenary.

## TECHNICAL SHEET 1 – VERBAL AND NON-VERBAL LANGUAGE

### 1. FACTORS OF VERBAL LANGUAGE. HOW A MESSAGE IS SAID.

- **Tone.** Tone of voice helps us to express a wide variety of emotions, attitudes and moods and to emphasise words and phrases. We emphasise those words or phrases that reinforce what we are saying.
- **Volume.** This is the intensity with which we speak, i.e. if we speak louder or softer. The volume required depends on the situation we find ourselves in.
- **Speed of speech.** The speed we talk at helps to express our mood.
- **Pronunciation.** This is the clear, correct articulation of the vowels and consonants of the words being used. In principle, we should avoid using the wrong sounds. Bad pronunciation makes the listener lose attention but, on the other hand, pronouncing everything excessively produces a disagreeable impression on the listener.
- **Silences.** When talking, small pauses or silences occur that fulfil different functions:
  - Marking the end of a sentence.
  - Emphasising an important word or idea in the middle of a sentence.
  - Thinking about what you are going to say later.
  - Creating expectation about something that is going to be said immediately afterwards.
- **Pace or flow.** This is the smooth current of words in the message.
  - An excessively slow pace leads to disinterest, boredom and monotony.
  - A very fast pace leads to errors in pronunciation that distort the message, overload the listener and prevent any refinement, and it also leads to monotony.

### 2. BEHAVIOUR FACTORS

- **Facial expression.** The face is a huge source of data in non-verbal communication. Our facial expression reflects our emotional state, attitudes and moods such as joy, sadness, fear, disgust, contempt, frustration, boredom or confusion. The facial expression is one of the most effective forms of feedback in interpersonal relations.
- **Posture.** This is how the body is held when sitting, standing or walking. It indicates attitudes and feelings towards oneself and others (friendship/hostility, superiority/inferiority, etc.).
- **Gaze.** Within facial expressions, we pay particular attention to the meaning of gaze. We use this to express emotions, the desire to establish relations or not to establish them. When we talk, we alternately look at the other person and our gaze acts as a kind of switch that indicates to our interlocutor when it is their turn to speak.
- **Gesture.** When we talk about gestures we refer to the brief, transitory movements of specific parts of the body. These are basically made with the arms, hands, shoulders and head: "the body is silent but not mute".
  - It reflects emotional states.
  - It emphasises verbal messages.
  - It expresses visually what is being said.
  - It regulates the flow of the conversation.
- **Spatial proximity** between the interlocutors: this will depend on our relationship with the other person and the kind of information we are passing on. It also depends on cultural factors (South Americans and Japanese speak more closely than North Americans or Europeans) and on population density.
- **Personal appearance.** Dress, hairstyle, adornments, accessories and make-up all provide data on the image a person has created of him/herself and informs us of his/her personality, mood, etc.
  - A neat appearance conveys order, serenity and professional efficiency.
  - Secretaries have to look after their appearance to a great extent and must know how to dress in accordance with their position and the company's atmosphere.

### 3. FUNCTIONS OF NON-VERBAL COMMUNICATION



- Emphasise verbal language.
- Express feelings and emotions.
- Indicate feelings produced in us by our interlocutor.
- Replace words.
- Influence how the verbal message will be interpreted.
- Contradict the verbal communication.
- Regulate the communication.

#### 4. FORMS OF VERBAL EXPRESSION.

- Conversation or dialogue.
- Narration or giving an account of something.
- A speech or talk.
- Description.
- Debate.

##### *Conversation or dialogue*

Personal and direct information exchange between two or more people.

Rules:

- Common language for interlocutors.
- Specific vocabulary, according to the socio-cultural level of the interlocutors.
- We shouldn't talk about something we don't have adequate information about.
- Clarity and conciseness, avoiding ambiguity in explanations.
- Take turns in expressing ourselves, alternating replies.

##### *Narration*

Giving a real or imaginary account occurring at a specific time. It is fundamental to get the listener's interest.

##### *Discourse*

Consists of an ordered explanation by an interlocutor of his or her ideas, thoughts or knowledge regarding a certain issue, so that the people he/she is talking to acquire a general knowledge of this issue.

It must follow a coherent order:

- Introduction.
- Body. Development of the issue in question.
- Conclusion. Summary of the main ideas.

It must use clear, concise language:

- Incorporating examples that explain the ideas, especially for those that are difficult to grasp.
- Explaining the same idea with different words, when this is difficult to understand.
- Using diagrams, slides, overheads, statistics or maps, etc. that, depending on the issue, facilitate comprehension and complete the information.
- Using anecdotes, comparisons, etc.

##### *Debate*

Exchange of opinions between several people on an issue, overseen by a chairman. To defend our point of view in a debate, it is very important to:

- Have a clear idea of what we want to defend.
- Provide reasons to support our argument.
- Reinforce our arguments with data.
- Take other people's refutations into account in order to respond to them.
- Listen carefully to what others are saying.

##### *Description*

This is a form of expression in oral communication by which we explain what a person, animal, object, place, feeling, emotion, etc. is like.

There are two types of description:

- *Denotative*: The describer is impartial to what he or she is describing and limits him/herself to detailing the characteristics that best define it.
- *Connotative*: This is a subjective description. This means that we explain things, places, etc. as we see or perceive them, irrespective of whether this is close to the truth.

Factors favouring communication:

#### *Active listening*

Paying attention both to what is said and to what is not said. There are 4 phases:

- Phase A: Hear and grasp verbal and non-verbal expressions.
- Phase B: Interpret what is heard (coincidence with what is said).
- Phase C: Evaluate the information and how it is used.
- Phase D: Receive the information. This does not necessarily involve a response.

Points to take into account for effective listening:

- Avoid distractions.
- Be thirsty for information.
- Observe the interlocutor. Identify when we can speak.
- While listening, adopt suitable non-verbal behaviour (maintaining eye contact, facial expression, feedback).
- Summarise the essential ideas.
- Don't interrupt the person speaking.
- Be understanding of the speaker's circumstances.
- Listen to the speaker by adapting to his or her level of training and culture.
- Do not make premature offers of help or solutions.

#### *Show empathy*

Via empathy, we make an effort to participate in the experiences of others, helping us to understand others perfectly. This is expressed in the following ways:

- When we invest all our efforts in understanding what our interlocutor is saying.
- Asking whenever we don't understand something.
- Speaking to our interlocutor from his/her own perspective, using his/her language.
- Creating an atmosphere of dialogue.
- Also paying attention to what is felt, not just what is said.

## TECHNICAL SHEET 2 – DIGITAL COMMUNICATION TOOLS

 1 hr 20 min

### Aims

- Become aware of free offers that can help us to communicate between members of European works councils.
- Get to know the basic steps to creating a Group.
- Get to know the basic steps to joining a Group.
- Get to know the basic steps for the following applications:
  - Files: Uploading, consulting and notifications.
  - Forums: Use

### Tasks

- Each member must take a test in creating a group or forum after the theoretical-practical explanation provided previously.
- Each member must join the group of the other participants and/or apply to the others to join.
- Choose a working group and take part in it as follows:
  - Upload a file related to the company (own headquarters)
  - Consult the file of a colleague's company.
  - Create a thread in a forum with the subject: Practical application of a working group for members of European works councils.
  - Each member posts their opinion regarding the above subject.
  - Consult the others' opinions and answers and debate online in the forum.

### Methodology

Each participant uses a computer to carry out the tasks and to understand and practise the different phases in creating and taking part in working groups. The tasks involve the repetition of steps on several occasions to facilitate comprehension and firmly establish the procedure so that, in the future, members can carry out these kinds of tasks on their own.

### Aim

To make the participants reflect on the way that they participate at the activities of a European works council.

### Introduction

According to the values which we use consciously or subconsciously, our attitude within a European works council and our expectations can be very divergent.

A first question that we must ask ourselves, is *“Who do I represent in this EWC?”* For this, we can differentiate several levels :

1. all of the employees of the group in Europe
2. all of the union members of the group in Europe
3. all of the employees of the company in my country
4. all of the union members of the company in my country
5. all the members of my union of the company in my country
6. all the members of my union in my country
7. all the employees of the department of the company where I work

### Task

Determine individually which target group comes first for you, which one in second place etc.

Next, you will be asked to point out on a synoptic table to which groups you attach the highest priority.

- Sheet elaborated by ETUI-REHS.

## COUNCIL DIRECTIVE 94/45/EC OF 22 SEPTEMBER 1994 ON THE ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL OR A PROCEDURE IN COMMUNITY-SCALE UNDERTAKINGS AND COMMUNITY-SCALE GROUPS OF UNDERTAKINGS FOR THE PURPOSES OF INFORMING AND CONSULTING EMPLOYEES

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### SECTION I GENERAL

#### Article 1

Objective 1. The purpose of this Directive is to improve the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings.

2. To that end, a European Works Council or a procedure for informing and consulting employees shall be established in every Community-scale undertaking and every Community-scale group of undertakings, where requested in the manner laid down in Article 5 (1), with the purpose of informing and consulting employees under the terms, in the manner and with the effects laid down in this Directive.

3. Notwithstanding paragraph 2, where a Community-scale group of undertakings within the meaning of Article 2 (1) (c) comprises one or more undertakings or groups of undertakings which are Community-scale undertakings or Community-scale groups of undertakings within the meaning of Article 2 (1) (a) or (c), a European Works Council shall be established at the level of the group unless the agreements referred to in Article 6 provide otherwise.

4. Unless a wider scope is provided for in the agreements referred to in Article 6, the powers and competence of European Works Councils and the scope of information and consultation procedures established to achieve the purpose specified in paragraph 1 shall, in the case of a Community-scale undertaking, cover all the establishments located within the Member States and, in the case of a Community-scale group of undertakings, all group undertakings located within the Member States.

5. Member States may provide that this Directive shall not apply to merchant navy crews.

#### Article 2

Definitions 1. For the purposes of this Directive:

(a) 'Community-scale undertaking' means any undertaking with at least 1 000 employees within the Member States and at least 150 employees in each of at least two Member States;

(b) 'group of undertakings' means a controlling undertaking and its controlled undertakings;

(c) 'Community-scale group of undertakings' means a group of undertakings with the following characteristics:

- at least 1 000 employees within the Member States,

- at least two group undertakings in different Member States, and

- at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State;

(d) 'employees' representatives' means the employees' representatives provided for by national law and/or practice;

(e) 'central management' means the central management of the Community-scale undertaking or, in the case of a Community-scale group of undertakings, of the controlling undertaking;

(f) 'consultation' means the exchange of views and establishment of dialogue between employees' representatives and central management or any more appropriate level of management;

(g) 'European Works Council' means the council established in accordance with Article 1 (2) or the provisions of the Annex, with the purpose of informing and consulting employees;

(h) 'special negotiating body' means the body established in accordance with Article 5 (2) to negotiate with the central management regarding the establishment of a European Works Council or a procedure for informing and consulting employees in accordance with

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Article 1 (2).

2. For the purposes of this Directive, the prescribed thresholds for the size of the workforce shall be based on the average number of employees, including part-time employees, employed during the previous two years calculated according to national legislation and/or practice.

### Article 3

Definition of 'controlling undertaking' 1. For the purposes of this Directive, 'controlling undertaking' means an undertaking which can exercise a dominant influence over another undertaking ('the controlled undertaking') by virtue, for example, of ownership, financial participation or the rules which govern it.

2. The ability to exercise a dominant influence shall be presumed, without prejudice to proof to the contrary, when, in relation to another undertaking directly or indirectly:

(a) holds a majority of that undertaking's subscribed capital; or

(b) controls a majority of the votes attached to that undertaking's issued share capital; or

(c) can appoint more than half of the members of that undertaking's administrative, management or supervisory body.

3. For the purposes of paragraph 2, a controlling undertaking's rights as regards voting and appointment shall include the rights of any other controlled undertaking and those of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other controlled undertaking.

4. Notwithstanding paragraphs 1 and 2, an undertaking shall not be deemed to be a 'controlling undertaking' with respect to another undertaking in which it has holdings where the former undertaking is a company referred to in Article 3 (5) (a) or (c) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (6).

5. A dominant influence shall not be presumed to be exercised solely by virtue of the fact that an office holder is exercising his functions, according to the law of a Member State relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings.

6. The law applicable in order to determine whether an undertaking is a 'controlling undertaking' shall be the law of the Member State which governs that undertaking.

Where the law governing that undertaking is not that of a Member State, the law applicable shall be the law of the Member State within whose territory the representative of the undertaking or, in the absence of such a representative, the central management of the group undertaking which employs the greatest number of employees is situated.

7. Where, in the case of a conflict of laws in the application of paragraph 2, two or more undertakings from a group satisfy one or more of the criteria laid down in that paragraph, the undertaking which satisfies the criterion laid down in point (c) thereof shall be regarded as the controlling undertaking, without prejudice to proof that another undertaking is able to exercise a dominant influence.

## SECTION II ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL OR AN EMPLOYEE INFORMATION AND CONSULTATION PROCEDURE

### Article 4

Responsibility for the establishment of a European Works Council or an employee information and consultation procedure 1. The central management shall be responsible for creating the conditions and means necessary for the setting up of a European Works Council or an information and consultation procedure, as provided for in Article 1 (2), in a Community-scale undertaking and a Community-scale group of undertakings.

2. Where the central management is not situated in a Member State, the central management's representative agent in a Member State, to be designated if necessary, shall take on the responsibility referred to in paragraph 1.

In the absence of such a representative, the management of the establishment or group undertaking employing the greatest number of employees in any one Member State shall take on the responsibility referred to in paragraph 1.

3. For the purposes of this Directive, the representative or representatives or, in the absence of any such representatives, the management referred to in the second subparagraph of paragraph 2, shall be regarded as the central management.

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## Article 5

Special negotiating body 1. In order to achieve the objective in Article 1 (1), the central management shall initiate negotiations for the establishment of a European Works Council or an information and consultation procedure on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.

2. For this purpose, a special negotiating body shall be established in accordance with the following guidelines:

(a) The Member States shall determine the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territories.

Member States shall provide that employees in undertakings and/or establishments in which there are no employees' representatives through no fault of their own, have the right to elect or appoint members of the special negotiating body.

The second subparagraph shall be without prejudice to national legislation and/or practice laying down thresholds for the establishment of employee representation bodies.

(b) The special negotiating body shall have a minimum of three and a maximum of 17 members.

(c) In these elections or appointments, it must be ensured:

- firstly, that each Member State in which the Community-scale undertaking has one or more establishments or in which the Community-scale group of undertakings has the controlling undertaking or one or more controlled undertakings is represented by one member,

- secondly, that there are supplementary members in proportion to the number of employees working in the establishments, the controlling undertaking or the controlled undertakings as laid down by the legislation of the Member State within the territory of which the central management is situated.

(d) The central management and local management shall be informed of the composition of the special negotiating body.

3. The special negotiating body shall have the task of determining, with the central management, by written agreement, the scope, composition, functions, and term of office of the European Works Council(s) or the arrangements for implementing a procedure for the information and consultation of employees.

4. With a view to the conclusion of an agreement in accordance with Article 6, the central management shall convene a meeting with the special negotiating body. It shall inform the local managements accordingly.

For the purpose of the negotiations, the special negotiating body may be assisted by experts of its choice.

5. The special negotiating body may decide, by at least two-thirds of the votes, not to open negotiations in accordance with paragraph 4, or to terminate the negotiations already opened.

Such a decision shall stop the procedure to conclude the agreement referred to in Article 6. Where such a decision has been taken, the provisions in the Annex shall not apply.

A new request to convene the special negotiating body may be made at the earliest two years after the abovementioned decision unless the parties concerned lay down a shorter period.

6. Any expenses relating to the negotiations referred to in paragraphs 3 and 4 shall be borne by the central management so as to enable the special negotiating body to carry out its task in an appropriate manner.

In compliance with this principle, Member States may lay down budgetary rules regarding the operation of the special negotiating body. They may in particular limit the funding to cover one expert only.

## Article 6

Content of the agreement 1. The central management and the special negotiating body must negotiate in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements for implementing the information and consultation of employees provided for in Article 1 (1).

2. Without prejudice to the autonomy of the parties, the agreement referred to in

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paragraph 1 between the central management and the special negotiating body shall determine:

- (a) the undertakings of the Community-scale group of undertakings or the establishments of the Community-scale undertaking which are covered by the agreement;
- (b) the composition of the European Works Council, the number of members, the allocation of seats and the term of office;
- (c) the functions and the procedure for information and consultation of the European Works Council;
- (d) the venue, frequency and duration of meetings of the European Works Council;
- (e) the financial and material resources to be allocated to the European Works Council;
- (f) the duration of the agreement and the procedure for its renegotiation.

3. The central management and the special negotiating body may decide, in writing, to establish one or more information and consultation procedures instead of a European Works Council.

The agreement must stipulate by what method the employees' representatives shall have the right to meet to discuss the information conveyed to them.

This information shall relate in particular to transnational questions which significantly affect workers' interests.

4. The agreements referred to in paragraphs 2 and 3 shall not, unless provision is made otherwise therein, be subject to the subsidiary requirements of the Annex.

5. For the purposes of concluding the agreements referred to in paragraphs 2 and 3, the special negotiating body shall act by a majority of its members.

#### **Article 7**

Subsidiary requirements 1. In order to achieve the objective in Article 1 (1), the subsidiary requirements laid down by the legislation of the Member State in which the central management is situated shall apply:

- where the central management and the special negotiating body so decide, or
- where the central management refuses to commence negotiations within six months of the request referred to in Article 5 (1), or
- where, after three years from the date of this request, they are unable to conclude an agreement as laid down in Article 6 and the special negotiating body has not taken the decision provided for in Article 5 (5).

2. The subsidiary requirements referred to in paragraph 1 as adopted in the legislation of the Member States must satisfy the provisions set out in the Annex.

### **SECTION III MISCELLANEOUS PROVISIONS**

#### **Article 8**

Confidential information 1. Member States shall provide that members of special negotiating bodies or of European Works Councils and any experts who assist them are not authorized to reveal any information which has expressly been provided to them in confidence.

The same shall apply to employees' representatives in the framework of an information and consultation procedure.

This obligation shall continue to apply, wherever the persons referred to in the first and second subparagraphs are, even after the expiry of their terms of office.

2. Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the central management situated in its territory is not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them.

A Member State may make such dispensation subject to prior administrative or judicial authorization.

3. Each Member State may lay down particular provisions for the central management of undertakings in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, at the date of adoption of this Directive such particular provisions already exist in the national legislation.

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### Article 9

Operation of European Works Council and information and consultation procedure for workers The central management and the European Works Council shall work in a spirit of cooperation with due regard to their reciprocal rights and obligations.

The same shall apply to cooperation between the central management and employees' representatives in the framework of an information and consultation procedure for workers.

### Article 10

Protection of employees' representatives Members of special negotiating bodies, members of European Works Councils and employees' representatives exercising their functions under the procedure referred to in Article 6 (3) shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the national legislation and/or practice in force in their country of employment.

This shall apply in particular to attendance at meetings of special negotiating bodies or European Works Councils or any other meetings within the framework of the agreement referred to in Article 6 (3), and the payment of wages for members who are on the staff of the Community-scale undertaking or the Community-scale group of undertakings for the period of absence necessary for the performance of their duties.

### Article 11

Compliance with this Directive 1. Each Member State shall ensure that the management of establishments of a Community-scale undertaking and the management of undertakings which form part of a Community-scale group of undertakings which are situated within its territory and their employees' representatives or, as the case may be, employees abide by the obligations laid down by this Directive, regardless of whether or not the central management is situated within its territory.

2. Member States shall ensure that the information on the number of employees referred to in Article 2 (1) (a) and (c) is made available by undertakings at the request of the parties concerned by the application of this Directive.

3. Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.

4. Where Member States apply Article 8, they shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the central management requires confidentiality or does not give information in accordance with that Article.

Such procedures may include procedures designed to protect the confidentiality of the information in question.

### Article 12

Link between this Directive and other provisions 1. This Directive shall apply without prejudice to measures taken pursuant to Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (7), and to Council Directive 77/187/EEC of 14 February 1977 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 businesses (8).

2. This Directive shall be without prejudice to employees' existing rights to information and consultation under national law.

### Article 13

Agreements in force 1. Without prejudice to paragraph 2, the obligations arising from this Directive shall not apply to Community-scale undertakings or Community-scale groups of undertakings in which, on the date laid down in Article 14 (1) for the implementation of this Directive or the date of its transposition in the Member State in question, where this is earlier than the abovementioned date, there is already an agreement, covering the entire workforce, providing for the transnational information and consultation of employees.

2. When the agreements referred to in paragraph 1 expire, the parties to those agreements may decide jointly to renew them.

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Where this is not the case, the provisions of this Directive shall apply.

#### **Article 14**

Final provisions 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 22 September 1996 or shall ensure by that date at the latest that management and labour introduce the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them at all times to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

#### **Article 15**

Review by the Commission Not later than 22 September 1999, the Commission shall, in consultation with the Member States and with management and labour at European level, review its operation and, in particular examine whether the workforce size thresholds are appropriate with a view to proposing suitable amendments to the Council, where necessary.

#### **Article 16**

This Directive is addressed to the Member States.

Done at Brussels, 22 September 1994.

For the Council

The President

N. BLUEM

(1) OJ No C 135, 18. 5. 1994, p. 8 and OJ No C 199, 21. 7. 1994, p. 10.

(2) Opinion delivered on 1 June 1994 (not yet published in the Official Journal).

(3) Opinion of the European Parliament of 4 May 1994 (OJ No C 205, 25. 7. 1994) and Council common position of 18 July 1994 (OJ No C 244, 31. 8. 1994, p. 37).

(4) OJ No C 39, 15. 2. 1991, p. 10.

(5) OJ No C 336, 31. 12. 1991, p. 11.

(6) OJ No L 395, 30. 12. 1989, p. 1.

(7) OJ No L 48, 22. 2. 1975, p. 29. Regulation as last amended by Directive 92/56/EEC (OJ No L 245, 26. 8. 1992, p. 3).

(8) OJ No L 61, 5. 3. 1977, p. 26.

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## **COUNCIL DIRECTIVE 94/45/EC OF 22 SEPTEMBER 1994 ON THE ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL OR A PROCEDURE IN COMMUNITY-SCALE UNDERTAKINGS AND COMMUNITY-SCALE GROUPS OF UNDERTAKINGS FOR THE PURPOSES OF INFORMING AND CONSULTING EMPLOYEES**

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### ANNEX

SUBSIDIARY REQUIREMENTS referred to in Article 7 of the Directive

1. In order to achieve the objective in Article 1 (1) of the Directive and in the cases provided for in Article 7 (1) of the Directive, the establishment, composition and competence of a European Works Council shall be governed by the following rules:

(a) The competence of the European Works Council shall be limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States.

In the case of undertakings or groups of undertakings referred to in Article 4 (2), the competence of the European Works Council shall be limited to those matters concerning all their establishments or group undertakings situated within the Member States or concerning at least two of their establishments or group undertakings situated in different Member States.

(b) The European Works Council shall be composed of employees of the Community-scale undertaking or Community-scale group of undertakings elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

The election or appointment of members of the European Works Council shall be carried out in accordance with national legislation and/or practice.

(c) The European Works Council shall have a minimum of three members and a maximum of 30.

Where its size so warrants, it shall elect a select committee from among its members, comprising at most three members.

It shall adopt its own rules of procedure.

(d) In the election or appointment of members of the European Works Council, it must be ensured:

- firstly, that each Member State in which the Community-scale undertaking has one or more establishments or in which the Community-scale group of undertakings has the controlling undertaking or one or more controlled undertakings is represented by one member,

- secondly, that there are supplementary members in proportion to the number of employees working in the establishments, the controlling undertaking or the controlled undertakings as laid down by the legislation of the Member State within the territory of which the central management is situated.

(e) The central management and any other more appropriate level of management shall be informed of the composition of the European Works Council.

(f) Four years after the European Works Council is established it shall examine whether to open negotiations for the conclusion of the agreement referred to in Article 6 of the Directive or to continue to apply the subsidiary requirements adopted in accordance with this Annex.

Articles 6 and 7 of the Directive shall apply, *mutatis mutandis*, if a decision has been taken to negotiate an agreement according to Article 6 of the Directive, in which case 'special negotiating body' shall be replaced by 'European Works Council'.

2. The European Works Council shall have the right to meet with the central management once a year, to be informed and consulted, on the basis of a report drawn up by the central

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management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly.

The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and Probable employment trends, investments, and substantial changes concerning organization, 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.

3. Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, 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. It shall have the right to meet, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

Those members of the European Works Council who have been elected or appointed by the establishments and/or undertakings which are directly concerned by the measures in question shall also have the right to participate in the meeting organized with the select committee.

This information and consultation meeting shall take place as soon as possible on the basis of a report drawn up by the central management or any other appropriate level of management of the Community-scale undertaking or group of undertakings, on which an opinion may be delivered at the end of the meeting or within a reasonable time.

This meeting shall not affect the prerogatives of the central management.

4. The Member States may lay down rules on the chairing of information and consultation meetings.

Before any meeting with the central management, the European Works Council or the select committee, where necessary enlarged in accordance with the second paragraph of point 3, shall be entitled to meet without the management concerned being present.

5. Without prejudice to Article 8 of the Directive, the members of the European Works Council shall inform the representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure carried out in accordance with this Annex.

6. The European Works Council or the select committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks.

7. The operating expenses of the European Works Council shall be borne by the central management.

The central management concerned shall provide the members of the European Works Council with such financial and material resources as enable them to perform their duties in an appropriate manner.

In particular, the cost of organizing meetings and arranging for interpretation facilities and the accommodation and travelling expenses of members of the European Works Council and its select committee shall be met by the central management unless otherwise agreed.

In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the European Works Council. They may in particular limit funding to cover one expert only.

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## COMMISSION OF THE EUROPEAN COMMUNITIES, BRUSSELS

### EUROPEAN WORKS COUNCILS: CONSULTATION OF THE EUROPEAN SOCIAL PARTNERS ON THE REVISION OF COUNCIL DIRECTIVE 94/45/EC OF 22 SEPTEMBER 1994 ON THE ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL OR A PROCEDURE IN COMMUNITY-SCALE UNDERTAKINGS AND COMMUNITY-SCALE GROUPS OF UNDERTAKINGS FOR THE PURPOSES OF INFORMING AND CONSULTING EMPLOYEES

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The Commission invites the European social partners to express their opinions on certain changes to the Directive which it is now considering to significantly improve the role and functions of European works councils, while also bearing in mind the key positive aspect of the Directive, namely the priority given to negotiation between an undertaking's management and employees for the purpose of establishing procedures for the introduction and operation of these bodies. While recognising the divergence of opinions among the social partners on the subject of a possible revision of the legislation, the Commission considers that they are in the best position to express opinions on the envisaged changes to the legal framework governing the establishing of European works councils and to identify operating procedures which are more consistent with the specific needs of the undertakings and employees they represent.

#### 1. Measures to ensure the effectiveness of employees' transnational information and consultation rights

##### 1.1. *Concepts of information and consultation*

Some of the definitions found in — or absent from — the Directive lead to different interpretations which have a major impact on the clarity of the legislative framework, the effectiveness of the rights introduced by the Directive and legal certainty, even though these rights have the nature of fundamental rights (Article 27 of the Charter of Fundamental Rights of the European Union: "Workers' right to information and consultation within the undertaking: Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices").

One possibility might be to clarify the definition of "consultation" and add a definition of "information" better linking it with the definitions in more recent directives concerning information and consultation of workers (Articles 1 (2), 2 (f), 2 (g), 4 (1), 4 (3) and 4(4) of 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 — OJ L 80, 23.3.2002. Articles 2 (i) - 2 (j) of Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European Company with regard to the involvement of employees, OJ L 294, 10.11.2001, and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees, OJ L 207, 18.8.2003).

##### 1.2. *Content of subsidiary requirements*

In order to take account of developments in European works councils' practices and needs, and to reinforce their role and relevance, the following changes could be envisaged:

- the right of the European works council to obtain a response, and the reasons for that response, to any opinions they have expressed;
- a precise definition of exceptional circumstances by the social partners, in order to foster anticipation;
- the possibility of a second meeting to seek an agreement in the event of exceptional circumstances,
- the possibility of adapting the number of ordinary meetings of the European works council, for example from one a year to two a year, in certain circumstances;
- the possibility of introducing new subjects for the information and consultation of the European works council, in line with practical developments (changes in responsibilities, mobility, health and safety at work, work organisation, environment).

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### *1.3. Role of trade union organisations*

As jointly acknowledged by the European social partners, European trade union federations have played an active role, directly or indirectly, in the negotiations for European works councils against a background of diverse systems of industrial relations. It would appear appropriate to recognise explicitly the special role which trade union organisations can play in negotiations and support for European works councils, recognition that is rendered effective by the inclusion, in Directives 2001/86/EC and 2003/72/EC, of trade union organisations among the experts who may be present at meetings of the special negotiating body.

### *1.4. Role and competence of employees' representatives*

In order to allow employees' representatives to perform their duties to the full, it might be appropriate to introduce:

- an obligation for European works council representatives to report to the workers they are representing;
- a right to training for employees' representatives (already provided in nearly half of European works councils).

### *1.5. Protection of rights*

It is vital that the rights referred to by the Directive are implemented. It might therefore be useful for the Directive to reiterate the general principle according to which, in the event of infringement of the provisions applicable, sanctions must be effective, proportionate and dissuasive, as described in the Framework Directive 2002/14/EC.

## **2. Measures designed to resolve problems encountered in the practical application of the Directive and to rectify gaps in legal certainty**

### *2.1. Adaptation clause*

### *2.2. Central management and responsibilities of local managements*

### *2.3. Composition of the special negotiating body and organisation of negotiations*

## **3. Measures designed to ensure coherence of Community legislative instruments in the field of information and consultation of employees**

### *3.1. Linking of definitions of information and consultation*

### *3.2. Transnational competence of European works councils*

### *3.3. Linking of information and consultation levels*

Linking the national and transnational information and consultation levels is one of the difficulties in the practical application of the Directive. In cases of restructuring, apart from the Directive on European works councils, the Framework Directive 2002/14/EC, Directive 98/59/EC on collective redundancies and Directive 2001/23/EC on transfers of undertakings also apply where such redundancies or transfers are specifically envisaged. Cases brought before the national courts concerning the relationship between legal acts and links between information and consultation levels have produced different responses in this respect. To ensure legal certainty and the effectiveness of Community law, it would be appropriate to find the best way to set out the principles of linking information and consultation levels.

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## ETUC STRATEGY IN VIEW OF THE REVISION OF THE EUROPEAN WORKS COUNCILS DIRECTIVE

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1. The European Commission is due to launch the revision procedure for Directive 94/45/EC on "the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees" (Directive complemented by Directive 97/74/EC extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 94/45/EC).

2. This revision is already four years overdue despite precise proposals for amendments made by the ETUC in its December 1999 Executive Committee resolution for this revision and a number of other trade union initiatives and actions to speed up its realisation. The European Parliament has also called for such a revision on several occasions and, more recently, even the Economic and Social Committee (EESC) almost unanimously adopted an Opinion confirming the urgent need for the revision and offering a positive framework of reference regarding its contents (23 September 2003). A number of legal judgements - most recently on 13 January 2004 the European Court of Justice (ECJ) handed down its judgement on the Kühne & Nagel AG case - have also confirmed the importance and value of accurate, detailed information and consultation for Special Negotiating Bodies (SNBs) and for EWCs.

3. It is therefore vital that Directive 94/45/EC be revised. Its application so far has had a positive impact, not just in terms of the number of European Works Councils established, but also - indeed, above all - in the light of its reference function and the incitement it has provided to spread and innovate information and consultation practices and rights within both companies and systems of professional relations in the EU Member States and candidate countries. Nonetheless, the experience gained in implementing and running EWCs underlines the need for an urgent review of the Directive to make it more effective with respect to actually seeing rights exercised and enabling EWCs to function effectively.

4. Furthermore, the revision is needed to lend coherence to the new legislative and economic measures that have come about since:

a) the adoption in October 2001 of Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees, and in March 2002 of Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community, which calls for the harmonisation of Directive 94/45/EC and the subsequent Directives;

b) the intensification of the process of restructuring, mergers, relocations, etc. affecting all sectors of activity and bringing about changes in the structure of companies, in production and employment. For we end up being forced to cope with the consequences of such changes instead of being properly informed and consulted.

In our view, the launch of the revision process must entail the European Commission presenting a specific, detailed document on the contents to be covered, so that we can respond by submitting our comments and proposals.

5. The main changes we want to see take place are as follows:

### **1. Definition of the notions of information and consultation**

The EWC Directive must clarify the need for information and consultation to be provided with such content and within such a timescale as to make them a meaningful part of the decision-making processes of the undertakings concerned. As it seems logically incoherent to define the right to 'information and consultation' at European level differently in different directives, we consider that it would be reasonable to incorporate the following definitions of information and consultation, taken from Article 2 of Directive 2001/86/EC (the SE Directive), into the EWC Directive:

- "information" means the informing of the EWC on questions which concern the

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- undertaking ... in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the undertaking;
- "consultation" means the establishment of dialogue and exchange of views between the EWC and the competent organ of the undertaking, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the undertaking;

## 2. Trade unions' role

To guarantee the right to trade union coordination and support for workforce representatives, both in EWC negotiations and in their general duties, the participation of a member or of a representative of the sectoral federations in both Special Negotiating Bodies and EWCs must be guaranteed.

The role of the trade unions In order to ensure a good level of support and coordination for workers representatives from the trade unions involved in EWCs and their creation, at least one seat should be set aside for the trade unions to be represented as full participants in all special negotiation body (SNB) and EWC meetings.

This seat reserved for trade unions should therefore be allocated to the relevant sectoral European Trade Union Federation(s) to nominate a representative of their choice. This right should not affect the wholly separate provision for paid experts who may or may not be trade union officials.

## 3. Period of negotiation

The present version of the Directive provides for a period of three years which has proven far too long. Consequently, it would seem reasonable to reduce the deadline for negotiating agreements from three years to one.

## 4. Confidentiality

We call for a clearer definition of confidentiality, properly defining it so as to limit its use to information that is of clear commercial or personal sensitivity. While we fully respect the need for an obligation of confidentiality as regards genuinely and necessarily confidential information, misuse of the concept must be prevented. This is particularly the case where it is wrongly utilised in order to block communication between EWC representatives and/or between them and their trade union organisations. The burden of proof should thus rest with the undertaking when it comes to showing that information must be kept confidential. Undertakings should also not have the right to veto any expert requested by the EWC on grounds of confidentiality when that expert is prepared to sign a confidentiality agreement in good faith.

## 5. Sanctions

The Directive does not ensure adequate penalties in the event of violation of its provisions and/or resulting agreements by undertakings. The European Parliament approved provisions for the first draft of Directive 2002/14 (National I & C Framework Directive) that would have avoided this problem for that legislation. However they were, unfortunately, later withdrawn at the behest of UNICE and some member states. We continue to support the original decision of the Parliament and call for this text concerning sanctions to be inserted into the EWC Directive:

1. *The member States shall provide for adequate sanctions to be applicable, in the case of infringement of the dispositions laid down in this Directive by the employer or employees' representatives. These sanctions must be effective, proportionate and dissuasive*
  2. *The member States shall establish provisions according to which, in the case of non-compliance by the employer with the obligations to inform and consult with employees regarding decisions as described under article 1 and the agreements signed for the setting up of a EWC, which may have direct and immediate consequences in the sense of substantial changes or termination of working contracts of the concerned groups of employees, such decisions shall not have any legal effects on*
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*the contracts and terms of employment of the concerned employees. Legal effects shall not enter into force until the employer has fulfilled all obligations, or, should compliance have become impossible, an adequate compensation be determined, according to procedures and modalities to be established by the member States.*

3. *With reference to the commas above, non-compliance is considered such: a) In the complete absence of information to and/or consultation of employee representatives prior to the adoption of decisions or the publication of such decision; b) In case of withholding important information or the release of inexact information with the result of making the exercise of information and consultation ineffective.*

## **6. Preparatory and follow-up meetings**

Pre-meetings and follow-up meetings for the workers representatives in SNBs and EWCs have become fairly common in agreements and could now be considered a standard indicator of good practice. To operate effectively, members of these bodies must be able to hold preparatory meetings before and follow-up meetings after each meeting with central management. They allow the employee representatives time to discuss their position before and after talking to management and to go over action points so as to follow up what has been discussed. As such they add an important contribution to the creation of effective EWCs and efficiency of operating EWCs. We therefore call for the facility to hold such meetings with appropriate financial provision and language resources to be incorporated into the Directive.

## **7. Training**

Training experience demonstrates that a major obstacle to the good functioning of EWCs is lack of training in languages as well as in economic/accounting and other technical and social matters. EWCs are multi-lingual bodies at the heart of large and complex corporations bringing together highly different industrial relations cultures. The SE Directive and even the National I & C Framework Directive (where linguistic and cultural differences are less of an issue) have both recognised the importance of this issue and made provisions for the training of representatives on the bodies to which they apply. It is thus clear that the EWC Directive should also ensure that workers' representatives under its provisions are given the skills to carry out their tasks correctly. This means asserting the right of the EWC to determine a training programme at EWC level and the right to appropriate time off.

## **8. Experts**

The current subsidiary requirements of the Directive state that only one expert per meeting need be funded by the employer. Practice has shown that in times of radical change and uncertainty, such as the more complex cases of restructuring, the EWCs often require the benefit of expertise in more than one field: for example, in both legal and economic/accounting matters. This should be recognised by the Directive. We therefore call for provisions in the Directive to entitle EWCs to at least one paid expert at all meetings and a second when necessary.

.../... <http://www.etuc.org/r/128>  
- Brussels, 04 December 2003

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## EUROPEAN TRADE UNION CONFEDERATION (ETUC) STRATEGY AND ACTION PLAN 2007-2011 XI Congress, Seville May 2007

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### **Better conditions for European Works Councils (EWC)**

The intense activity of transnational companies makes the role of the EWCs all the more important.

That is why the ETUC continues to call for a revision of the EWC Directive as well as:

- The effectiveness and the working conditions of EWCs are to be improved. This refers especially to the right to information and consultation and negotiation before decisions are taken by the companies and to the recognition of the trade unions as well as to the clarification of the right of the EWC to assert its rights vis-à-vis management by (short cause) court proceedings at the company's expense;
- The right for trade union representatives and experts to participate in meetings, above all in support of the Special Negotiating Body (SNB) in its negotiations as well as in EWC meetings with

On the offensive:

For a space for social dialogue, collective bargaining and worker participation for all central management must be secured. This is already explicitly regulated in this way in the SE Directive, which was adopted well after the EWC Directive;

- The persistent under-representation of women in SNBs and in EWCs and their selected committees has to be addressed. Furthermore EWCs' policies do not sufficiently incorporate gender mainstreaming;
- Legal problems and uncertainties are to be clarified such as how to deal with 50:50 joint ventures, the maximum number of seats, the lack of provisions regarding the renegotiation and the adoption of the agreement;
- The scope of application of the EWC Directive is to be enlarged also to smaller multinational companies with 500 employees;
- If the central management refuses to have negotiation meetings with the SNB within 6 months at most, the subsidiary requirements shall come into force;
- In any event, the fact that there are already more than 11,000 EWC representatives in nearly 800 multinationals means an additional effort is required in support of the EWCs.

In that regard, ETUC undertakes:

- To support the European Industry Federations (EIFs) in order to improve gender-mainstreamed actions as well as actions concerning training schemes, the expertise of EWC representatives and to enhance networking and the sustained monitoring of agreements, by means of existing databases;
  - To back the efforts of the EIFs for a qualitative re-negotiation of the agreements and to extend them to all concerned multinationals;
  - To improve potential synergy reinforcing the links between EWCs and trade unions, by means of a range of initiatives with the agreement of the EIFs, with the goal of achieving a positive management of company restructuring and mobility, based on specific practices and experiences in order to provide general reference models.
  - To mention in the preamble to the Directive the importance of the promotion of gender democracy in the EWCs, while being aware that the ETUC itself and its member organisations still have much work to do on this issue.
-