

## **FREQUENTLY ASKED QUESTIONS ON EWCs<sup>1</sup>**

### **What is the Goal of Establishment an European Works Council (EWC)?**

Council Directive 94/45/EC of 22 September 1994 (henceforth, the 'EWC Directive') introduces European Works Councils or alternative procedures/structures in order to ensure information and consultation for employees of multinational companies that meet certain criteria.

### **What Companies are Affected/ Covered by the EWC Directive?**

The following criteria apply under Directive 94/45 (EWC Directive):

- a. community-scale undertakings (multinational companies) – undertakings employing at least 1,000 employees within the EU Member States and the European Economic Area (EEA: EU 27 + Liechtenstein, Iceland and Norway) and at the same time employing at least 150 employees in each of at least two EU Member States.
- b. community-scale groups of undertakings – groups of undertakings (a controlling undertaking and its controlled companies) employing in total within the EU Member States and EEA at least 1,000 employees and controlling at least two group undertakings in different Member States, of which each employs at least 150 employees.

It is worth noting that the location of the headquarters of a multinational company or group of undertakings has no influence on the application of the EWC Directive. Even if the company's main HQ is outside the EU, as long as the company has 1,000 employees in the EU and at least 150 in two or more EU Member States the EWC Directive still applies. In fact, many companies registered for instance in the USA or Japan meet the above criteria and thus are covered by the EWC Directive.

### **At Which Level Should an EWC be Established?**

The Directive stipulates that EWCs should:

- a) be established at the group level, and
- b) unless wider scope is provided for in the agreements governing their powers and competences (or the scope of information and consultation procedures, if such an alternative exists at a company), cover all establishments and all group undertakings located within the Member States .

In other words, EWCs shall be established at supranational level and, at the same time, cover all the subsidiaries and establishments of that group/multinational company.

### **Who Represents a Company which has its Headquarter (Central Management) Outside the EU?**

The main partner of an EWC is always the central management of the company. In case the central management/headquarters are situated outside the EU or EEA (for example, in the USA) the central management shall be represented by a designated agent who is responsible for all issues concerning the EWC (or its establishment).

In the absence of such a representative of the central management the management of the establishment (or group undertaking) employing the largest number of employees in any Member

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<sup>1</sup>Retrieved from website on 19 March 2010 <http://www.worker-participation.eu/European-Works-Councils/Frequent-Questions>

State is considered the agent of the central management located outside the EU/EEA and hence has all the consequent responsibilities.

### **How can it be Determined whether a Company/ Group of Companies Meets the Criteria in Terms of Numbers of Employees?**

In order to check whether a company meets the criteria laid down in Directive 94/45 one needs to make sure that this company is active in at least two EU/EEA Member States. Secondly, conformity with the given employee thresholds needs to be verified. All the prescribed employee thresholds should be based on the average number of employees, **including part-time workers**, employed during the previous two years. Methods of calculation must be in line with national legislation and/or practice.

### **How are Negotiations (Process of Establishing) on EWCs Initiated?**

The first step in establishing an EWC involves negotiations between a Special Negotiating Body and the management of the company. Negotiations may be initiated either by the management (more seldom) or at the written request of at least 100 employees or their representatives from at least two undertakings or establishments in at least two Member States.

In case of employees or their representatives submitting the demand to the management to start negotiations it is necessary for the workers' side to obtain information about employee numbers and company undertakings operating in other Member States. The management is obliged to provide such information to the employees or their representatives without unnecessary delay and cannot refuse to fulfil this obligation by saying they have no access to such data.

### **How to Select the Members of the Special Negotiating Body?**

Procedures for the selection of SNB members are laid down by the national transposition laws of the Member State in which the given member is to be elected. These procedures may differ in each Member State. It is highly advisable that each elected member of the SNB present the SNB with proof of a lawful mandate (for example, protocol of the elections).

The SNB must have a minimum of three and may have a maximum number of members equal to the number of Member States in which a company is active (recent technical amendment of the EWC Directive adopted on 20 November 2006 by the European Commission, COUNCIL DIRECTIVE 2006/109/EC), in respect of the fact that:

- i) each Member State in which a company has a subsidiary must have at least one member, and
- ii) there are supplementary members in proportion to the number of employees working in the establishments within one country of operations.

It is obligatory to inform the central and local management about the composition of the SNB.

### **What Happens if the Negotiations Fail?**

The special negotiating body and central management shall negotiate an agreement on an EWC in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements. Normally, such negotiations lead to the signing of an agreement. But if no agreement is signed within three years of a request to establish an EWC being submitted due to, for example, a conflict or different

views of the negotiating parties the so-called 'subsidiary requirements' come into force. Subsidiary requirements are provisions laid down by the legislation of a Member State (transposition law) and they need to be in line with the Annex to Directive 94/45. These provisions were designed to avoid a situation in which obstruction by one party during the negotiations leads to a deadlock in the process of establishing an EWC. Thus, they set minimal standards which stipulate basis principles governing the functioning of a EWC.

### **What is the Aim of the Special Negotiating Body (SNB)?**

The SNB has the task of determining, in accord with the central management, by written agreement:

- the scope,
- composition,
- functions, and
- term of office

of an EWC.

### **Can an SNB be assisted by External Experts?**

Yes, an SNB has the right to call upon experts of its choice. Directive 94/45 explicitly stipulates (Art. 5 paragraph 6) that the cost of expert advice and any other costs of the functioning of an SNB shall be borne by the central management. But Member States are entitled to limit (in their transposition laws) the coverage of expert costs borne by the management to one expert only.

### **How is 'Information and Consultation' Defined in Directive?**

The right to information and consultation and procedures ensuring the exercise of this right make up the core of Directive 94/45. Thus, it is crucial to use precise definitions of these terms. The Directive itself provides only a definition of consultation (art. 2 point f of the Directive): '*the exchange of views and establishment of dialogue between employees' representatives and central management or any more appropriate level of management*' .

Although this definition has been widely criticised as not precise enough – for instance because it fails to mention the timing of such an 'exchange of views' (prior to any decisions being made/implemented) – it does represent a basis for enforcing the competencies of an EWC in conflict situations.

On the other hand, there is no definition of 'information' in the Directive. EWC practice has shown that this is one of the major flaws of this regulation

### **Why is Confidentiality of Information an Important Issue for the Functioning of an EWC?**

It is obvious that EWCs are likely to become cognisant of confidential information. Various kinds of information may be of crucial importance for the company's interests and performance and their dissemination should be protected in order to avoid the EWC being the source of 'leaks', causing losses for the company. On the other hand, if an EWC is to be taken seriously it is imperative that it be treated as an insider with an insight into the company's performance, financial and production reports, and so on, and all data concerning the functioning of its undertakings. These circumstances have the potential for a conflict of interests.

For the reasons mentioned above, in Art. 8 of the Directive it is stipulated that the information conveyed to the EWC or experts as explicitly confidential must not be passed on by EWC members or

experts. Individual Member States were granted a rather wide margin of discretion as regards setting rules for confidentiality.

On the other hand, EWC practice reveals that managements sometimes abuse the confidentiality clause, so hindering the flow of information both to ordinary employees and to external experts assisting the EWC (for example, trade union experts). Cases of such conduct on the part of the central management are extremely difficult to litigate on the grounds of Art. 9 of the Directive, namely the obligation to work in a spirit of cooperation with due regard to the reciprocal rights and obligations of the parties. It can be argued that the abuse of the confidentiality clause in extreme cases can be countered with an appeal to a labour court on the basis of, for example, Art. 9 of the Directive. Nonetheless, lawsuits are costly, represent the last resort for an EWC and are by no means advisable as a universal instrument.



## European Works Councils (EWCs)<sup>2</sup>

Adopted on 22 September 1994, the European Works Council Directive gave millions of workers across the European Union the right to information and consultation on company decisions at EU level through their EWC representatives.

The EWC Directive (94/45/EC) applies to all companies with 1,000 or more workers, and at least 150 employees in each of two or more EU Member States. It obliges them to establish European Works Councils to bring together workers' representatives (usually trade unionists) from all the EU Member States the company operates in, to meet with management, receive information and give their views on current strategies and decisions affecting the enterprise and its workforce.

Of the estimated 2,264 companies covered by the legislation, some 828 (34%) have EWCs in operation, although the number of active EWCs is higher since some companies have set up more than one. Many of these firms are large multinationals, so the proportion of employees represented by EWCs is much higher: more than 64% or 14.5 million workers across Europe. An additional 125 EWCs have been set up but ceased to exist following mergers, takeovers or bankruptcies.

- ▶ The majority of companies covered by the directive employ less than 5,000 workers - but only 23% have EWCs.
- ▶ Among multinationals employing 10,000 people or more, 61% have EWCs.

. An active, representative trade union organisation is the first guarantee of a well-functioning EWC.

### Timetable and implementation

The 1994 directive allowed two years for Member States to transpose the provisions into national legislation. Under Article 13, companies had until 22 September 1996 to reach voluntary agreement on establishment of an EWC. After that, Article 6 came into force, requiring the setting up of special negotiating bodies and laying down rules on procedures and timing. In 1996, over 300 agreements were concluded, as companies rushed to beat the deadline for voluntary deals. Since then, the pace has slackened, with around 40 to 50 new EWCs annually.

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<sup>2</sup> Retrieved from website on 19 March 2010 <http://www.etuc.org/a/125>

### **Structure**

The majority of European Works Councils meet once a year, with an extra meeting as required. The structure generally conforms to one of two models: workers' representatives only, or joint worker/management representation, and is influenced by industrial practices in the company's home country. EWCs may deal with a huge range of economic, financial and social issues, including research, environment, investment, health and safety and equal opportunities.

The ETUC strongly recommends that EWCs should have smaller steering committees that can meet at short notice, and these exist in about 66% of them. Training is very important to enable EWC members to fulfil their role, but only 28% of agreements give members this right, with language education most commonly on offer.