



To.Be.E.Ewc VS/2014/0356 - phase WP4 Local workshops

Rome, 9 July - Stockholm, 23 Sep - Amsterdam, 05 oct - La Valletta, 30 oct - Bucuresti, 10 nov. 2015

A guide to organising a European Works Council

by

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1.1

1st Step:

The decision to establish an E.W.C.

It is certainly a political one, but it must be established foremost on the different bases which govern it, obviously the Directive 2009/38 and in general the Directives that concern information, consultation and participation of workers.

TWO FUNDAMENTAL THEMES BEFORE ESTABLISHING IT

1. LACK OF COORDINATION AMONG VARIOUS DIRECTIVES
2. THE EUROPEAN AGENDA FOR THE REVISION OF DIRECTIVE 94/95: A STRONG ROLE FOR EWCs IN "MANAGING AND ANTICIPATING CHANGE"

1. AN EXAMPLE OF SUCH LACK ABOUT CONSULTATION BETWEEN THE MAIN DIRECTIVES BOTH DEALING WITH INFORMATION & CONSULTATION

2009/38/CE

*The definition of "consultation" needs to take account of the goal of allowing for the expression of an opinion which will be useful to the decision-making process, which implies that the consultation must take place at such time, in such fashion and with such content as are appropriate (**Recital 23**)*

2002/14

WITH A VIEW OF REACHING AN AGREEMENT

*...with a view to reaching an agreement on decisions within the scope of the employer's powers referred to in paragraph 2(c). (information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations...) (**Art 4. G**)*

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1.2

2. THE EUROPEAN AGENDA FOR THE REVISION OF DIRECTIVE 94/95: A STRONG ROLE FOR EWCs IN "MANAGING AND ANTICIPATING CHANGE"

- The revision of Directive EWC 94/95 was planned for 1999, but there has been a delay of precisely 10 years, a political delay due mainly to resistances on the employers' side, but also due to internal contradictions in the European trade union front (see the fundamental ambivalence towards the role of an EWC)
- European lawmakers, contrary to expectations, instead of planning this revision in the Agenda for a "New dynamic of Industrial Relations", included this topic in the "European strategies for employment, anticipation and management of change 2007/13"
- The EWCs are therefore given a very active role and ambitious tasks, on fronts that are dear to trade unions, such as managing corporate restructurings, and relative effects on workers, active employment policies, both in the European social dialogue and in lifelong training, seen also in the context of the national intricacies regarding reconversion plans for professionals who were involved in restructuring.

"Social parts will explore the potential synergies between the European and corporate level of social dialogue, an example of which is the sector social dialogue and the EWCs (...) The array of topics that are faced by EWCs keeps growing, and encompassing topics of a European dimension, such as health and safety, equal opportunities, training and mobility, corporate social and environmental responsibility.

Where the social parts face similar issues at a sector level, an opportunity may exist to create a synergy between such level and the interested sector EWC. The European social parts may take advantage of the occasion given by the Commission on the revision of the EWC Directive to renew their bond with EWCs and social dialogue"

(Communication 557-2004 "Partnership for change in an enlarged Europe")

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2.1

2nd Step

The decision to establish an EWC in relation to the players in the field

Directive 2009/38 HAS AMONG ITS PRIORITIES THAT OF ESTABLISHING EWCs:

"It is necessary to modernize the EU norm on transnational information and consultation of workers to ensure the effectiveness of the rights to transnational information and consultation of workers, to increase the percentage of European works councils established, (...)" (Recital 7)

The decision to establish an EWC, or to take care or not about an already established EWC, is in any case a political one. The identification criteria proposed by UNI Europa are needed to motivate this political decision, even though there are two crucial points in my opinion for UNI Europa on this issue:

- 1) UNIONISED EWCs and/or the transnational groups within which an EWC must be established, need mainly a trade union capacity and transnational experience that may make easier and stimulate trade union alliances among different countries, based on what we have learnt and experienced from this point of view in previous EWCs: this should be a priority for UNI Europa in this context.

Barely or NOT UNIONISED EWCs and/or transnational groups within which an EWC must be established, are not hopeless. A true attempt must be done to act as UNI experts, bringing first of all the added value of technical knowledge on the EWC Directive (and "additional" norms, see quoted database) and also a concrete experience on other EWCs functioning, and of their problems. It is an added value that even the least unionised of the EWCs may not ignore, and one upon which the bases for a further path to unionisation may be established.

- 2) In every situation, the **network of transnational trade union relations**, the contacts and the identification of the right reference people in the various countries, is a key added value to determine the quality of future prospects of any EWC, an added value which is typical of the UNI Europa expert (or "coordinator").

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2.2

THE TRADE UNIONS' AMBIVALENCE TOWARDS EWCs

- **Directive 94/95** is centred on the role of “worker representation”, and does not formally assign any specific role to trade union representatives.
- **Directive 2009/38** does bestow on the trade union a role limited to representation in the competent European Federation and only during negotiations (or re-negotiations) of the agreement on the establishment of a EWC, and only as **experts**, having previously being invited by the SNB.

"During negotiations, the special negotiation body may request to be assisted by experts of their own choice, that may include representatives of the relevant worker organisations that are recognised at a European level. Such experts and trade union representatives may participate to negotiation meetings as consultants and on request of the above mentioned body."

(Art. 5.4)

SO: WHAT SHOULD BE DONE?

Try to enlarge as much as possible the *de facto* role within EWCs up to managing the T.C.A.?

Try instead to circumscribe the role only to information and consultation?

Oversee only to unionised EWCs, and work to unionise all of them?

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3.1

3rd Step

The S.N.B as a first result of a new T.U.A.

- **A unionised and cohesive SNB** (Special Negotiating Body) should be the result of a timely preparation work to establish a T.U.A., i.e. a transnational alliance among unions of represented countries in the transnational group. Even though the initiative to establish an EWC comes from the group Management, when the trade unions of the interested countries are already in a network, they are able to have a hegemonic role in the composition of the SNB.
- Always be able to count on a **structural trade-unions coherent majority within the SNB** (and then in the EWC)
- It is key to prepare a document, that represents **a true draft of the EWC agreement that is intended to reach**, and establish a negotiation on OUR text and not on that which would surely be proposed by the company. The text must be ready and agreed upon by the SNB before starting negotiations, and must be brought to the negotiation table at its first session.
- The **procedures** indicated by UNI for the SNB may become **more agile** when you already have a series of direct contacts in the countries and trade unions interested to the establishment of the SNB, to assure maximum efficiency in the procedure and beat the company to the designations.
- **The role of the UNI expert is essentially based on two pillars:**
 - a) Capacity to build transnational alliances thanks to his network
 - b) Knowledge of the Directive and its national transpositions, together with the capacity to apply them efficiently and the attention to avoiding being involved in negotiations that tend to lower standards

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4.1

4th Step

Trade Union Alliance

- 1) The key point is **how to build the relations among external and internal players** of an EWC while building a T.U.A. To be perceived somewhat as “intruders” that wish to impose their vision, their line, and seen as alien by the members of the EWC (or part of it, maybe those with higher roles, such as the secretary, the president, members of Sel.Co.) is a problem that, depending on the resistances encountered, must always be faced with the added value and authority that external players/agents such as UNI experts/coordinators, are able to bring in the discussion, and being substantially acknowledged even by the most sceptic.
- 2) A **dialogue** could follow, that could become dialectically rich as well, and if necessary, **asymmetrical alliances** may be established between countries, external players and part of the internal ones. All these must be based on the shared UNI guidelines and the authority obtained on the field, mentioned above. In the worst of cases, it may also be decided to **“stay out”** and let a T.U.A. go on without sharing or subscribing certain acts or initiatives of the EWC, but being able to deliver points of view and messages, also the most delicate ones, through alternative proposals that include a wide and transversal array of forces.
- 3) The required commitment to the UNI Europa guidelines must take in account the human and financial RESOURCES that are necessary to perform the tasks and objectives indicated in such points. It is necessary to be very aware of the limits in terms of resources that are actually usable in and the time-line within which this may happen, and this could push or sometimes force **to merge for example the role of technical expert, EWC political coordinator and T.U.A. coordinator.**

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5.1

5th Step

Ambivalence and importance of subjective attitudes

Self-determination among parts in relation to the content of the EWC Establishment Agreement is at the same time a great opportunity and a huge limit, maybe the deepest limit to union efficiency in EWCs. The awareness of this limit is seen in art. 6 and 7 of Directive 2009/38 that provide for self-determination, but limit its scope through precise prescriptions.

- A good understanding between the parts is enough to bestow upon a EWC multiple rights and **efficiency, well beyond what is written (and maybe even meant) in the Directive**. In this sense, Directive **2009/38 is, paradoxically (but not that much, either!) more prescriptive than the 94/95 one**.
- Nevertheless, self-determination has been often used (and continues being used) by the company management, making ample use of the old art. 13 of 94/95 and art. 15 of 2009/38, **the so called “voluntary agreements”, to establish standards and rights that are inferior to the minimum ones of both Directives, and not being forced to attain conformity to them**.
- This is the main reason why -in the 2009/38- the EU legislator made both the **article 6 (Content of the Agreement) and the article 7 (Subsidiary requirements) more prescriptive, so that:**
 - all the relevant issues in terms of an appropriate functioning of the EWC are included and ruled in the Agreement (art.6.2)
 - in the worst case the threshold of the minimum rights an entitlements is high enough to ensure a decent functioning (Annex 1 referred to art.7).
- Regardless of the quality of an agreement, the functioning of an EWC depends greatly on the **political will of the people that in time represent the management and the workers**.
- The frequent changes in the contact person for the management have a **deep effect on the quality of such task**

6.1

6th Step: managing an EWC

Some key points

More on subjectivity:

Quality, motivations and training of EWC members

- **Effective knowledge of an EWC agreement** (and relative norms) of the individual members of the EWC is often insufficient and lacking, and it's one of the most widespread limits to the functioning of an EWC.
- **The true individual motivations** for participating to an EWC are a fundamental parameter to measure the functioning of the EWC and the transparency in relation to management.
- **The right to translation and interpretation** should be given up only in exchange for an equivalent amount of economic resources to allocate to the EWC budget. Nevertheless, where it is possible to overcome language mediation, quality of communication in the EWC may only improve, and with it the capacity to take decision in a timely manner.
- **Training of EWC members** should be mainly aimed to the knowledge of the Directive, the Agreements that regulate the functioning of your EWC or of others, and the correct implementation within your EWC of such rule.

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6.2

MANAGING the E.W.C. from the roots

Some parts of the 2009/38 that clearly inspired most Uni Europa indications on how to manage an EWC:

Let us interconnect them to each other in any negotiation to establish or to renew any EWC Agreement.

LEVEL OF THE DIALOGUE

Only dialogue at the level where directions are prepared and effective involvement of employees' representatives make it possible to anticipate and manage change. (Recital 14)

TRANSNATIONAL ISSUES : (...) are considered to be transnational (...) matters which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States. (Recital 16)

PROFESSIONAL BALANCE

In accordance with the principle of subsidiarity, it is for the Member States to determine who the employees' representatives are and in particular to provide, if they consider appropriate, for a balanced representation of different categories of employees. (Recital 20)

CONSULTATION AND DECISION-MAKING

The definition of 'consultation' needs to take account of the goal of allowing for the expression of an opinion which will be useful to the decision-making process, which implies that the consultation must take place at such time, in such fashion and with such content as are appropriate. (Recital 23)

TRADE-UNIONS ROLE AND RECOGNITION

Recognition must be given to the role that recognised trade union organisations can play in negotiating and renegotiating the constituent agreements of European Works Councils, providing support to employees' representatives who express a need for such support. (Recital 27)

LINKING NATIONAL AND TRANSNATIONAL LEVELS TO ANTICIPATING AND MANAGING CHANGE

Such agreements must lay down the arrangements for linking the national and transnational levels of information and consultation of employees appropriate for the particular conditions of the undertaking or group of undertakings. The arrangements must be defined in such a way that they respect the competences and areas of action of the employee representation bodies, in particular with regard to anticipating and managing change (Recital 29)

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6.3

**TWO KEY ISSUES THAT CAN MAKE OR BREAK ANY EWC:
TRANSNATIONAL ASPECTS and CONFIDENTIAL INFORMATION
HAVE A LOOK AT THE CONTRADICTIONS WITHIN THE 2009/38**

- " Are considered to be **transnational matters** which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their **potential effects** or which involve transfers of activities between Member States". (**Recital 16**)
- Matters shall be considered to be transnational where they concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in **two different Member States (Art. 1 par. 4)**
- In order to perform their representative role fully and to ensure that the European Works Council is useful, employees' representatives **must report to the employees** whom they represent and must be able to receive the training they require. (**Recital 33**)
- Member States shall provide that members of special negotiating bodies or of European Works Councils and any experts who assist them are **not authorised to reveal** any information which has expressly been provided to them in confidence. (**Art.8-1**)
- Without prejudice to Article 8, 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 Directive (**Art.10-2**)

- Too often the contradictory definition of trans-nationality is a source of controversies.
- Too often the confidentiality clause on information refrains the EWC delegate from communicating information received to the local workers' representatives and/or to the workers themselves, which have delegated the representative to attend the EWC. A way out could rely in a kind of border-line interpretation supported by some jurists according to which to "reveal to third parties information communicated under a confidentiality agreement" with the term "third parties" (such expression however is used in the Italian version of the Directive but not in the English one) it is intended all those that are not part of the EWC, therefore workers should not be covered by the clause, since them or their direct representatives are actively interested by the events that are the object of said information.

6.4

COORDINATION between EWC and NATIONAL LEVELS (The "loneliness" of a EWC delegate in spite of article 12)

Article 12 – 2009/38

Relationship with other Community and national provisions

- 1. Information and consultation of the European Works Council shall be linked to those of the national employee representation bodies, with due regard to the competences and areas of action of each and to the principles set out in Article 1 par. 3.*
- 2. The arrangements for the links between the information and consultation of the European Works Council and national employee representation bodies shall be established by the agreement referred to in Article 6. That agreement shall be without prejudice to the provisions of national law and/or practice on the information and consultation of employees.*
- 3. Where no such arrangements have been defined by agreement, the Member States shall ensure that the processes of informing and consulting are conducted in the European Works Council as well as in the national employee representation bodies in cases where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged.*

In spite of the very prescriptive article 12 of the 2009/38, too often EWC delegates don't have the LINKS that art. 12 makes enforceable, they don't have a systematic way to communicate, discuss and decide democratically together with their national union officers.

7.1

7th Step

About the specific roles

ORGANISER

It is extremely important to periodically have collective discussions and exchange of experiences among delegates of various EWCs. The moments are organised and guided by the respective national unions, with the aim of training and promoting a sense of belonging to the national trade union (and indirectly to the European one) on which one can count when performing its own activity of transnational representation of workers.

SHOP STEWARDS in a TNC

Medium-high level knowledge of at least spoken and written English, and, in general, a training aimed at the transnational dimension of trade union activity, together with genuine and verifiable individual motivations to be part of a rather specific activity such as that of EWC member, in the wider context of trade union activity.

7.2

EWC MEMBER

- To what extent the rights foreseen in the EWC agreement are effectively applied?
- Periodically (e.g. every Plenary) the control of the work done should compare to what was established in the initial EWC agreement, to analyse and discuss both the results and the successful implementation or lack of implementation of rights through the concrete EWC activity.
- Discontinuity of involvement of substitute delegates: it is necessary to have specific provisions in the EWC agreement to minimize time discrepancies between mandates of individual members (often a four year term) in relation to the EWC in general and sometimes to the Agreement that regulates it. It is also necessary to foresee the moments when the substitutes can assist in operating on behalf of the titular members.

SELECT COMMITTEE MEMBER

- Have the opportunity to contact people and exchange ideas, experiences, information with components of other select committees of EWCs in their own countries, comparing different experiences that have in common the same framework both legally and in terms of industrial relations at a national level.

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7.3

The President/Secretary

- First interlocutor of the company
- Capable of effective and efficient political synthesis of the sometime complex and also divergent wills expressed in the EWC
- Capable of building its own authority and communicating it to the company
- Capable of reaching a believable balance between:
 - a) Its own autonomy/fairness/respect of mandates
 - b) Reciprocal dialogue/respect/trust/transparency
- Relation with a UNI expert/coordinator= synergy + respect of reciprocal roles

EXPERT AND COORDINATOR: TWO IN ONE

- The political will of UNI to exercise efficiently a coordination role in a EWC must always be based on the **awareness of the limits of the role assigned to the European union in the Directive 2009/38:**
 - an expert invited by the SNB to support it during the negotiation for the establishment of an EWC or the renegotiation of an existing agreement. That's it!
- **The role of coordinator is not formally recognised in any way.** The available resources given by the company are normally enough for only one expert. The UNI delegate must be able to show its usefulness to the EWC, after he has done so in the SNB. Therefore, as an officially recognised expert, he must be able to expand his position and assume the role of technical expert and political coordinator, also having to be very careful to avoid overlapping his role of President, Secretary and member of the select committee.

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7.4

INFORMATION, CONSULTATION, NEGOTIATION

Discussion is in full swing on what spaces could/should be opened to the negotiation activity of EWCs, taking in account the existence and diffusion of this practice and trying to govern it from a European union point of view.

- In the final document (proposal 2 –point 2C) of the Fisac-Cgil European Project on Productivity, Competitiveness and Social Sustainability, we support the possibility for EWCs to experiment specific negotiation moments, in the context of precise union mandates and guarantee roles covered by UNI Finance.
- Nevertheless the level of consultation in many EWCs is below the minimum standards required by the Directive and, based on this, in addition to reaching a correct consultation as a priority, **Uni Europa (together with CES, if possible) should promote an actual campaign aimed at identifying the problems that plague consultation and remove the causes, together with the employers and their representatives at a European level in every sector.**