

To.Be.E.EWC

MICROMANUALS FOR EWC EMPLOYEES' REPRESENTATIVES
AND TRADE UNIONISTS - WWW.TOBEEEWC.EU



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VS/2014/0356 - Project To.Be.E. EWC - *Towards a better employee involvement in undertakings: roles and tasks of the main actors in establishing and improving European Works Councils.*



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VS/2014/0356 - Project **To.Be.E. EWC** - *Towards a better employee involvement in undertakings: roles and tasks of the main actors in establishing and improving European Works Councils.*
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FOREWORD

We present To.Be.E.Ewc, a work supported by the European Commission - DG Employment, Social Affairs & Inclusion, that demanded our commitment as trade union organizations and EWC representatives of different sectors, in particular Credit and Commerce, and whose aim it is to provide the operators involved in various ways with a field manual able to guide the trade union representatives at the grass-roots level through the principal procedures and duties relating to the constitution and running of European Works Councils.

The manual is the result of a work carried out alongside and inside companies operating in the EU in the sectors Credit and Commerce; preceded by a survey that revealed ambitions and questions raised by the sectors of the most advanced services, which have long since found their natural economic and operational environment in the European Union, accepted the challenges, contributed significantly to its growth and called forcefully for a system of rules and warranties that are at least as advanced and “productive” as what is demanded from the workers in each sector, especially in the services, in terms of commitment and skill enhancement.

On our part, we cannot but continue the work started with this common project, shared with the colleagues from Filcams, FNV, Fsub, Mube, Handels and UNI EUROPA, with a view to provide an instrument of common use for the implementation of the cross-national confrontation and participation of the labor representatives, that should be the first step of a much greater integration process, expected by the production sector.

It remains our satisfaction, if this work will contribute to give the young workers representatives an understanding of the establishment and the development of the European Works Councils; likewise, the companies will benefit as they must necessarily dialogue with the labor representatives and involve the workers in the strategic decisions.

May dialogue and sharing, both on the European and the regional scale, be translated as steady and shared growth rather than false profit which implies the decrease in value and the impoverishment of values, which occurs if an economy is managed without real participation.

The solidity of the European Union concerning the disruptive forces is related to its capacity of boosting the social and participative growth of work, against egoism originating from economic powers that sometimes have lost the capacity of fostering relations with the surrounding society in terms of dialogue, equity and development.

MAURO BOSSOLA, *F.A.B.I. Deputy General Secretary*

PRESENTATIONS OF THE PROJECT

I. THE CHALLENGES OF *To Be.E. EWC*

ANGELO DI CRISTO – GABRIELE GUGLIELMI

The challenge is that of building an agile tool, that will spread widely, and is understandable by those that aren't living an EWC experience yet. A useful tool for those that approach this union experience from the start-up phase and for those that have been participating for a longer time to the life of EWCs. A Multi-language tool that will be available on <http://www.tobeeewc.eu/>; that may be fully downloaded or browsed for interesting parts in relation to the role that one

performs or is about to perform. All this is made possible by the technological contribution of Pietro Gentile; and also thanks to the two years of intense work and progressive integration of texts and tools that each one of us will be able to keep consulting on <http://bit.ly/1Qzz5oB> and that have been edited and revised by Federica Cochi and Francesco Colasuonno.

II. WHAT IS THE EWC FOR?

GIORGIO VERRECCHIA

The European Works Council (hereinafter EWC) is a representative body for workers established for the first time under European Directive 94/45/EC of the Council, of 22 September 1994, which dealt with 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*.

What emerges clearly in this Directive is an awareness that the functioning of the market naturally involves a process of concentration of undertakings, cross-border mergers, takeovers and joint ventures and, consequently, a *transnationalisation* of undertakings and groups of undertakings. It would, therefore, be utopian to assume this type of process would be carried out harmoniously, without the risk of social dumping to the detriment of workers. In fact, even in the first recitals of the Directive, it is specified that *undertakings and groups of undertakings operating in two or more Member States must inform and consult the representatives of those of their employees affected by their decisions*; also warning that *the procedures for informing and consulting employees as embodied in legislation or practice in the Member States are often not geared to the transnational structure of the entity which takes the decisions af-*

fecting those employees. This may lead to the unequal treatment of employees affected by the decisions within one undertaking or group of undertakings.

It was therefore necessary to take appropriate measures to ensure that the employees of Community-scale undertakings or groups of Community-scale undertakings are properly informed and consulted in cases where the decisions that affect them were taken in a Member State other than their own.

Thus was born the EWC: the company representative body at transnational level with the function of ensuring that the employees of undertakings or groups of undertakings operating in two or more Member States are properly informed and consulted.

After a period of time the abovementioned Directive needed to be updated, and it was repealed and recast in Directive 2009/38/EC of the European Parliament and the Council of 6 May 2009 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 (recast). This Directive, among other things, introduced the notion of transnationality, defined information and consultation and

made a specific reference to trade unions (absent in the previous Directive).

In fact, an awareness on the part of the European legislature can be noted regarding the competence of the union to deal with transnational issues of particular interest to employees. Specifically, in Directive 2009/38 the European and national trade union makes its entrance. This innovation, born from the knowledge that the EWC supported by the union at European and national levels has more chance of achieving the objectives of the Directive, recognises the closeness of the union to the bodies representing workers, mitigating the neutral feeling of the representative body provided for in Directive 94/45. In other words, from a representation of employees without any hint of unions, the 2009 directive moves to acknowledging 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*. For this reason, *in order to enable them to monitor the establishment of new European Works Councils and promote best practice competent trade unions and employers' organisations recognised as European social partners shall be informed of the commencement of negotiations* (see. recital no. 27).

However, this is not the place to examine in detail the legal-trade union aspects of the EWC. Nor is it possible here to analyse the definitions of information, consultation and transnationality, despite their undeniable importance. The economy of this study does not allow it.

But to one question, the one that gives this contribution its title, we have to respond: what is the EWC for?

It is clear that in the face of the fundamental freedoms on which the European market rests it was necessary to provide and ensure the effectiveness of information and consultation rights of workers in order to protect the worker and their dignity, even before working conditions.

The EWC is the depositary organ of this function.

The EWC is an essential tool for dealing with undertakings and groups of transnational undertakings in order to protect the positions of employees and avoid incorrect or harmful behaviour towards them based on which country the undertaking operates in. Massimo D'Antona wrote that “the company thinks with its feet”, in the sense that it will move where it costs less to produce. Well, the EWC, if properly constituted, is capable of inducing undertakings into a general realignment of undertakings to avoid national

distortion or situations of “competition” between groups of employees.

In short, the EWC plays an important role in facilitating the exchange of information between employees' representatives, identifying omissions of information on the part of management, facilitating the exchange of ideas for the solution of common problems, allowing the use of any information available anywhere (including outside the country) which would be useful for bargaining, and, not least, preventing differences in treatment of workers between countries.

In the current context of increasing globalisation, the EWC is a valuable resource, which has also undergone unforeseen developments (and controversial ones if we think of the participation in various capacities of the EWC in the conclusion of transnational company agreements, TCAs), and they need to be increasingly involved in anticipating changes in undertakings, in order to prevent or limit the negative consequences of restructuring.

To borrow the words of Directive 2009/38, only dialogue at the level where directions are prepared and effective involvement of employees' representatives make it possible to anticipate and manage change.

For this reason it is important that EWC members are fully aware of their role and

refine the skills they need to carry it out. It is equally important that in the agreement establishing the EWC the connection between the EWC and the national and local trade union representatives be guaranteed so that members of the EWC can inform the employees' representatives of Community-scale establishments or undertakings of the content and outcome of the information and consultation procedure.



III. FUNDAMENTALS ON COMPANIES/GROUPS

ACCOUNTING POLICIES

ANNA MARIA ROMANO

Balance data isn't as "sexy" as bargaining for a trade unionist, but if carefully analyzed, may give a lot of interesting information on the economic fundamentals of a company or a group of companies, allowing to acquire useful tools for bargaining. Even though we are aware that balance data is only a snapshot of the health status of a company, and don't tell the whole story, but only a part of it in a specific moment, the analysis of these may give a key support for union-political choices in the life of an EWC.

Accounting may seem complex, and it impossible to learn with one manual or a brief course. For these reasons, the risk is of underestimating the knowledge possibilities that are and must be available for all unionists at all levels.

Behind every figure, there may be the influence of our trade union activity: the more or less balanced redistribution of wealth produced by a company among its stakeholders is a union matter.

How is the value of a company determined: by how much profit it produces or by how this profit is given value for each interested party to the productive process and to the life of the company itself?

Analyzing a balance sheet may help us to

answer questions like this one, and it is therefore a complex operation that makes use mainly of quantitative techniques of data elaboration, with which balance analysis is performed (comparing data in time and space) to obtain qualitative information on managing, on the company and its industrial strategies.

Balance analysis gives us the possibility to transform accounting data in information.

In particular, it allows us to define indexes that summarize the information itself: these indicators are more valid based on their capacity to relate values that allow to read a balance without drowning in complexity.

Balance analysis by INDEXES is a powerful tool that allows the analyst to elaborate indexes and quotients that represent the economic performance, the patrimonial and financial situation of the company, since balance data refer directly to the causes that determine them. Carefully analyzing them makes it possible to understand the origin and the destination of a specific company area and/or what kind of real strategies, in addition to the declared ones, are being implemented (in a single company of the group, in a geographic area, in a complex perspectival vision,...).

It certainly isn't a magic wand and no indicator has a meaning in itself, but must be compared with something else: **the comparison in time (different balances in different years) or in space (comparison with similar companies) allows to formulate an evaluation of the health of the group or part of it.**

A balance index also has the **advantage of normalizing data of very different nature**, allowing the comparison of different periods, territories and companies.

The first step is to gather data that is useful to the analysis.

Data is obtainable from internal information (balance, official documents, company records) and external information. The internal analysis is characterized by the knowledge and the evaluation both of the balance and of the off-income sheet information of the company. External analysis are based on public documents and eventually on informal relations. In this context, informal information may be crucial for internal trade union representatives at all levels.

Regarding this, we will refer to various aspects of the practice called "Whistleblowing".

In the case of multinational groups, the main source of information is the consolidated balance, which defines the patrimonial, economic and financial situation of a group of companies, linked by the participation and/or control level defined by

European norms, considered as a single entity, regardless of the individual juridical subjects. Within it, all companies belonging to the group are assimilated by divisions or branches of a single bigger company.

(las n. 27 Consolidated Financial Statements and Accounting for Investments in Subsidiaries; with regard to the Directive 2013/34/EU).

For EWCs, balance analysis of group data may be useful to increase the sense of growing complexity of trade union activity, that can no longer be limited by national or territorial circumstances. It is clear and objective that complex data is influenced by the decisions taken by the individual companies that are part of the group, and in countries included in the operations area of a multinational company. **Borders are erased and the trade union scope expands: the wellbeing and the rights of a country are always more a concern of everyone, also from an individual bargaining point of view.**

The final objective of the referrals to accounting isn't to make us all experts of balance analysis, but to foster an evaluation of balance results as a tool of trade union activity, with the idea that any form of production, both economic or financial, may not disregard the social added value brought to the activity itself in terms of rights and social justice.

IV. A GUIDE TO ORGANISING A EUROPEAN WORKS COUNCIL

MARIO ONGARO

A guide to organising a E.W.C. should be mainly aimed at guiding the current practices in order to maximise their outcomes in terms of their ability to meet the EWC members demands and of the effectiveness of such members in representing their concerned employees. I have therefore tried to write the parts of the micro-handbooks in order to deliver a number of indications, suggestions and analysis that may concretely help the current practices in this respect.

I am more and more convinced nevertheless that most of the weaknesses and ineffectiveness of the current practices (which moreover have often turned into a growing demotivated approach by the individual EWC members) are due to their distance from the original idea that led the EU legislator in the re-cast of the 94/45 Directive to get to the 2009/38 one. That idea was to

put the re-cast in the Agenda for the “*European strategies for employment, anticipation and management of change 2007/13*”. It is true that the final version of the 2009/38 is in turn somehow distant from that original idea, but the more the EWC members will be aware of keeping the current practices up with the Directive as it is, the better and the more effective the EWC outcomes would be.

This is the reason why you will find frequent connections to this theoretical approach in my following chapters /micro-handbooks, always bearing in mind that an individual and collective effort to reduce the distance from the theoretical level would be a very concrete approach to improve the current practices and to re-motivate more than just a few EWC members.

Note: While this handbook is being printed, the process of EVALUATION of the 2009/38 DIRECTIVE by the EU Commission has just started, being finalised TO REVIEW THE DIRECTIVE itself. Such process does not have any direct impact on our analysis/proposals here, but we, as European trade-unions, are engaged in contributing to it. For a first approach just see the following link: ec.europa/smart_regulations/roadmaps/docs/2016_empl_011_evaluation_european_works_council_en.



V. COMMUNICATION OF THE PROJECT

NICOLA IANNELLO

The aim of the Project To.Be.E.Ewc is to enhance the role of Trade Unions in establishing and managing an Ewc. The legal, organizing, and accounting aspects are the core of the Project, summoning up in this manual. Once this task fulfilled, emerges the need for communication. Communicating the outcomes of this work is a fundamental tool for promoting the purpose of the Project. The book you are browsing is the most touchable means to spread the know-how that the expertise and the Union Working Group gathered together. To provide the best preparation and dissemination, we went through different steps: local workshops, a website, Twitter, this book, and a final conference in Brussels, with interviews to trade unionists and video clips presented to show different aspects of situations and roles in establishing and managing an Ewc.

The “words on paper” form is the most traditional way to communicate. In fact, you are reading a book... We decided to take advantage of social networks too. That is why we created an account Twitter (@tobeewc1), by which we are able to communicate in real time during our steering committees, workshops and conferences.

The website is the central pillar of the

communication of the Project. In the age of global connection, everything and everyone is networked. We could not do less. We wanted to supply an instrument of quick and easy consultation at fingertips. In the website, all the information and instructions on how to build and run an Ewc are collected and articulated in different sections according to two main ways of browsing: by the “flux diagram” *role* and *path*. The learner can go through the sections and find his or her point of interest.

Inspired by “the 7 Cs of communication”, we borrowed just 3 criteria, trying to be *clear*, *concise*, and *concrete*. Effective communication is a very complicated task: you have to make the complex simple, to find your own style, even to listen because communication is a two-way process.

To be *clear* means to focus on the main object of the communication, stressing the relevance of the message and making simple the assimilation by the recipient. That is why it is important for the experts to use a proper terminology, but we must avoid being excessively technical.

To be *concise* does not mean to write brief messages or to deliver a short speech, it means not to be redundant, to communicate all the information of the message avoiding every useless details, allowing

both sides of the process to concentrate on the fundamental elements.

To be *concrete* means that an effective message is based on data and facts, that we should answer questions even before they are asked, and develop our arguments moving from a real case study rather than from an abstract theory. Concreteness allows the recipient to get the message in all its meaning.

The same rule of the 3 Cs has been applied to support the flux diagram roles/paths by means of short video clips. These video clips are an incentive to read and deepen the content of the files roles/paths, by an immediate language, conceived not for specialist. Their aim is to make understood that behind the complicated statutes regulating the life of the EWC we can find quick answers able to explain its nature even to absolute beginners. The presentation of the video clips in all the languages of the Project (English, Italian, Swedish, Romanian and Dutch) is consistent with the freshness we want to bestow on these audiovisual products.



The communication of the Project has to be completed by a press release, issued at the final conference presenting the result of the activities. The press release must be written according to the standard rules of communication. A specific target will be chosen: the press interested in Trade Unions' activities, in social dialogue, in advanced forms of collective bargaining. The press release must have a title and a short subtitle; **key words** should be written in bold character; all the main concepts must be clearly presented in the first section; some statements by a top Union leader should be "quoted"; all the contacts should be included: the website, Twitter account, logos of the Trade Unions partners.

An effective communication of the outcomes of the Project and a proper arrangement of the contents started by "meeting" the workers and trade unionists: they are both the target and the end-users of our work. That is why we planned an inquiry handed out by the Trade Unions Partners in the Project. This inquiry was conceived to provide us with a comprehensive overview of the competencies, perceptions and trust on the EWC issue owned by the subjects involved in the development of the practice of EWCs, with their abundance of experiences and expectations.

VI. THE SURVEY

NICOLA IANNELLO

In order to know directly how workers and trade unionists are familiar with establishing and managing an Ewc, we delivered a Survey, articulated in 16 questions. Here the elaboration of the data.

A general overview

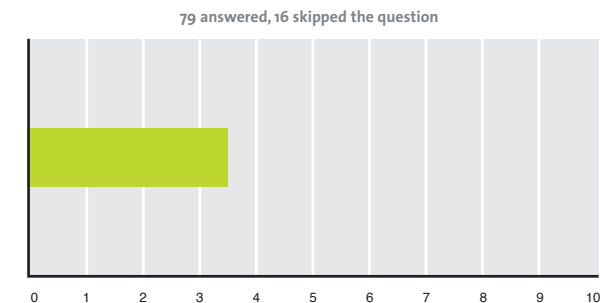
Since we received 95 answers over the 100 we were expecting, we can consider the result achieved. Of course, it is not a representative statistical sample, but a kind of collective interviews to get information from.

Concerning the "role" (Q2, multiple choice), most identified themselves as Ewc members (44,21%), then Trade union organisers (31,58%), Shop Stewards (30,53%) and Ewc Select committee members (29,47%). Chairs are 8,42%.

In the question on concrete context and relationship (Q3), the weighted average (from 1 min to 5 max) is a positive evaluation: 3,49, with a distribution focused on 3, but high on 4 and 5. We consider it as a good judgment on the Ewc experience. Those who gave a negative evaluation are a tiny minority: 5,06%, less than half of those who gave the highest grade (12,66%). A reassuring distribution.

Half of the Agreements (49,37%) will be renegotiated or are being renegotiated (Q4). In this instance (Q5), most of the attention is devoted to the updating of the Directive 2009/38 (52,38%); it is necessary to strengthen the right to information and consultation (35,71%); less necessary the issues of mergers, take-overs, split (7,14%) and resources (4,76%). We are allowed to interpret the datum as a perception of the inadequacy of the law where Ewc works.

Q3 Thinking about the concrete context and the kin of relationship that you are (have been) experiencing among the members of your EWC representing different countries, what score would you give by the here-under scale (where 1 means that, conflict and competitiveness are absolutely prevailing, while 5 means that solidarity and mutual cooperation are absolutely prevailing):



Concerning the evaluation of the practice and effectiveness of Ewc (Q6):

- evaluation is more than positive on information, weighted average 3,35 (of 5), 40% giving grade 4;
- poor consultation, weighted average 2,44, 34,18% giving grade 2;
- good practice of rights, weighted average 2,88, 64,10% giving grade 3 and 4. Bizarre distribution: 12,82% giving grade 1 (the minimum grade) and 3,85% giving grade 5 (maximum).

This means that the least satisfying point is the one concerning the lack of consultation by employers.

In the evaluation of Q7, asking if Ewc is in line with the Directive 2009/38, YES prevails: 62,34%, more than half of which (32,47%) say this happens since the Directive has been transposed into national legislation, 29,87% since renegotiation to keep up with the Directive.

To the question if the Ewc is ruled just by *Subsidiary requirements* (Q8), YES are more than 60%, divided in 36,62% referring to the ones of Directive 2009/38 and 23,94% to the ones of the Directive 94/95.

In regard to Sanction to employers (Q9), 62,16% considers they are neither dissuasive nor effective, datum understandable as a request to strengthen them.

The result related to Confidentiality clause based on employers' answers (Q10)

is relatively good, with the YES at 56,58%.

On the law applicable to the set up of the EWC (Q11), 55,29% answers "the national law transposing the 2009/38 Eu Directive in the country where the central management is", 22,35% "the national law transposing the 94/45 Directive in the country where the central management is", 16,47% "any of the two a.m. Directives, as mutually agreed by the concerned social partners", 5,88% "any national law transposing the 2009/38 Directive, as mutually agreed by the concerned social partners".

Obviously, the question on the reasons why the multinational is not structured with an Ewc or Societas Europea only received a few answers: 16 (Q12).

The main reason for the absence of EWC (it was possible to give 5 answers max) is to blame on the fact that it is not considered a priority by part of management (43,75%). Troubles in organizations can also be listed: difficulty in finding candidates who want to hold a role in Ewc (37,50%) or have an authentic and certified profile in the field on unions (12,50%). The datum demonstrates a lack of formation and motivation that has to be filled. Furthermore, 12,50% expressed a lack of trust for the low level of rights granted by Ewc, hence not considering it a priority. Another critical issue is the difficulty in reaching consensus on contents and relevant rights to focus on.

It also appears necessary to point out that

31,25% answered by stating that the procedure for the institution of the Special Negotiating Body is open.

The initiative of the constitution of an Ewc (Q13) was taken by the employees' reps 39,34%, 32,79% by the central direction, 19,67% by national unions, 8,20% by Uni Europe. This means the unionist initiative represents over two thirds of the cases (68%).

In the SNB case (Q14), the initiative was taken for the 34,48% by unionists of the Countries considered, for the 27,59% by both the national unions and management and for the 10,34% by Uni Europe.

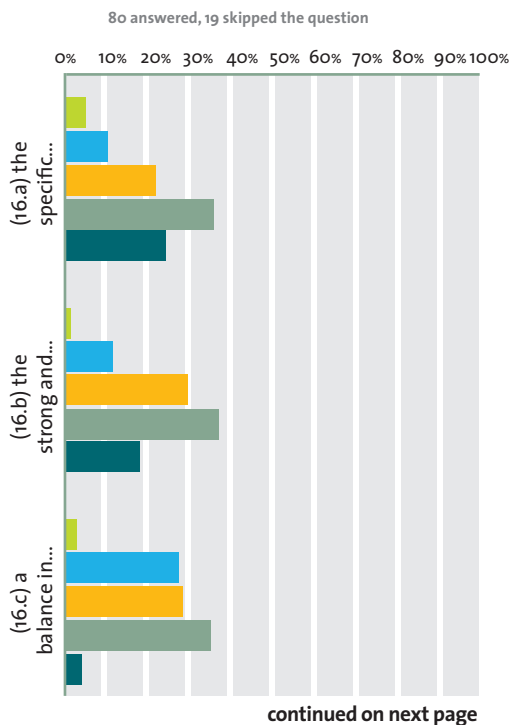
SNB composition (Q15, min 2 max 4 answers) can be described as follows: 53,85% of unionized workers' representatives, 51,28% of unionists specially elected for this end, 47,44% of workers' representatives already holding representation roles, 12,82% of non-unionized representatives and only 7,69% of workers' representatives nominated by the management.

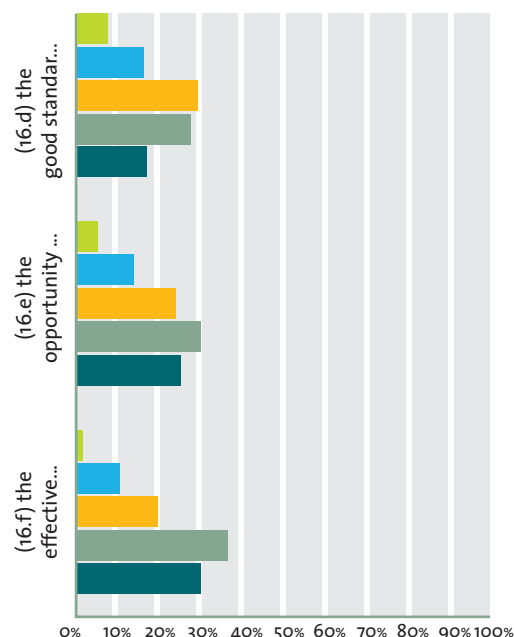
The most complex question to analyze is Q16: the one on the motivations to be part of an Ewc. The question includes other six sub-questions, to which the interviewed could answers by giving a grade from 1 to 5. We decided to give each sub-question the grade of the highest score obtained, along with a "+" mark when the highest grade was the second choice, a "-" mark in case the second choice was the lowest grade and a grade with no "+" nor

"-" marks in case the highest and lowest grades were equal.

- a. Competencies: 4+
- b. Team: 4-
- c. Balance work/charges: 4-
- d. Dialogue with the management: 3+
- e. Direct contact with the management: 4
- f. Effective results: 4+

Q16 What are (or what would be, in a future EWC) your own main motivations to stand for a position in the EWC (as a member, as a Sel.Co. Member, as an expert/coordinator) or to keep playing your current role in it?





Analysis by Country

Italy (39 respondents)

There is no coordinator figure, members are in the average, many define themselves as Trade Union organizers. The evaluation on EWCs is positive 3,44, slightly lower than the weighted average 3,49.

The agreement is being re-negotiated in a slightly more accentuated manner; a 2009/38 Directive update is demanded by 62,50% (52,38%); the request for more information is less accentuated: 25% (35,71%).

The concrete practice and effectiveness of information, consultation and relevant rights is close to the average. EWC agreements are negatively evaluated in a more accentuated manner: 56,25% (37,66%). However, there are many more EWCs working not only on subsidiary requirements basis: 58,62% versus an average of 39,44%. The demand for more effective sanctions is even more pronounced: 74,19% (62,12%). The data on confidentiality clause is in line with the average. In the same fashion, the answers given on applicable law do not differ much from the average.

The answers given on multinationals not structured either as ECW or SE are only a few (5); no one indicated the lack of EWC institution as a result of the unions not considering it a priority; the indication of a lack of interest by the management is more pronounced 60% (43,75%); same

It is an overall positive evaluation, particularly in regard to the skills developed and the results obtained or expected. It seems clear that it is common opinion to believe taking part into an Ewc further develops unionists' skills. The dialogue or direct contact with management is not considered a core aspect. Results show we have to find a key to make team work and work/charges balance more attractive.

The overall evaluation of the survey is positive. There still are different aspects to improve, such as normative framework or training and motivation of unionists, but evidences show a system of relations that, despite several uncertainties, it's growing and becoming a shared asset for unions.

goes for the difficulty in finding candidates 40% + 20% (37,50% + 12,50%) and coming to an agreement for nomination and election and for contents and rights (20% + 40% (12,50% + 31,25%). Within the initiative of establishing an EWC, the influence of management and unions is higher, while that of Uni is lower.

For what concerns Special Negotiating Body, the national component is higher, while that of management and Uni is lower. This double reference to Uni, low in both Q13 and Q14, appears to be worth considering. Are Italian TUs less integrated at a European level?

In SNBs composition there's a larger space for the non-unionized 22,22% (12,82%).

Regarding the motivations to be part of an EWC, the answers concerning skills, group, work/charges balance and results are on average, while those regarding dialogue and direct contact with management are lower, respectively 3- versus 3+ and 3- versus 4.

The Netherlands (16 respondents)

Less TU organizers; more EWC president/ secretary and Select Committee members. Good evaluation (3,71), focus on grade 3 and 4 (Q3).

Q4 The Agreement is going to be renegotiated or is being renegotiated at 57,14%; the changes indicated are about more info, resources and adaptation to merg-

ers, take-overs and split (Q5). The concrete practice and effectiveness of info, consultation and relevant rights is on average (Q6). YES about the Agreement in line with the Directive 2009/38 is more than average, NO less than 1/3 (Q7). On Subsidiary requirements, YES is on average but differently distributed (Q8). There a slightly more intense request of more effective sanctions (Q9). The Confidentiality clause is considered positive slightly more than average (Q10). About the applicable law (Q11), some differences in c. and d.

About the company not structured as EWC or SE (Q12), just 3 answers: "not an issue" is a minor problem, the blame is on the management; other problems: lack of skills; difficult to find candidates wishing to stand and with TU approach.

The initiative to open the procedure to set up the EWC (Q13) is mainly due to employees' reps. The SNB (Q14) was made mainly by employees' reps; no Uni. In the composition of SNB (Q15), there are less reps elected on purpose and less unionized reps.

The motivations to be part of an EWC are in line with the average; the only difference is about the balance work/charges: 4+ against 4-.

Sweden (13 respondents)

The respondents were mostly shop stewards. The evaluation of EWC (Q3) is good but lower than the average: 3,18 (3,49).

The Agreement is not going to be renegotiated for a wide majority (NO 77,78%, average 50,63%), so we had only 3 answers to Q5 and a 100% indication for updating the Directive 2009/38.

Q6 is almost in line with the average. The Agreement is considered in line with the Directive 2009/39 by a tinier majority: NO is 44,44% (37,66%); among YES, the one referring to a negotiation after the transposition of the Directive in the national legislation is 44,44% (32,47%).

About the EWC rule just by the Subsidiary requirements (Q8): NO 33,33% (39,44%).

The request of more effective sanctions (Q9) is in line with the average.

The answers to the question about the Confidentiality clause are more positive than the average: 70% (56,58%). Q11 is on average.

Only 3 answers about the company not structured as EWC or SE (Q12): the main difficulty is due to find candidates: 66,67% + 33,33%.

The initiative to set up the EWC is never due to the central management, but mostly to national unions 66,67% (19,67%).

The SNB was made more than the average by Uni: 16,67% (10,34%), less by employees' reps: 16,67% (34,48%). The composition is almost the same, but there are no non-unionized reps.

The motivations to be part of an EWC (Q16) are almost the same, with some differences about the dialogue with the management [4+ (3+)], and the effective results [5 (4+)].

Romania (16 respondents)

Nobody defines him or herself as president, secretary, coordinator or expert. The general evaluation is good, better than the average: 3,79 (3,49).

The Agreement is going to be renegotiated or is being renegotiated at 57,14% (49,37%); 9 answers to Q5, demanding more info and consultation than updating the Directive 2009/38.

Q6 almost on average.

Romania is the only Country where nobody answered NO to the question (Q7) on whether the Agreement is in line with the Directive 2009/38.

Very low percentage of NO to the question on whether the EWC is ruled just by the Subsidiary requirements (Q8): 7,14% (39,44%).

Sanctions to the employer are perceived to be effective, considering the result of almost 80% of YES to Q9 (37,84% the average).

Relatively good result for the Confidentiality clause (Q10): positive answers total to 57,14% (56,58%).

About the applicable law (Q11), the main

differences concern point b. (The national law transposing the 92/25 Eu Directive in the country where the central management of your group is): 6,25% (35%), and point d. (Any of the two a.m. Directives, as mutually agreed by the concerned social partners): 31,25% (16,47%).

Only 2 answers to Q12 (Company not structured as EWC or SE): not a priority, difficult contents/rights. High percentage of EWC set up by the central management: 63,64% (32,79%). Same datum regarding the SNB (Q14): by the central management 72,73% (28,07%); in this case, Uni played a relevant role as well: 18,18% (10,34%). This may be interpreted as the necessity of an exogenous stimulus for a Country which only recently became a member of the UE. The SNB is mainly composed (Q15) by employees' reps elected on purpose 64,29% (51,28%) and unionized reps 78,57% (53,85%).

The answers about the motivation to be part of an EWC are pretty similar to the average, with the only difference of the best grade of the Survey for the team: 5 (4-).

Analysis by role

The score about the concrete context and the relationship experienced (Q3) is on average for Ewc members: 3,50 (3,49), with a similar distribution. For Presidents it is higher than the average: 3,67 (3,49). It is higher than the average for Shop stewards: 3,54 (3,49), but with more 3 than 5.

Ewc members demand (Q5) more attention in updating the Directive 2009/38: 55,56% (52,38%) than information and consultation 27,78% (35,71%); and to have more sensibility to mergers, take-overs, splits 11,11% (7,14%). It is almost the same thing for Presidents [updating Dir. 60% (52,38%), info/consultation 20% (35,71%)], with an even stronger request for attention toward mergers, take-overs, splits: 20% (7,14%). According to Shop stewards, the changes to be made are as follows: more attention in updating the Dir. 63,64% (52,38%) than info and consultation 27,27% (35,71%); no sensibility at all to mergers, take-overs, split: 0% (7,14%).

About information, consultation and rights (Q6), for Ewc members there is a poor consultation 2,27 (2,44). According to Presidents, poorer info 2,83 (3,35), good consultation 2,67 (2,44), poorer rights 2,67 (2,88). According to Shop stewards, there is much to be improved: information 2,88 (3,35), consultation 2,29 (2,44) and practice of rights 2,67 (2,88) are all poorer than the average.

Concerning the adequacy of Sanctions

(Q9), Ewc members think they are effective more than average: 40,54 (37,84), Presidents and Shop stewards less than average, respectively 16,67% and 33,33%. Concerning Presidents, this datum means a total dissatisfaction with the present system: an overwhelming 83,33% think it is inadequate.

On the confidentiality clause (Q10), Presidents' opinion is far more negative: 66,67% answered it does not work (43,42%).

Motivations to be part of an Ewc (Q16):

For Ewc members there is a poorer score on the team and the balance work/charges: a. competence 4 (4+), b. team 3- (4-), c. balance work/charges 3- (4-), d. dialogue w management 3- (3+), e. direct contact w management 4+ (4), f. effective results 4+ (4+).

Presidents have more confidence in team, less appreciation for the work/charges balance, maybe for the weight of the charges, more interest in the confrontation with the management: a. competence 3/4/5 (4+), b. team 5- (4-), c. balance work/charges 3- (4-), d. dialogue w management 5 (3+), e. direct contact w management 4 (4), f. effective results 4+ (4+).

Shop stewards gave a very similar score to the average, with less interest in the confrontation with the management: a. competence 4+ (4+), b. team 4- (4-), c. balance work/charges 3+ (4-), d. dialogue w management 3 (3+), e. direct contact w management 3 (4), f. effective results 4/5 (4+).

In conclusion, every figure gave a positive evaluation of the experience of taking part in Ewc. Presidents show a deeper concern, maybe due to the higher engagement, but members and shop stewards too are convincingly involved in this task.



1. ESTABLISHMENT, NEGOTIATION, UNIONS

1.1. INSTRUCTIONS. LEGEND

LEGEND

Each data sheet is composed of 5 parts:

number/category +

- 1 Introduction (ed. Staff)
- 2 EWC-related organizing (Mario Ongaro)
- 3 Legal-related issues (Giorgio Verrecchia)
- 4 Business accounting (Anna Maria Romano)
- 5 Communication, information

INSTRUCTION FOR USE OF THE MANUAL (Paper e Digital)

The **D** version is structured on the Wikipedia model and links to English or selected language links.

The **C** version, only in English, may have annexes; a specific annex will refer to web pages of key organisations such as:

CES <http://www.etuc.org/>

ETUI <http://www.etui.org/>

UNI Europa <http://www.uni-europa.org>

Or to the main **Data Bases**, e.g.:

EWC database is a specific service by the European Trade Union Institute

EUROPEAN COMPANY (SE) DATABASE - ECDB

Database on transnational company agreements

The manual is based on the UNI Europa guidelines, and is formed by:

- INSTRUCTIONS (this document)
- Introduction to the used norms and other documents on TNCs (transnational companies), EWCs (European Works Councils) and Transnational and Global agreements.

Possible **Annexes** (or **links**) with in-depth info on specific aspects of the combination role/phase and the check-lists

Annexes / Tools

Bibliography

Glossary



Note on the To Be.E. EWC manual

The manual is for women and men; the use of the term man or woman, save exceptions explicitly indicated, must be intended as referred to men and women.

When talking about operative modalities, when we mention the UNI Europa European Federation, except when indicated otherwise, it is meant as European Federation.

1.2. INTRODUCTION TO THE MANUALS

1.2.O. Presentation

This manual follows the union process of establishing a European Works Council (EWC), a body for Information and Consultation (I&C).

It follows the chronological order of the temporal phases of the process: it does so by describing the role of the “main actors” in this process.

It uses data sheets to describe and self control (check list) the specific skills that each one should possess to perform at best his role.

1.2.a. EWC main topics

SOURCES

Industrial relations are arranged in the different member states

Workers’ right to information, consultation and participation

www.europarl.europa.eu/atyourservice

Database on transnational company agreements * It is recommended to make an analytical distinction among the various T.C.A., according to the one made in the database, but also keeping into account the basic difference between a “Joint Declaration” and a proper Collective Agreement in terms of their binding commitment for the social partners

UNI Europa Guidelines on European Works Councils

The above mentioned sources should be consulted being aware of two fundamental questions when deciding to set up a E.W.C.

- LACK OF COORDINATION AMONG VARIOUS DIRECTIVES CONCERNING INFORMATION AND CONSULTATION
- 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 can effectively be even just the definition of CONSULTATION as it is in the core parts respectively of the Directive 2009/38 and of the 2002/14 one:

2009/38 Art. 2

- g. ‘consultation’ means the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees’ representatives to express **an opinion** on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, **which may be taken into account** within the Community-scale undertaking or Community-scale group of undertakings.

2002/14

Consultation shall take place: (a) while ensuring that the timing, method and content thereof are appropriate; (b) at the

relevant level of management and representation, depending on the subject under discussion; (c) on the basis of information supplied by the employer in accordance with Article 2(f) and of the opinion which the employees’ representatives are entitled to formulate; (d) in such a way as to enable employees’ representatives to meet the employer and obtain a **response**, and the reasons for that response, **to any opinion they might formulate; (e) with a view to reaching an agreement** on decisions within the scope of the employer’s powers referred to in paragraph 2(c) i.e. decisions likely to lead to substantial changes in work organisation or in contractual relations

I have put in bold the concept of what the opinion should be for in these two Directives which are both on information and consultation, so as to show immediately the relevant difference between the two.

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

1. 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)

2. 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”
3. 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.

1.2.b. Legal sources

Pursuant to the Treaty on European Union and the Treaty on the Functioning of the European Union <http://urly.it/21jv4> one particular objective of the Community and the Member States is to promote dialogue between management and labour.

Therefore, the legislation we refer to includes in particular:

- Chart of fundamental rights of Nice 2000 (art. 27) <http://urlin.it/14194c>
- Directive 2009/38/EC on European Works Councils; <http://urly.it/21jv3>
- Directive 2001/86/EC supplementing the Statute for a European Company (SE) <http://urly.it/21jv5>
- The national transpositions of these Directives within the 30 countries of the European Economic Area



1.2.c. Business accounting: use of the manual

The aim of this manual on accounting is to provide simple tools for general knowledge. We have no desire to analyze deeply the matter nor to become experts on this issue.

So why talk about balance analysis? Because we think it is useful to define some knowledge boundaries, that, even if very small, are helpful to understand what to ask companies in terms of information and bargaining the establishment and life of an EWC.

Balance data may give us important indications on the health of the group, of parts of it, and on its industrial strategies.

Following this simple introduction, here are some instructions on how to use this part of the micro manual. Contrary to other topics, it is impossible to define bits of knowledge for each step or role.

Balance analysis and its consolidation in case of a transnational group is a complex issue, that requires knowledge and experience that is not a requisite for trade unionists in this context. We are only interested in giving the possibility to understand where we find ourselves and what is the general health.

Therefore, basic knowledge is applicable to each step and for each role, with slight variations.

4.3. Glossary annex business accounting is the basic section of the topic called “business

accounting”, so it is made explicit only once.

Each data card invites to consult the section defined as “4.3. Glossary annex business accounting”, which provides in a very summarized way, a basic knowledge of the topics more strictly related to accountability in general and that of transnational groups in particular.

It defines some useful elements for policy choices of those that work in EWCs; it provides some basic indexes that are particularly useful to evaluate the condition of the companies with which one is involved.

The main objective is to help those approaching the establishment of an EWC to know what to ask to understand better the real situation in which one operates and to bargain for what is needed (even the simple presence of an expert on the subject, of union choice, when we deem it necessary).

A substantial part of this micro manual consists in suggesting some questions/considerations that, starting from balance data, allow to evaluate the industrial strategies of the group.

In some of the data cards, peculiar aspects are underlined, in addition to what already said. In some steps/roles, it is considered useful to further study some topics or the evaluation of specific tools, in addition to the common base.

This passage is necessary also to identify the need and request further training at all levels.

1.3. START UP AND PATH

1.3.o. Identification of companies that may have the EWC

Identification of companies that qualify for an EWC

UNI Europa’s sectors, also on request of an affiliate, should identify the companies within their sphere of responsibility where it is appropriate to work for an EWC. UNI Europa affiliates have a key role to play in this respect, through their national knowledge and through their direct contacts to the workforce and to national works councils, if any.

1.3.a. Deciding to set up the EWC

UNI Europa acknowledges that the decision as to whether or not to establish a SNB is one which belongs to the employee representatives of a company, in conjunction with the central management of a company. Nevertheless, UNI Europa should evaluate whether or not it is advisable to encourage the establishment of an SNB or whether a different strategy towards the company is more appropriate. If an SNB is to be established, the initiative should be taken in a timely man-

ner and in cooperation with the affiliates concerned

*(more than 1000 employees in Europe and more’ of 150 employees in 2 countries)

The decision to take care or not of a specific EWC or of a certain multinational is in any case mostly political. The listed criteria are reasonable, for European Federations, two are the crucial points:

- EWCs (and/or multinational companies where one can establish an EWC) that are unionized need a capacity and a transnational union experience that stimulates union alliances among different countries and makes them easier, also on the basis of a deep knowledge of previous EWCs experiences: this should be the main duty of European Federations in this context

On the other hand, the less unionized EWCs are not necessarily hopeless, we should at least try to act as experts of European Federations, bringing the added value of technical skills and knowledge of the EWC Directive (and complementary norms, see mentioned db) and experiences on the practical functioning of other EWCs, and the problems therein. It is an added value that also the less unionized EWC can’t but recognize and that may serve as a base for a unionization process.

- In every situation, the network of transnational relations among unions, the contacts and the ability to identify the reliable persons in various countries, are a determining added value if one aims for quality and future perspectives for each EWC, an added value which is typical of the expert (or “coordinator”) of European Federations.

Trade-union ambivalence towards the EWC

Once the decision to set up a EWC is made, we need to be very well aware of the contradiction between the potential role for trade-unions in implementing such decision and the limitations to such role by the Directive 2009/38 too, even before and regardless any current practices, since the 2009/38 gives the trade-union the mandate just to represent its competent European Federation and only during negotiations (or re-negotiations) of the agreement on the establishment of a EWC, and only as **experts**, under voluntary (and not compulsory) invitation 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)

This contradiction has been making and is still making it difficult (both for the individual unions and for the EU trade-union Federations) to answer questions like the following three ones, or even just to answer them in one clear way:

- Shall we try to enlarge as much as possible the *de facto* role within EWCs up to managing the T.C.A.?
- Shall we try instead to circumscribe the role only to information and consultation?
- Shall we participate (as coordinators) only in unionised EWCs, or shall we work to unionise as many of them as possible?



1.3.b. When there is an obligation to establish a EWC. Who is obliged

When there is an obligation to establish a EWC.

According to the Directive 2009/38, 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.

For the purposes of this Directive:

- ‘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;
- ‘group of undertakings’ means a controlling undertaking and its controlled undertakings;
- ‘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 othergroup undertaking with at least 150 employees in another Member State.

Who is obliged.

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, in a Community-scale undertaking and a Community-scale group of undertakings.

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 for creating the conditions and means necessary for the setting-up of a European Works Council.

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 for creating the conditions and means necessary for the setting-up of a European Works Council.

1.3.c. Group's characteristics

What is the deadline to conclude the concerned negotiation process?

Go to 1.2.c. Business accounting: use of the manual

At the beginning it's important to know in which kind of transnational group we operate, in terms of:

- Nature of group
- Structure of group
- Geographical composition

Go to 4.3. Glossary annex business accounting

In particular B

1.3.1. Start Up – check list

1.3.1.o. Introduction on the start up

In which companies may an I&C body be formed?

1.3.1.a. To establish a EWC

Who can start the relevant procedure?

What kind of information has to be provided for by the Central Management?

How many employees and in how many countries are required to set it up?

1.3.1.b. Applicable laws

Which legal provisions must be considered?

Which case law?

1.3.1.c. Information on the group

Go to 1.2.c. Business accounting: use of the manual

Where can I look for information on the size and characteristics of the company? Is the consolidated balance sheet enough? It's important to collect information out of accounting, as well. You can find a lot of information on web.

Go to 4.3. Glossary annex business accounting

In particular: B

1.3.1.d. Contacts aspects

How do I contact trade unions of other Countries?

1.4. TRADE UNION ALLIANCES - STEPS

1.4.o. Introduction on trade union alliances

Trade union alliances

EWCs should always reflect the aims and objectives of the trade unions that organize in a company.

The EWCs need to be regarded as tools for UNI Europa and its affiliates to defend and promote employees' interests. There is a need to ensure that trade union members genuinely benefit from the European legal provisions and that companies' managements do not circumvent legitimate trade union representation.

For this reason, the development of trade union alliances is a fundamental element in our work for strong EWCs.

of affiliates (trade union officials) organizing in the company concerned.

The aim of a trade union alliance is to:

- ensure maximum support to the SNB/ EWC.
- secure a common trade union approach to the company concerned.
- gather information to obtain a comprehensive overview of the company.
- ensure a balance between the national interests of affiliates, in order to allow for a truly European/international approach, creating a stable basis for transnational trade union activities (such as campaigns or negotiations for a global framework agreement).
- develop the EWC as a tool to empower members from countries with little or weak trade union involvement to demand and enjoy the same rights as colleagues from countries with stronger trade union power.
- discuss and implement strategies for raising the unionization rate in the company, and in the EWC.
- protect and promote the interests of employees within multinational companies operating in Europe.

1.4.a. The aim of a trade union alliance

Any SNB and EWC should be embedded in a stable and clearly defined European trade union alliance covering the company concerned. The alliance should link unionized SNB/EWC members, the SNB/ EWC coordinator and the representatives

The alliance can be extended beyond Europe to become an international trade union alliance. UNI Europa sectors should initiate and coordinate trade union alliances for the companies in their sectors, deciding on the structure, the scope and possible rules of procedure and ensuring that this process is transparent.

Cooperation with other European Trade Union Federations

If different European Trade Union Federations that are members of the ETUC organize in the same company, UNI Europa will cooperate with these Federations in an open and constructive way, for the benefit of the employees concerned.

The T.U.A. can be set up:

1. *Before starting the procedure to set up the EWC or the designation of the SNB also in case of the Societas Europea*
2. *Within an already existing EWC.*

Case 1) is normally better in terms of effectiveness, but case 2) is normally more frequent due to the simple fact that the T.U.A. strategy is a result of the experiences made by UNI within the EWCs.

1. Platform and alliance building

- *It is key to prepare a draft of the EWC Agreement, so that negotiations take place on OUR text and not on that which would almost*

certainly be proposed by the company. Such draft should be ready to be shared by the SNB before starting the negotiation to be brought at the first session of the latter.

- *It is key to take advantage of our direct contacts in various countries and unions interested in the establishment of the SNB, so as to assure the highest promptness in the procedure and to prevent the Management from nominating SNB members who are not genuine trade-union reps, or at least genuine employees reps. (SEE ALSO 1.5.o)*

1.4.c. Geographical and Financial information

Go to 1.2.c. Business accounting: use of the manual

It's fundamental to collect information about geographical distribution and Financial leverage (chain of command by participations) to understand who is really managing the group and where, to bargain at the right level of ownership.

Go to 4.3. Glossary annex business accounting

In particular: B, C, D.1

1.4.1. Trade union alliance annex steps

1.4.1.a. Establishing a TUA: two important aspects

Establishing a TUA: two important aspects

- *The key point is how to build a relation among external trade-union reps and internal employees reps within a EWC, while establishing the T.U.A. itself, not to be perceived as "intruders" aiming to impose their vision, their line, and not to be seen as foreigners by the EWC members, Sel.Co. members, President or Secretary.*

Such problem, depending on the resistance encountered, can only be faced through the authority and added values brought by the external reps such as experts and Uni coordinator, that are able to overcome also internal skepticism.

This action may be followed by dialogue and discussion that may also be vividly dialectic, and if necessary by variable alliances among different countries, among external and internal reps, based on the shared UNI guidelines and the above mentioned authority conquered on the field.

In the worst case, you may decide to stay out of it, and establish a T.U.A. that does not share or subscribe to specific acts and initiatives of the EWC, but that is capable of conveying its point of

view and messages, also critical ones, through alternative proposals that gather ample and crossover forces.

- *The commitment required by the guidelines of Uni Europa must take in account the human and financial RESOURCES necessary to achieve the indicated tasks and objectives. A clear understanding of limits of resources is necessary, together with the knowledge of the time available to use these resources. This sometimes pushes or actually compels to merge roles such as that of the technical expert, the political coordinator, or T.U.A coordinator.*

1.4.1.c. Cross - reference

Go to 1.2.c Business accounting: use of the manual

Go to 4.3. Glossary annex business accounting



How to relate with other members

In order to provide a wider range of information about communication within European Works Councils, we present some points after a previous research, edited by a group of mainly German trade unionists and experts. The purpose of this manual conceived by the Leonardo innovation transfer project TEAM.EWC is to provide and distribute a seminar concept for trainers and coaches of EWCs. The main focus of the material is on the development of intercultural competence, legal and organisational frameworks for EWCs and target-setting and decision-making processes.

TEAM.EWC provides shared indications about “How to relate with other members” “inter-cultural communication” and language

*«European network of workers’ representatives: Within the European Works Council the scope and potential to include the members of the committee, as well as those of the national workers’ representation, into a communication network should be utilised. This network should be coordinated by the steering group of the European Works Council and supported from the trade union side. In this way the European Works Council can make a contribution both to the improved cooperation and to the intercultural understanding within – and also on a national level – and it can help improve the communication between the company employees, especially for those in countries where workers’ representation on a national level, and hence the opportunity to share information among each other, does not exist.»*¹

Cultural differences between people and groups are historically shaped by their background of class, age, education, gender and personal experience. Cultural values are neither static nor exclusively defined by nationality. Enhancing intercultural competence for EWCs should cover two aspects:

- *Firstly, getting to know other people’s understanding of themselves as employee representatives, and thereby getting an overview of the different systems of interest representation in the countries of the EWC members.*

¹ TEAM.EWC – A Leonardo da Vinci innovation transfer project, Training, Education, Advice, Management for EWCs. A manual for trainers and lecturers, IG BCE BWS GmbH, Hannover, 2013, p. 32; Url http://www.adam-europe.eu/prj/8620/prj/igbce_bws_handbuch_2013_eng_web.pdf, consulted on July 7th, 2016.

- *Secondly, learning about differences in the social behaviour and interaction between people in general, which are influenced by historically developed cultural traditions, and how these may interfere with the joint work in the EWC.»*²

TEAM.EWC summarizes in actual and effective words, taking a clear position about Language barriers and inter-cultural bridging:

«Language barriers and inter-cultural challenges: differences between language and culture play an important role in the development of the communication among workers’ representatives, and with the management, and should not be underestimated. This challenge must be faced and the problems that appear in this context must be solved.

Language problems: The issue has been accompanying the European Works Council from the very beginning. It is clear that it is of great help for the development of mutual relationships if one can communicate in a common language. This common language can only be English, according to our present understanding. So there is no other option but to accept the fact that anyone who wants to make a meaningful contribution to a European Works Council for a considerable duration of time should be in command of the English language or at least learn the language. English is not only the global language of management; it also offers many benefits regarding the acquisition of skill which other languages cannot offer. For example, it is fairly easy to reach a level of proficiency on which one can make oneself understood (without mistakes) relatively quickly. Hence EWC members have the opportunity to converse outside of meetings about questions concerning everyday life, particularly about working life.

Usually, the language skills of EWC members tend not to be sufficient enough to comprehend complex issues, let alone to make representations thereof. This is why it is indispensable to make use of interpreters and of translations of significant documents. Therefore, interpreters and translated documents must be provided to any EWC member who requires either one or the other. This has to be stipulated in

² Ivi, p. 14; Url http://www.adam-europe.eu/prj/8620/prj/igbce_bws_handbuch_2013_eng_web.pdf, consulted on July 7th, 2016.

the agreement in implicit terms. Also: anyone who has managed to find a reliable interpreter should, where possible, use them in every meeting – this will improve understanding even further.³

To develop effective communication within a group working across cultures, it is important that people reflect on their own cultural values, are able to scrutinize them from time to time, and tune in to the mindset of others as well as enhance their own abilities “see themselves as others see them”.»

³ Ivi, p. 36; Url http://www.adam-europe.eu/prj/8620/prj/igbce_bws_handbuch_2013_eng_web.pdf, consulted on July 7th, 2016.



1.5. ESTABLISHMENT OF A SPECIAL NEGOTIATING BODY (SNB). PATH

1.5.0. Introduction on Starting a SNB

Starting a Special Negotiating Body (SNB)

Academic research as well as practical experience has shown that trade union co-ordination is truly strategic right from the very beginning of the procedure to set up the Special Negotiating Bodies (SNBs) as well as in the ongoing work of EWCs once established, moreover since the Directive clearly states that the responsibility to provide the S.N.B. is in charge of the central management. (see artt. 4-5).

ATTENTION!!

An “anti-union” central management will probably try to set up the S.N.B. by anticipating both Uni and the national unions concerned and appointing the individual SNB members among the people who are not necessarily representative of the local employees, but are “in the pocket” of the employer, in order to foster an anti-union attitude within the SNB and orientate the negotiation in its favour. Such a risk can be prevented by anticipating the management i.e. by immediately building a proper

T.U.A. that is strong enough to find out and elect the majority of the SNB members among genuine trade-union reps. At the same time it's even preferable to collect the relevant information for opening the procedure through informal and reliable sources first, possibly through the members of the T.U.A “in progress”, before addressing the central management directly as per the Directive indications.

...therefore:

The S.N.B as a first result of a new T.U.A. (SEE ALSO 1.4.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)

- Prepare an effective and strong 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.
- Work for the best balance between an agile and well representative SNB, within the spirit of the 2009/38 Directive which is to avoid including countries where the too small number of employees can mean to include no unionised rep in the SNB or even someone who is not even a genuine employees reps, always bearing in mind the structural trade-union coherent majority within the SNB as key.
- **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*

1.5.a. Responsibilities of UNI Europa and the affiliates

Responsibilities of UNI Europa and the affiliates

The decision to start to work towards an EWC, and the necessary implementing steps, should be taken by the relevant UNI Europa sector, in close cooperation with the affiliates concerned, meeting the requirements of European legislation but also working to the principles described in these Guidelines.

It is the responsibility of affiliates concerned to inform the workforce of the company and to monitor SNB and EWC elections in their country.

When an initiative to set up an SNB comes from UNI Europa affiliates or from the workforce within the company and is supported by UNI Europa affiliates, it is essential that affiliates always contact and consult with UNI Europa before starting any procedure.

The UNI Europa sector(s) responsible will then contact all affiliates situated in the countries concerned.

This applies equally if the initiative to start an SNB comes from the management side.

Steps towards setting up an SNB

Before the setting up of an SNB, the relevant UNI Europa sector will (subject to agreement and capacity)

convene a trade union coordination meeting with all potential members of the envisaged trade union alliance.

The aim of such a trade union coordination meeting is to:

- Enable the different actors to meet and communicate with each other.
- Maximise trade union representation in the SNB (including by supporting affiliates in coordinating elections of SNB members).
- Gather information available.
- Reach an agreement on common positions and steps to be taken.
- Identify possible conflicting national interests and find solutions so there is no obstacle for the process.

The designation of SNB/EWC coordinators

The coordinator can be a staff of UNI Europa or a trade union official of a UNI Europa affiliate acting with a UNI Europa mandate.

The responsibility for designating the SNB/EWC coordinator lies with UNI Europa. UNI Europa will ensure both the transparency of the process of nomina-

tion and the acceptability of the nominated person by the EWC.

Affiliates will be included in this process, as the most important players in everyday SNB/EWC operations. Affiliates' role is to ensure that the selected coordinator has the necessary profile and resources, and to inform UNI Europa if he/she is no longer able to continue in this role.

In this situation, affiliates can propose another person to take over the role.

Any proposed coordinator must be informed of what would be expected from them in the role.

See note inserted in annex 2TNA



1.5.b. Information to European social partners on the start of a SNB

Information to European social partners on the start of an SNB (via the procedure described in EWC directive 2009)

Article 4.2.c of EWC directive 2009/38/EG stipulates that “Central management and local management and the competent European workers’ and employers’ organisations shall be informed of the composition of the special negotiating body and of the start of the negotiations”.

The European Trade Union Confederation (ETUC) and the European employer organization BusinessEurope have agreed to each provide a single contact e-mail address in order to ensure effective transmission of information from companies to the European social partner organisations. The ETUC and

BusinessEurope are each responsible for disseminating the information they receive in this way to the competent sectoral social partner organisations. The ETUC has set up the following e-mail address for this aim: ewc@etuc.org.

The ETUC is responsible for forwarding the information it receives as appropriate to UNI Europa and the other European Trade Union Federations. UNI Europa has created an email account ewc@uniglobal-union.org for this purpose. It is the re-

sponsibility of UNI Europa to ensure that the necessary contacts are made with the relevant company representatives (employees as well as management).

UNI Europa follows the procedures proposed by ETUC in *Rules of Internal Procedure - Information of European Social Partners of the start of EWC negotiation*.

UNI Europa affiliates should monitor in their countries whether the requirement to inform the ETUC and BusinessEurope is being complied with by companies. As an additional safeguard, affiliates should notify UNI Europa when they first become aware of the setting up of an SNB

Negative response from the company's management to an SNB request

In case of an outright negative response to a request from the workforce for an SNB, affiliates should inform the UNI Europa sector(s) concerned, so that a decision on coordinated action towards the company can be jointly agreed. Affiliates should also inform UNI Europa if the company's management agrees to start the procedure for the setting up of an SNB but is obviously trying to avoid or even exclude trade union involvement..

Adequate steps should be coordinated between UNI Europa and its affiliates.

1.5.c. The trend of the group

Go to 1.2.c. Business accounting: use of the manual

It's fundamental to understand the trend of the group, first of all in terms of growth/decline, economic performance of the various segments (geographical and/or business) of the Group

The study of its evolution allows to assess the strategic decisions of the holding, in terms of:

- acquisitions, develop/abandonment of strategic business areas
- changes in the level of company and/or financial integration

Go to 4.3. Glossary annex business accounting in particular E

1.5.d. Advice for preparation of an international meeting with interpreting Check list

Advice for preparation of an international meeting with interpreting

- Always pick the right interpreting method for the planned event.
- Not everyone who speaks a language is also a good interpreter.
- Be careful when the corporate management offers an employee with foreign language skills as a “cost-efficient” alternative to providing a professional interpreter.
- Provide the interpreters with as much background information on the event as possible.
- Support the interpreters in their work. Make sure that they receive copies of the documents that are referred to before the meeting.
- Ensure that the interpreters are familiar with the “trade union lingo” and the EWC specialist terms as well as the typical EU diction.
- If possible, avoid expressions widely unknown to anyone not at home in the centre of the trade union organisation.
- Think of your listeners when talking about interpreting. Many of us have an accent, speak dialect or speak very quickly.



1.6. NEGOTIATION OF EWC AGREEMENT. STEPS

1.6.1. Introduction on negotiations for an EWC agreement: from minimum standards to preferred outcomes

EWC agreements are always a result of negotiation and compromise. However, an EWC agreement must never go below the standards defined by EWC directive 2009/38/EC including the subsidiary requirements, as well as the applicable national transposition law or other applicable legislation. UNI Europa wants to achieve better provisions than those provided by legislation.

These Guidelines include Annex I suggesting several concrete points to be negotiated for in an EWC agreement.

Please see hereunder some recitals of the 2009/38 that have clearly inspired most Uni Europa indications on how to manage an EWC from its roots i.e. from the NEGOTIATION of the Agreement

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

LEVEL OF 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 ANTICIPATE AND MANAGE 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)

1.6.1.a. UNI Europa's role in the negotiating process

UNI Europa will ensure, through the communication and coordination role described in its Guidelines,

that the employees' representatives have a common approach and that negotiations run smoothly.

UNI Europa will encourage and support the SNB to draw a EWC agreement based on Annex I of these Guidelines. This draft will be presented to management at the earliest possible stage of negotiations.

The role of the expert of the European Federation, appointed in joint agreement with the DSN, is a resource for the negotiation process and to aid the EWC.



1.6.1.b. Signature of the EWC agreement

As provided by the directive 2009/38, for the purpose of the negotiations, the special negotiating body may request assistance from experts of its choice which can include representatives of competent recognised

Community-level trade union organisations. Such experts and such trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body.

From another point of view, UNI Europa should be the (co-)signatory on EWC agreements negotiated within its sphere of responsibility. This demonstrates that the trade unions involved stand united and in transnational solidarity behind the EWC.

UNI Europa will not endorse an agreement that is below the minimum legal standards.

During the negotiating process, UNI Europa will decide on a case by case basis how to proceed with the company concerned.

In any case, at the moment there is not a legal provision on the participation of UniEuropa to the agreements.

1.6.1.c. External expert and accounting data in the agreement text

Go to 1.2.c Business accounting: use of the manual

This is the moment to bargain for useful information to evaluate the condition of the group, both in current and dynamic terms. We are interested in having the right to access balance data and periodical evaluations (trimestral, biannual), and being informed on consolidation modalities of data, on orders and relative intergroup pricing, and on the existence and typology of subcontracts external to the group.

The direct information we are able to bargain will be a useful analysis tool that is stable in time.

At this step, it's possible to bargain to have an external, independent, accounting expert, that means the EWC has to choose the expert.

Go to 4.3. Glossary annex business accounting

1.6.2. In addition

1.6.2.a. Select Committee and languages

Select Committee: its composition must take in account the best balance possible between operative agility and representativeness. In this sense, no country should express the majority of the SelCo even if largely a majority among workers.

Languages and interpreting: our starting point should be the right to interpreting in all languages of EWC representatives. We should nevertheless consider a common language during meetings and even more during informal contacts, because it makes

mutual comprehension and the intensity of relations definitely easier. When we have a decent ability to communicate in such common language, we should test this opportunity starting from the SelCo meetings. Of course any waiver to part or all of the interpreting and translation services must be object of an acquired negotiation with the management, whereas the bigger the save in money for them (interpreting is maybe the most expensive voice in the expenditures of an EWC, at least in relative terms), the more rights for the EWC, like more meetings in a year, more training, etc.

Even in this sense so, renouncing to interpreting (within precise limits and conditions) may become an important opportunity/resource.





1.6.2.b. Agreement and standard rules. A way to improve the agreement

Agreement and standard rules. A way to improve the agreement

EWC Directive 2009/38/EC on the elements of the EWC agreement.

In synthesis, the EWC agreement have to include the standards and definitions set by the EWC Directive 2009/38. But it may improve *in melius* the provisions of EWC Directive.

In this sense, it could be useful to analyse the definitions of information and consultation provided by Directive 2002/14 in order to improve the notions that have to be detailed in the EWC agreement.

Furthermore, delegates have to know the subsidiary requirements of EWC Directive 2009/38/EC for two reasons. First: in case of contrast with the central management on the elements of the EWC agreement, the delegates could ask the application of the subsidiary requirements of EWC Directive. Second: in order to grant the improvement *in melius* of the provisions of the EWC agreement.

It's always advisable to put an expiration date of the agreement. This allows you to renegotiate the agreement at regular intervals taking into account legislative and judicial innovations, as well as good practices that occurred in the meantime.

1.6.3. Negotiation of EWC agreement -annex: Elements for a EWC agreement

Annex: Elements for an EWC agreement

An EWC agreement must include the standards and definitions set by the EWC Directive 2009/38/EG including the subsidiary requirements, and the provisions of the applicable national transposition law. In addition, UNI Europa recommends inclusion of the following points:

Meetings:

- The EWC must be able to hold at least two meetings per year.
- The right to extraordinary meetings – whenever the EWC considers it necessary - must be included.
- The agenda for the meeting(s) should be worked out between the Select Committee of the EWC and management.
- The official EWC meeting should last at least one day.
- There should be one full day for a preparation meeting and sufficient time for de-briefing.
- Travel time for EWC meetings must be treated as working time.

Select committee:

- According to the subsidiary requirements of EWC Directive 2009/38/EC, the employees' representatives within the EWC must have the right to elect a select committee.
- The mandate of the select committee members emanates from the agreement and is given by the full EWC.
- The EWC agreement must define the role and responsibilities of the select committee so that it at least contains the following rules:
 - It discusses and agrees with management on the location, agenda and structure of the plenary meeting,
 - In co-operation with management it discusses and agrees on the minutes and statements of the plenary meeting.
 - The select committee must have the right to hold regular meetings financed by the company.
 - It must be informed and consulted by management in good time especially in the period between official meetings if extraordinary transnational aspects become relevant.
 - The select committee must have the right to produce and circulate position papers. Furthermore it should have the right to have these papers translated into the relevant languages.

- The select committee must have the right to hold meetings fully or partly without any representation of management.
- Information and consultation that takes place in select committee meetings with management must not replace information and consultation at full EWC meetings.
- In order to have a strong select committee it is recommended to have provision for elected substitutes.

Information and consultation:

- The definitions (“information”, “consultation” but also “transnationality” including Recital 16) of the EWC directive 2009/38/EC should be explicitly incorporated in the agreement’s text. If the national legislation which is going to be applied provides for better and even more concrete rules, then these provisions should be incorporated.
- It should be clear that the duty to conduct proper information and consultation on the part of management must be based on a written report made available in good time prior to the pre-meeting to all members of the EWC in the appropriate languages.

Languages:

- Simultaneous interpretation from and into all relevant languages must be provided for the main EWC meeting, the pre-meeting, de-briefing meetings and select committee meetings.
- Long-term plans to achieve one major working language with suitable language teaching should be avoided and cannot be used to restrict simultaneous interpretation and translation where this is necessary.

Trade union representatives and additional experts:

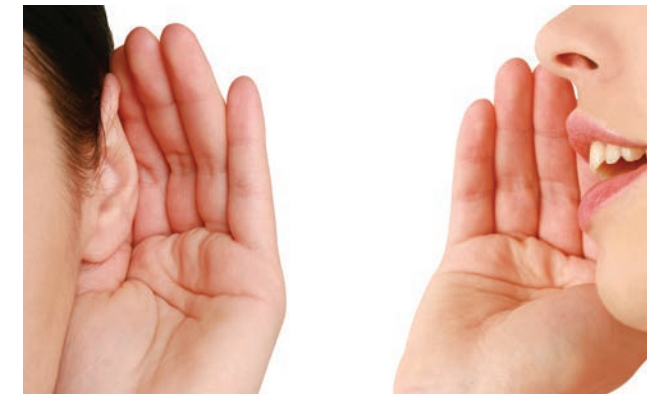
- The agreement must provide for a permanent seat for a trade union representative.
- In addition, the EWC and the select committee must have the right to invite experts (financial, economic, legal, ...) of their own choice to all meetings.
- Management should be informed of this; it is however not acceptable that experts can only be invited to certain pre-determined points on the agenda.
- The EWC agreement must ensure that the company covers the cost of at least one expert, at least concerning travel and accommodation.

Composition of members:

- EWCs should be representative of the composition of the company workforce, both in terms of gender and in relation to other factors (for example, different types of employees).
- Equality issues (including antidiscrimination, equal pay, women’s health, and other relevant issues) should be included within the remit of the EWC.
- Only legitimate employee representatives (according to national law) should be members of an EWC. It must be transparent to the entire EWC how each member has been elected or appointed in their country.
- Management not to appoint or nominate employee representative members.
- UNI Europa is in favour of including employee representatives from countries that are not European Union member states or in the European Economic Area. Companies operating in Switzerland should include Swiss employee representatives in their EWC. Other countries “beyond” Europe should have the possibility to be represented in the EWC; if full participation cannot be achieved, representatives should be included as observers.
- In order to have a strong EWC, all members should have substitutes.
- A maximum number of members should be avoided.

Confidentiality:

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



Costs and means required:

- All costs in connection with the work of the EWC must be met by management. That includes travel, accommodation, interpretation, translation, communication facilities, training, wages for the time spent on EWC work.
- EWC members should have access to communication facilities (internet access, local and international phone calls, Fax, e-mail, website, webcam).
- EWC members should have access to translation services in order to communicate and exchange information between meetings.

Training:

- Sufficient training for EWC members to fulfil their mandate must be provided.
- New EWC members must be entitled to receive basic training about EWCs and their role.
- Regular possibilities for training and for participation in specialised seminars should be provided to EWC members.
- Trainers and contents of the training should be chosen by EWC members according to their needs.

- Training opportunities should be available to the entire EWC as a group. This is to support the development of group coherence and a common basis of knowledge.

Internal rules of procedure:

- Internal rules of procedure can help to prevent conflicts within the EWC. They can describe the roles and tasks of the chair, the select committee members, and other functions within an EWC. Such rules do not necessarily have to be a part of the agreement but can be an internal document for employees reps only. Such rules do not need acceptance by management.

Applicable national law:

- SNB members and management should jointly decide under which national law the EWC will operate and which is the court of jurisdiction.

This information should be included in the agreement.

1.7. MANAGING THE EWC

1.7.0. Introduction

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 to be 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**

1.7.a. EWC agreement goals

UNI Europa aims to:

Ensure that employees' rights to information and consultation are respected at all times.

Ensure trade union support for EWC members.

Ensure that all EWCs, irrespective of the date of signature of their agreement, fully benefit from the improvements introduced by the new Directive of 2009 (Directive 2009/38 EC).

Increase employee involvement in the decision-making mechanisms of companies covered by the legislation mentioned above.

Reinforce cooperation between employees' representatives across borders.

Link developments at the company level to more general trade union goals.

Strengthen trade union alliances in the companies concerned.

Ensure that companies' EWCs are representative of the composition of the company workforce, both in terms of gender and in relation to other factors.

Help to develop EWCs into powerful tools of employee participation in companies' decision making.

Pro-actively influence EWC agendas to cover more than the standard issues covered by the EWC Directive, so that issues such as Human Resources, Equality, or Health and Safety are also included.

Give particular support for EWC members from Central and Eastern European countries, to enable them to connect with their trade unions, receive adequate training and participate actively in their EWC.

Ensure – together with the affiliates concerned – a high unionisation rate within companies.

Ensure that EWCs are linked effectively to employee representation/participation at other levels (workplace, regional, national or international levels and board level representation).

Empower EWCs to anticipate changes and to pro-actively offer possible alternative strategies and solutions to management. In order to put these goals into practice, a strong trade union presence in EWCs is vital.

1.7.c. General knowledge of balance analysis

Go to 1.2.c Business accounting: use of the manual

What guides the EWC management in terms of accounting is ask the questions aimed at obtaining. The necessary information to evaluate the health of the group in which we are representatives, being aware that the figures of a balance sheet could give us key political information on the strategic choices of the group itself. In addition to official data provided by the company, or found on the official site, it is useful to look also for alternative sources.

To do so, we must be aware of what we are looking for and where to look for it.

It's useful to acquire a:

- General knowledge of balance analysis, of significant balance figures analysis and tools for a first evaluation of group.

Go to 4.3. Glossary annex business accounting

In particular F/G/I



How to base a good communication

Communication within EWCs is a very important issue. As in previous instances, we propose to the trainees, the compact and efficient text elaborated by the “Leonardo innovation transfer project -TEAM.EWC”.

TEAM.EWC gives some shareable suggestion in order to realize and be acquainted of the different “styles of speech”:

«Apart from looking at different industrial relations system the focus is on typical situations which EWC members experience and can relate to, e.g. how meetings are organised or how people state their points of view in discussions.

An example for different styles of speech: in some countries people are used to stating their opinions frankly and briefly. Coming directly to their main point without what they would consider unnecessary introductions or polite phrases.

In other countries, however, this kind of behaviour might be considered too direct or even rude. Because here the ‘normal’ way of stating your opinion requires you to first set out the general context of an argument and acknowledge what has been said by previous speakers, before stating your opinion.

Thus often when communications cause conflict, the problems might have more to do with style or process than with the content of what people are actually saying.

People can learn to understand different communication styles and appreciate that communicating across cultures requires extra effort and sensitivity. Good communication requires commitment and concentration. The overall aim of the module ‘Enhancing intercultural competence’ is to offer people conceptual tools for analysing and understanding how other EWC members behave, making them more aware of the cultural background and values of each member in order to overcome unnecessary frustration and irritation in the EWC.¹»

¹ TEAM.EWC – A Leonardo da Vinci innovation transfer project, Training, Education, Advice, Management for EWCS. A manual for trainers and lecturers, pp. 14-15; Url http://www.adam-europe.eu/prj/8620/prj/igbce_bws_handbuch_2013_eng_web.pdf, consulted on July 7th, 2016.

We strongly share TEAM.EWC, noticing that a good communication, to be effective, must be established and sustained by the current agreements; that opinion is shared by us:

«Organisation of the cooperation: The work of the European Works Council thus stands and falls foremost with the question about whether a good communication base has been established or not. In order to ensure this is the case, the EWC agreement must – as mentioned before – provide an adequate legal and organisational foundation.

The European trade union federations in particular have compiled adequate material for this purpose.

This material, however, does by no means replace qualified advice, training and further instructions.

The ETUF have early recognized the need for trade union support in EWCs and endeavoured to have one trade union coordinator for each EWC. If one wants to make use of such means, it should be adhered to in the agreement as the European Works Council law merely provides general guidance in such cases.

The same goes for material, financial and technical means as well as for personnel necessary for a functioning EWC office that is fit for purpose. And finally, it must also be noted that those means should be readily available for members of the European Works Council – otherwise the communication within the committee won’t work. Even in companies where actual practice is considerably better than the text of the agreement suggests it should be pointed out at this stage that the agreement is not between individuals but between the central management and the European Works Council. It is therefore advisable to regularly adapt the existing agreements to the actual current state of practice in writing: people may be exchanged, and that is when the dependability of written regulations comes to the fore.²»

² Ivi, p. 34; Url http://www.adam-europe.eu/prj/8620/prj/igbce_bws_handbuch_2013_eng_web.pdf, consulted on July 7th, 2016.

1.7.1. Managing the EWC - check list

Managing an EWC

Some key points

More on subjectivity and individual approach

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 interpreting** should be given up only in exchange of an equivalent amount of economic resources to allocate to the EWC budget. Where the language skills of the individual EWC members may allow to avoid translations/interpreting filters and mediation, quality of communication in the EWC may

only improve, and with it the capacity to take decision in a timely manner. **Such exchange, nevertheless, has to be seen on a case by case approach.**

- **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.

Two STRATEGIC topics:

- 1) **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

- *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.

- *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.

- 2) A "mass" campaign for true consultations

All the studies we are aware of on EWC functioning agree on the dramatic lack of appropriate practices which could assure a barely effective consultation, revealing in this case a blatant fail in trying to achieve one of ("the") pillar on which the whole existence of EWCs rests upon. UNI Europa (Together with the ETUC, if possible) should promote a true campaign aimed at identifying the problems

obstructing consultations and to remove them, together with employers and their European level representatives.

1.7.1.c. Cross - reference

Go to 1.2.c. Business accounting: use of the manual

Go to 4.3. Glossary annex business accounting



1.7.2. EWC Management - Confidential information - annex

1.7.2.a. EWC related organising

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

TRANSNATIONAL ASPECTS

“.... 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)**

CONFIDENTIAL INFORMATION

*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 on a kind of borderline 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.

1.7.2.b. Rules on confidential information

In specific cases and under the conditions and limits laid down by national legislation, 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.

As provided by the article 8 of the Directive 2009/38, 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.

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

So, workers' representatives, members of the SNB and experts that will assist them, may not transmit information covered by a non disclosure clause to third parts.

What about the case of improper use of the non disclosure clause by the employer?

With the aim of check the fairness, there are provisions for administrative or judicial appeal procedures which the employ-



ees' representatives may initiate when the central management requires confidentiality or does not give information in accordance with Article 8.

Italy

This is the Italian law, a possible solution to this issue:

Art. 18 of decree law 113/12:

- “(...) the parts (...) foresee the establishment of a conciliation commission to solve in preliminary and non contentious way controversies related to (...) the confidential nature of information given, or that qualify as such (...),
- And the objective criteria to identify information that could create notable difficulties to the functioning or activities performed by involved companies and damage them or the markets; to spreading confidential information, as in the mentioned article 10 paragraph 1”.

1.7.2.c. The economic significance of the clause

Go to 1.2.c. Business accounting: use of the manual

Whistleblowing: what do our people “sense”?

It's important to listen to people working in the company, that could have crucial but confidential information about the real situation of the company.

It's the first sentinel to understand if management is cooking the books.

Go to 4.3. Glossary annex business accounting

1.7.2.d. Foresee limits, also in terms of time, to the confidential clause for each information

A good practice of the UNI Credit EWC is to call an SC at the end of important data presentations to financial analysts, for example industrial plans or important company operations, when there is no more confidentiality, because information has become public, but early enough to prepare press releases and information notes for workers, at the same time this info is printed on the press.

In this case too, to provide some hints

Organising the flow of information

In this case too, to provide some hints in the field of communication within EWCs, we quote from the research issued by the “Leonardo innovation transfer project TEAM.EWC”.

Important issues about information, such as organising the flow, internally and with the management, from the “efficiency and good communication” point of view, are specified by the authors in these exemplary steps:

«Organising the flow of information: The hitherto explanations should already have indicated that the purpose of the work of a European Works Council is in no way to limit the information of the company management to EWC members or even the EWC committee. The role of the European Works Council is to support the work of the national workers' representatives and of their participation rights through improved information about the transnational aspects of the company management. Thus the information given to the European Works Council must be passed on to the national workers' representatives. Finally, the employees also need to know what their representatives in the European Works Council can find out and what they can influence. This is important mainly because in this way, the European Works Council illustrates its competences and its possibilities for action, which it could not keep or build on without the support and the understanding of the workforce.

Fundamentally, the European Works Council should be informed before the national workers' representatives are informed, as and where this does not impede with national laws. The information of the European Works Council has at the latest to be given simultaneously with an according information of a national employee representation if the latter potentially has priority. These rules should also be described and determined as a rule in an agreement. The rule of confidentiality is paramount to the relationship between the European Works Council and the national workers' representatives: the European Works Council must brief the national workers' representatives, towards whom the transfer of information is not regarded as breach of confidentiality.

This ensures that the importance of clauses of confidentiality, as is often endeavoured by the employer side, is reduced in essence to the issue of

transferring the received information to the ultimately concerned party, namely the employees of the respective companies. Insofar it is commended – as it is done in a national context also – to determine clear agreements about the point in time for the release of the information. However, this should not result in secrecy. Confidential information should however, not be passed on without timely briefing of the employer side and only after a decision has been made about it in the European Works Council. Otherwise individuals might unnecessarily be exposed to compensation claims and to threats thereof.

It should be self-explanatory that the employees should be briefed about the information the European Works Council receives. It is, however, only stipulated in the laws. Therefore it should be arranged in the EWC agreement, how, in which form, how frequently etc. the imparting of the information to the employees should be conducted. In practice there are varying methods for the dissemination of the information, be it from the shop stewards' intranet site or through newsletters. What all publications share in common is the fact they should be made with the knowledge of the employer's side and that a respective accord exists in the EWC agreement or in code or the rules of internal procedure. This is because all publications cost money which the employer has to provide.¹

Goal efficiency and good communications: Even during the consultation procedure the preparations for the implementation of the planned decision by the company management may continue. The sooner an opinion is made, the bigger the possibility to influence the decision. Hence, efficiency of its own communications is a goal that European Works Council should aspire to!

Processing of information: the first and crucially important point during the development of an effective and efficient European procedure of information and consultation is the acquisition, processing and distribution of relevant information.

In order to not drown in an abundance of information it is important to define the type of information which is relevant to the European Works Council and to its members. Who requires what information? Where can this information be found and in which form should it be provided? These are questions for workflow

¹ TEAM.EWC – A Leonardo da Vinci innovation transfer project, Training, Education, Advice, Management for EWCS. A manual for trainers and lecturers, pp. 30-31; Url http://www.adam-europe.eu/prj/8620/prj/igbce_bws_handbuch_2013_eng_web.pdf, consulted on July 7th, 2016.

planning which need to be worked out by the steering group and by the office of the European Works Council. Such questions about regular flow of information should be clarified during “normal” working operations, and should be applicable and function in a “crisis”, which is when one will not have the time to answer questions about principle points that have been left unresolved. Experience has shown that cross-border communication does not work well without good planning and clarity regarding the responsibilities during the procedures. This is amplified by the fact that there are no or considerably fewer support mechanisms, but numerous obstacles such as language problems, compared with communications on a national level.

The updated EWC Directive from 2009, furthermore, has not initially defined, but insistently clarified, that the national workers' representatives be integrated in the EWC communications, namely in respect of the chronological progression of the briefings and the consultation as well as regarding the duty of imparting information of the European Works Council to the local workers' representatives, between whom the maintenance of confidentiality is assumed.

In this respect it should be pointed out that these responsibilities can also lead to the realisation that the set-up of a national representation of interests, which does not exist in many countries, can be meaningful. If this is the case, then such a possibility should be rooted in the EWC agreement and should, in addition, be recognised in writing by the respective national company management.²

Communications; internally and with management: Communications in European Works Council is by no means a simple undertaking. One does, however, not talk to each other of one's own accord, neither in writing nor orally. Trade unions and European Works Councils have already made this experience in the Nineties: if initially the questions during the setting-up of a European Works Council primarily dealt with institutional (legal and organisational) matters, questions about communications would then soon emerge on the daily agenda. European Works Councils are made up of representatives of the national workers' representatives, while the national trade unions and workers' representations and collective industrial relations function on different regulative backgrounds from country to country. The workers' representatives who initially convene in the European Works Council have (legitimately) their own national interests in

² Ivi, p. 32; Url http://www.adam-europe.eu/prj/8620/prj/igbce_bws_handbuch_2013_eng_web.pdf, consulted on July 7th, 2016.

mind. In the European Works Council they first have to find a common ground, meaning that they have to find a programme and common goals for themselves. Finally they must – as soon as they possibly can – be in a position to implement the European goals of workers' representation which they have commonly recognised and defined.

An additional obstacle to the differing national back-grounds is the language barrier, which can cause misunderstandings, slow down conversations and make telephone calls difficult to conduct or impossible – these are all difficulties, which are generally non-existent on a national level. It is obvious that these communication barriers cannot be abolished with the mere help of annual meetings. The minimum requirements are the following:

- The development of the knowledge of a common language – namely English – through which the members of the European Works Council can at least communicate outside of official meetings in order to promote understanding not only via interpreters but on a social and human level*
- Regular training in this language for all members of the European Works Council in order to reach a common level of proficiency that can be maintained at that level*
- The provision of interpreters at common and internal meetings for all members in order to prevent misunderstandings and to prevent the falsification of information*
- The set-up of a steering committee (consisting of at least five people) in the European Works Council whose members should originate from different countries and should, where possible, all be in command of a common language so that communication on simple matters can be dealt with quickly and without complications, in person or on the phone*
- Where possible, there should be two regular annual meetings of the European Works Council – or one meeting and one larger training unit to help the members to better get to know each other*
- At least four meetings of the steering committee each year*
- The option to conduct further meetings of the steering committee in cases where important matters for employees or important decisions by the company management, are impending, with the workers' representatives*

from the respective affected countries, and if applicable, with the entire European Works Council

- Regular involvement of the trade union coordinator, maybe also of some national trade unions, at meetings and during the planning procedure for EWC work.^{3»}*

How to bridge cultural and political differences is then stressed out, as previously done by the cited authors, by deeping some crucial aspect; expecially when recommends to EWC the necessary supplements to the national representations of interest:

«Cultural and political differences: The meaning of intercultural teamwork within the EWC will be illustrated within the individual modules of this book. It should be noted during the training build-up that fluctuation of members in European Works Council – regardless of the common duration of members' mandates – happens at a higher rate than in national employees' representative committees. Restructuring in companies takes place constantly worldwide and also in Europe, which results in the expulsion of employees' representatives from their hitherto enterprise or company structures. This will naturally have a negative effect on the merging of the group. It is therefore important to conduct activities together regularly and in short intervals. Competent training has a positive effect in this context and it eases the continual growth of resources in the European Works Council and in its environment.

European works councils do not have the purpose of solely dealing at all times with the formal procedures of the hearing processes. They are intended to be sensible and necessary supplements to the national representations of interest by communicating information on the border-crossing decisions in the company to the bodies that they cannot access directly.^{4»}

³ Ivi, pp. 33-34; Url http://www.adam-europe.eu/prj/8620/prj/igbce_bws_handbuch_2013_eng_web.pdf, consulted on July 7th, 2016.

⁴ Ivi, p. 38; Url http://www.adam-europe.eu/prj/8620/prj/igbce_bws_handbuch_2013_eng_web.pdf, consulted on July 7th, 2016.

1.8. RENEWAL OF THE AGREEMENT. STEPS

1.8.o. Introduction on the renewal of a EWC agreement

EWC agreements: From minimum standards to preferred outcomes

EWC agreements are always a result of negotiation and compromise. However, an EWC agreement must never go below the standards defined by EWC directive 2009/38/EC including the subsidiary requirements, as well as the applicable national transposition law or other applicable legislation.

UNI Europa wants to achieve better provisions than those provided by legislation.

These Guidelines include Annex I suggesting several concrete points to be negotiated for in an EWC agreement.

1.8.a. UNI Europa's role in the negotiating process

UNI Europa's role in the negotiating process UNI Europa will ensure, through the communication and coordination role described in these Guidelines, that the employees' representatives embrace a common approach and that negotiations run smoothly.

UNI Europa will encourage and support the SNB to draft a EWC agreement based on Annex I of these Guidelines. This draft will be presented to management at the earliest possible stage of negotiations.

The role of Uni Europa is essentially delegated to his envoy, and all the multiple and complex responsibilities that UNI Europa identifies correctly, rest almost solely on this person. See info pages for further information.

1.8.b. Adaptation

To know the EWC agreements stipulated in the same company or in company of the same sector is a good practice to obtain a good renewal of the EWC agreement. This is a good way to pick the better existent provisions into the EWC agreement that it is going to be stipulated.

In this regard, it is necessary to remember that the directive provides for cases where it is required to renegotiate. In fact, where the structure of the Community-scale undertaking or Community-scale group of undertakings changes significantly, and either in the absence of provisions established by the agreements in force or in the event of conflicts between the relevant provisions of two or more applicable agreements, the central management shall initiate the negotiations referred to in Article 5 of the Directive 2009/38 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.

At least three members of the existing European Works Council or of each of the existing European Works Councils shall be members of the special negotiating body, in addition to the members elected or appointed.

As known, during the negotiations, the existing European Works Council(s) shall continue to operate in accordance with any arrangements adapted by agreement between the members of the European Works Council(s) and the central management.

The directive also provides for cases where it is not necessary to renegotiate the agreement (see art. 14 of the Directive).



1.8.c. Help of the expert in the renewal

Go to 1.2.c. Business accounting: use of the manual

It's the time to understand the needs of the EWC, in order to bargain for an independent expert (of Union choice), when necessary. Balance sheet analysis is a complicated matter deeply understood, so it is better to ask for an expert; also bargain for the right to information and consultation (annual meeting) and a report on trimestral data.

Waiting for the annual Balance sheet is not enough; it's important to follow the ongoing situation of the company.

Go to 4.3. Glossary annex business accounting

2. PERSONS AND ROLES

2.A. TRADE UNIONIST, ORGANIZER – THE ROLE

2.A.o. Introduction

If your answer to:

«do I have a TNC?»

is

«Yes!»,

The national and/or local officer (e.g.. Fabi/Filcams/Handels ...) will have to verify:

How to do so?:

Asking workers and delegates

Asking the national level

Consulting with the ETUI DB

Asking Google !!!

Often the EWC delegate is not a trade union officer, and hence finds it harder to get used to the “tools of the trade”; coordination, training and involvement activities must be organized for delegates in territorial and sector union structures.

2.A.a. Necessary checks

Where is the TNC Head-Quarter?

Does the TNC cover more than one industry?

Which countries are concerned by the TNC?

What are the number of employees in each country?

Do collective redundancies concern more than one- EWC issue?

The transformation in SE was communicated to other territories, countries?

In addition he will have to know: structure and functioning of European Union Federations.

Periodically organize moments of collective discussion and exchange of experiences among delegates of TNCs and EWC of various groups, moments that should be organized by national unions, with training aims, to promote the feeling of belonging to a national union (and indirectly European) on which you can count when performing the activities of transnational representative of workers.

2.A.b. Legal checks

Must be verified:

- Applicable European Directives
- National reference law EWC/TNC eventual agreements signed by social dialogue committees during sector social dialogue /Decision 98/500/CE of the Commission, of 20 may 1998, that establishes sector social dialogue committees to promote dialogue among social parts at a European level).
- EWC establishment agreement (and of EWCs that followed)
- the existence of a “group” (see art. 2 l. b and c.)
- The existence of a ‘controlling undertaking’.

For the purposes of the Directive 2009/38, ‘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.

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

- a. holds a majority of that undertaking’s subscribed capital;

- 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.

For these purposes, 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.

Notwithstanding what above said, 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) of the Directive 2009/38 or of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

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.

2.A.c. What do we want to know

Go to 1.2.c. Business accounting: use of the manual

We are a multinational group: what do we need to know?

1. Concept of “group”
2. Notion of “control”
3. What kind of group? Nature and typology of group

It’s useful to get a:

- General knowledge of balance analysis, of significant balance figures analysis and tools for a first evaluation of group.

Go to 4.3. Glossary annex business accounting In particular B/C

2.A.1 Trade unionist, Organizer role – check list.

2.A.1.o. Introduction to basic information on the company

Basic information on the company:

Company operations

Distribution of workers

Company structure

Position on the market

Plans for the future

Where are important decisions taken at a managerial level – in Europe or out of Europe? At what level are key decisions taken, both at a national and transnational level?

Recent history, mergers, restructuring, etc.

2.A.1.a. Is there a EWC?

Is there a EWC?

If it does exist, where can I find the current EWC agreement?

2.A.1.b. Conditions for establishing a EWC

Firstly, it must be verified how many employees the company has. For example, answering to the question: does the company employ more than 1000 employees in Europe?

It is also necessary to know how many offices the company has and where these are, answering to the question: does the company have at least two structures employing more than 150 workers in 2 EU countries?



2.A.1.c. What we have to look for

Go to 1.2.c. Business accounting: use of the manual

Must look for:

Balance sheet, budget

Right to annual information and consultation meeting

Trimestral/biannual figures

Is it a multinational group? What do we want to know?

What is:

1. Concept of “group”
2. Notion of “control”
3. In what kind of group? Nature and typologies of groups

Consolidated Financial Statements

How can I apply my right to information and consultation? When and how many times do we have the right to meet? Where can I find accounting data and more informal information?

Go to 4.3. Glossary annex business accounting

2.B. SHOP STEWARDS - BASIC - ANNEX

2.B.o. Some questions for workers

The question asked by the workers to the union representative is:

“...but ...? Can they do it?”

Obviously the question refers to an act done by the company.

This page describes the ROLE and SKILLS of a union representative.

and his skills

Understand the needs of workers

- Be present among workers and be representative
- You need:
 - a. Listening skills
 - b. Patience
 - c. Availability
 - d. Attention

Problem solving and sorting

Have initiative

- **analyse needs, plan, negotiate:**
 - elaborate a platform
 - research
 - develop bargaining strategies
- **manage bargaining process:**
 - maintain meaningful contacts with the counterpart
 - know how to sit at the bargaining table
 - knowledge of tools and negotiation techniques

2.B.a. The role of a union representative

The ROLE of a union representative

Knowledge of the Union

Information on union organisation

- **In company, in other subsidiaries**
- Political and contract points of reference at a local and national level
- Sector and confederation strategies,
- Services offered to members ...

The ROLE of the trade union representative

- have an “inside” vision of the company
- be the hub for communication fluxes
- perform the role of synthesis between the “inside” vision and the union objectives of the Federation (territorial, national and European)

2.B.b. Necessary legal knowledge

The legal framework to be aware of:

- **Knowledge of applicable laws and collective agreements**
- **Knowledge of the National Labor Collective agreement Knowledge of working conditions rights** (laws and how to apply them)
- **Knowledge of Company**
- Information on the performance of the company (balance, productive and commercial strategies, investments)
- Information on work organization and structure of company functions
- Industrial Relations system of the Countries participants to EWC

2.B.c. Knowledge about the typology and nature of group

Go to 1.2.c. Business accounting: use of the manual

Knowledge about the typology and nature of group, to ask and report information.

Fundamental as “sentinel” of the actual situation of the company: It’s important to listen to people working in the company, that could have crucial but confidential information about the real situation of the company.

It’s the first sign of alarm to understand if management is cooking the books.

(Whistleblowing)

Go to 4.3. Glossary annex business accounting

2.B.d. How to communicate

- Be able to give a report ...
- Be good communicators
- Know how to talk to workers
- Know how to maintain constant and transparent relations
- Know how to speak in public
- Motivate workers in difficult moments

2.B.1.a. A global vision to organize EWC

Good knowledge at least of spoken and written English (to read company documents and internet training modules) aimed training for transnational activities of representation, together with genuine and verifiable subjective motivations for a very specific and specialized activity, considering trade union activities in general.

2.B.1. Shop stewards in a TNC

2.B.1.o. Introduction on Shop Stewards in a TNC

Identify additional skills needed if compared with a “basic” trade union rep.

For example relational, bargaining skills ...; knowledge of company and of sector; of norms and collective agreements; of forms of trade union organization; ... in a multinational company he will also need to:

Abandon a “shop” vision and the national level and measure itself with Europe and globalization and have a global vision of competitors.



2.B.1.b. Necessary knowledge

- Applicable European Laws
- National law on TNC/EWC
- EWC establishment agreement
- Knowledge of legal, trade union and superior bargaining tools; e.g.. EWCs and how do they work;
- Knowledge of the laws on the topic
- Transnational company agreements (TCA).
- The link with national employees representation.
- 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 EWC agreement. That agreement shall be without prejudice to the provisions of national law and/or practice on the information and consultation of employees.

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.

2.B.1.c. Basic knowledge of financial information

Go to 1.2.c. Business accounting: use of the manual

This role is crucial to get basic information:

A general knowledge of the meaning of Balance sheet, budget and Consolidated Financial Statements is useful to ask what needed;

Review of future skill and training needs of individual Shop Stewards is crucial to plan effective training.

Go to 4.3. Glossary annex business accounting



2.C. EWC MEMBER - ROLE

2.C.o. Skills

What skills in addition to those possessed by Shop Stewards of a TNC

2.C.a. On what be informed at European level

Structure and functioning of European Union Federations

Structure and Functioning of Trade union federations in countries of EWC

Knowledge and relations with other components of national EWC (also alternates) and of other countries

Constant information of workers and shop stewards

Constant communication with: local union officers, national unions, relevant European Federation; possibly also trade union officers of other countries especially if NOT represented directly in the Council

KEY QUESTIONS

- To what extent the rights provided for by the EWC agreement are effectively applied?
- Periodically (e.g. every Plenary) check the work done and compare it 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 titular delegates and substitutes:
- it is necessary to have specific provisions in the EWC agreement to minimize time discrepancies between mandates of individual members as local workers representatives and the current EWC mandate (which is often a four year term). It is also necessary the substitutes to participate in the EWC meetings as observers together with their concerned titular delegates in order to be actually able to replace them effectively when they have to.

2.C.b. Role and protection of employees' representatives

The members of the European Works Council shall have the means required to apply the rights arising from this Directive, to represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings.

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.

Members of special negotiating bodies, members of European Works Councils shall, in the exercise of their functions, enjoy protection and guarantees similar to those 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, 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.

In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall be provided with training without loss of wages.

From another point of view, it is important that the EWC member is knowledgeable of:

Applicable European Directives

National reference law TNC/EWC

National law transposing the Directive.

Excellent knowledge of the EWC establishment agreement

The role and the function of an EWC and its components.

Ways to coordinate the various levels of union representativeness (European/national).

Confidentiality rules.

Independence from the employer in the designation of the EWC member: as established in legal literature (see Turin court of appeal sentence n. of 7.05.2014, Fiom Cgil (national structure) against CNH Industrial N.V. (company that has incorporated Fiat Industrial s.p.a.).

2.C.c. Consider whether there is the need for an expert

Go to 1.2.c. Business accounting: use of the manual

It's the right moment to wonder if an expert is needed

Go to 4.3. Glossary annex business accounting

2.C.1.a. Some things to check in preparation for EWC work

Which countries and/or parts of the company are represented in the EWC and how many workers?

How are workers distributed in the individual countries?

Which trade unions are represented in the EWC?

How is gender balance in the EWC?

What were the most significant results obtained by the EWC?

What tensions and problems are visible in the EWC? What should be improved?

To what extent are the rights provided for by the EWC agreement actually enjoyed?

2.C.1. EWC member - check list

2.C.1.o. General information

Since when and how well do the EWC members have been knowing each other?

How does the EWC work?

How often do the EWC members meet each other?

2.C.1.b. Points to ponder upon

Is there a select committee in the EWC?

Are there other work groups to discuss certain topics?

Do you know about the notion of information and consultation?

Do you know what is a transnational issue?

Have you verified if there are other form of procedure of employees involvement at European level?

Is the work of the EWC carried out in a spirit of cooperation with the central management?

2.C.1.d. Reflecting on participants' differences

What are the characteristics distinguishing the possible participants in regard to:

1. language and intercultural skills
2. roles and responsibilities within the EWC

The EWC has previously developed training courses, and if so, on what topics where they focused?

How is the cooperation between EWC and management?

What are the results of the EWC and how does it work?

2.C.2. EWC member deputy role - annex

2.C.2.o. Introduction on the role of the EWC deputy member

The presence and the role of the alternate member in a EWC is normally foreseen

in the EWC establishment agreement, where it is also described how to correctly exercise this role. The substitute member will have similar tasks to those of the main members, since he must be able to substitute them during single occasions or permanently. Since he will not be able to participate to meetings, he will have to maintain a constant communication with the main member and other EWC members, and contribute to the initiatives of an EWC.

2.C.2.a. Provided in the EWC agreement

SEE EWC MEMBER *Check List*

2.C.2.b. Non codified role

Non codified role – general principles included in the provision cited in the previous cards shall apply nonetheless.

In any case, the contract has force of law between the parties. So if this role is foreseen by the EWC agreement, it will be entitled to the same protection and guarantees recognized by law for EWC members.

2.D. EWC STEERING COMMITTEE

2.D.o. Steering Committee (SC)

The directive 2009/38 provides the possibility to establish a steering committee. The Steering committee member must have required skills in addition to those of EWC members; e.g. Experience with GSN and EWC or have a discussion with who covered your position before.

2.D.a. The role of Steering Committee members

Knowledge of good practices for discussion and proposals

Know how previous negotiations went

Know what the potential problems are

Have time and “resources”

Ask the European Federation for adequate political and logistical assistance

“claim spaces for exchanging experiences on EWCs and Sectoral social dialogue

Democratically participate in the management of the EWC alongside with the Secretary/President

Have the opportunity to exchange contacts and ideas, experiences, information with members of other select committees and EWCs:

- In your own national reality, compare different experiences having the same legal context in common, and the same industrial relations
- In your own industry.



2.D.b. Legal framework of the EWC SC

According to the art. 6 par. 2 lett. E of the Directive 2009/38 the central management and the SNB can provide a steering committee. In particular, where necessary, they provide the composition, the appointment procedure, the functions and the procedural rules of the select committee set up within the European Works Council.

It is important that the EWC SC members know their rights, that derive from the position within the EWC and eventually also from the position in your trade union, and in particular know how to protect workers from illegitimate or discriminatory acts committed by the employer, or by the central management.

Make use of the possibility to hire experts.



2.D.c. General information

Go to 1.2.c. Business accounting: use of the manual

Go to 4.3. Glossary annex business accounting

2.E. EWC SECRETARY/PRESIDENT - THE ROLE

2.E.o. Know your role

Distinction of the role in various norms (eg. Germany-France)

Identify additional skills related to: EWC STEERING

Be fluent in English

- Manage the relationship with the UNI expert/coordinator in terms of synergy + respect of reciprocal roles
- Involve the steering committee and consequently the EWC members in a timely and democratic manner
- Relate with external experts, with the EWC coordinator, the European Federation, the National Federations (if not represented in the EWC)
- Represent the Sel.Co and EWC demands when negotiating and agreeing with the Mgt. on agenda, logistics, dates and timing of any meeting
- Closely checks the prompt and correct issue of the minutes and official reports by the Mgt concerning the outcomes and decisions made in the meetings.

2.E.a. Functions

The President/Secretary

- First interlocutor of the appropriate person of the Central Management
- Capable of effective and efficient political synthesis of the sometime complex and also divergent wills expressed in the EWC
- Capable of building its own recognition and communicating it to the company
- Capable of reaching a believable balance between:
 - a. Its own autonomy/fairness/respect of roles and mandates
 - b. Reciprocal dialogue/trust/transparency with the appropriate person of the Central Mgt.

2.E.b. Legal framework in National Industrial Relation System

The President may represent the EWC in front of third parties. But the EWC mandate to take legal action depends on the transposition law.

For instance, the Court of First Instance of 27th April 1995, *Comité Central d'Entreprise de la société anonyme Vittel et Comité d'établissement de Pierval et Fédération générale agroalimentaire* / Commission of the European Communities, (trial T-12/93) has provided that in the presence of guarantees and prerogatives recognized and assigned by law to the trade union and to the staff committees, they must have a means of appeal limited to the protection of their rights and should be recognized their mandate to take action.

See the National Industrial Relation System, because in some countries the secretary is appointed by the employer.

2.E.1. EWC Secretary/President – check list

2.E.1.o. Figure description

Depending on the national rules applied in the EWC, the figure of: President / Secretary described in this card has to be understood in a role that is played by the workers' representative.

To agree with the company's management the Agenda of the meetings

What subjects should focus the meeting?

Main theme of the meeting?

Check:

- The date and duration of the meeting
- That the shipment of invitations and program is made in good time

2.E.1.a. Organizational tasks

Who is responsible for the booking of an adequate number of rooms for the seminar (in one of the corporate structures)?

Agreement on the number of languages for simultaneous interpreting

How will the meeting be documented?

Organizational preparations and final details

Technical equipment are suited to the needs?

Meals and refreshments (are there vegetarians among the participants?) and accommodation, transport for participants and trainers?

Meeting the day before and at the end of the meeting

Documentation and results

The President / Secretary is also vested with a prominent political role, complex and delicate: in the EWC he/she is the first interlocutor with the company, to some extent "privileged" in the positive sense of its effective and efficient ability of political synthesis of the EWC will and needs. He must be able to build and communicate his/her own authority in respect to the company, maintaining his/her autonomy and fairness, but at the same time able to build a relationship of mutual dialogue, respect and trust. In some cases it is even better that he/she does not come from the country where the Central Direction headquarter is located, so as to not accumulate upon himself/herself an excessively centralizing role on industrial relations. Precious (for himself, for the expert / coordinator and for EWC as a whole) is the ratio of synergy, respecting each other's roles and the sincere effort to avoid overlaps or, worse, competitions, between the President / Secretary and the Uni expert / coordinator.

2.E.1.b. Institutional tasks

To Schedule meetings in good time according to the received information and the consultation to be carried out with the central management.

To call promptly and with emergency procedure meetings in cases where it appears that the company wants to *bypass* the right of the EWC to be informed and consulted on transnational issues.

2.E.1.d. Arrangements for communication

Projector for laptops, general projector, flipchart

Tools for blackboard

Has the material been translated into all the selected languages? Was it sent with adequate advance notice?

The team of interpreters is at capacity and the technical equipment *at your disposal*?

Press releases and cooperation with the media.

2.F. TECHNICAL SECRETARY

2.F.O. Introduction on technical secretaries

The Secretariat may be provided by the company or appointed among the trade union representatives.

This is decided when the decision to establish an EWC is taken.

Tasks of the Company:

IN PREPARATION OF MEETING

Draft agenda of meetings

Date and length

Take care of:

Sending invitation and program in a timely fashion

Prepare a room where the meeting may take place

Guarantee a number of languages for simultaneous translation

Provide for the documentation regarding the meeting

Catering, accommodation and transportation for all participants and trainers

Organization aspects and final details

Verify that all technical equipment is appropriate for meeting, plenary or Select Committee.

DURING THE MEETING

Verify correct functioning of technical devices during meeting.

Take minute of speeches during plenary session of meeting.

AFTER MEETING

Help with travel needs

Cooperate in drafting:

Press releases and cooperation with media

2.F.a. Tasks of trade union representatives

Tasks of trade union representatives:

IN PREPARATION OF MEETING

Cooperate with Select Committee in drafting the agenda

Drafts potential presentations that will be given during the EWC

DURING THE MEETING

Takes minute of speeches during plenary

session of meeting, and during pre-meeting and post meeting.

Cooperates with the presidency to draw the final declaration

AFTER THE MEETING

Saves all produced documentation

during the meeting sent in a timely fashion to all EWC delegates?

DURING THE MEETING

Is the meeting going as planned in the agenda?

Is a minute being taken?

AFTER THE MEETING

Was the declaration drafted at the end of the meeting??

2.F.1. The role of technical Secretary - check list

2.F.1.O. Tasks

Tasks:

The secretariat may be run by the company, by the trade union or by both, but with different areas of intervention.

COMPANY SECRETARIAT

IN PREPARATION OF MEETING

Was the agenda for the meeting sent to all participants?

Were the rooms for the EWC meeting prepared ?

Were the rooms for EWC delegates booked?

Have all the interpreters/translators been summoned for the meeting?

Was the documentation that will be used

2.F.1.a. Preparation of meeting

TRADE UNION SECRETARIAT

IN PREPARATION OF MEETING

Did we receive the meeting agenda?

Did we receive the documentation by the company?

Does the presidency or the select committee need presentations and or documentation for the meeting?

DURING THE MEETING

Is a minute of the meeting being taken?

AFTER THE MEETING

Was a declaration drafted at the end of the meeting?

2.F.2. Technical Secretary
Case-Study UniCredit - annex

INTRODUCTION

That of Secretariat may be a role performed by the company or may be nominated among union representatives. This is determined when establishing an EWC.

A “case study” is that of the UniCredit EWC, regulated by art. 4.3 of the internal procedures according to which the Secretariat is composed by company employees, normally employed in the State where the central management is.

The structure of the companies’ central management takes care of the logistical aspects of meetings, while the Secretariat supports the Presidency and EWC members for information and drafting of meeting documents.

IN PREPARATION OF MEETING

Draft agenda of meeting

Date and duration

Provide for:

Timely sending of agenda and invitations

Preparation of the meeting room

Guarantee all the languages for simultaneous translation

Provide meeting documents

Catering, rooms and transportation for participants and trainers

Organizational aspects and final details

Verify that technical equipment is appropriate for meeting, be it plenary or select committee.

DURING THE MEETING

Check correct functioning of technical equipment during meeting.

Take minutes of plenary session.

AFTER THE MEETING

Facilitate return trips

Cooperate in drafting:

Press releases and cooperation with the media

Tasks of Secretariat composed by trade union representatives:

IN PREPARATION OF MEETING

Cooperate with select committee for drafting of agenda

Drafts presentations that will be showed at the EWC

DURING THE MEETING

Take minutes of interventions during plenary session, pre meeting and post meeting

Cooperate with the Presidency to draft the final declaration

AFTER THE MEETING

Register all produced documents

2.G. COORDINATOR OF SNB/EWC - ROLE

2.G.o. UNI Europa SNB/EWC coordinators

Every SNB and EWC should be coordinated by one responsible trade union official.

EU Directive 2009/38/EC clearly provides for an SNB or EWC to be assisted by trade union experts and obliges company managements to cover the costs of at least one such expert. Accordingly, every SNB/EWC should have one trade union expert continuously present who can act as a coordinator.

The coordinator’s role is to bring together all members of the trade union alliance to facilitate a common approach, to provide support to EWC members, to ensure that SNB negotiations/EWC proceedings are in line with UNI Europa’s policy, and to be the link between the EWC and UNI Europa.

The role of a coordinator is distinct from, and not in competition with, the role of an SNB/EWC chair or president from the employees’ side. The latter’s duty is to chair the everyday proceedings of the SNB/EWC.

Note that, in addition to the union expert acting as coordinator, each SNB/EWC should have access to other experts that can provide support in financial, economic, legal or any other relevant technical matters.

2.G.a. SNB/EWC coordinator profile

Coordinators should be experienced in the various SNBs/EWCs roles & tasks, have negotiating and

mediation skills, and should speak at least two European languages. They should be familiar

with the sector as well as with the company concerned.

If they have not been involved in the SNB or EWC from its inception, they should be informed about the specific history and of any potential problems.

2.G.b. Legal note

The role described in this page must be related with the position of expert foreseen by EU norms

2.G.c. Coordinator tasks

Go to 1.2.c. Business accounting: use of the manual

The coordinator has to have the capacity to identify the best EWC agreements and disseminate them among the interested parties.

This role needs to be aware of the importance of business information in a wide sense.

Go to 4.3. Glossary annex business accounting



2.G.1. Coordinator of SNB EWC –role - check list

HOW SHOULD AN EWC COORDINATOR BE

Should he:

- Have any experience with GSN and EWC?
- Have negotiation skills?
- Speak at least two European languages?
- Have sector knowledge?
- Know the company?
- Be aware of how previous negotiations were conducted?
- Be aware of potential problems?
- Have time and “resources”?

Contribution to and from the European Union...

...to the EWC coordinator:

- Regularly informs coordinator on EWC matters and union policies?
- Provides for aimed training
- Implements the coordination of the coordination network
- Spreads best practices (careful about the worst ones)

Contribution of its own union...

...to the EWC coordinator:

- Gives you time
- Gives you resources
- Provides for aimed training (at a confederation level, hence useful for exchanges with other sectors)

Contribution of the coordinator to...

EWC representatives, one's union, European Federation

Is the information flux to and from ... consistent?

Before, during and after the meeting?

Something else?

2.G.2. Role and tasks of DSN and EWC coordinators - annex

Role and tasks of SNB coordinators

Liaison, communication, trade union presence:

- Represent UNI Europa.
- Act as the liaison person between SNB members, and between SNB members and UNI Europa.
- Make sure that UNI Europa EWC

Guidelines are understood and accepted.

- Monitor the SNB members' election process in order to ensure maximum trade union presence in the SNB.
- Keep an updated list of SNB members including their trade union membership.
- Participate in all pre-meetings, meetings with management and de-briefings.
- Inform UNI Europa on the progress made in the negotiations.

Guidance and advice:

- Inform SNB members on their rights (EWC directive applicable, relevant national transposition law).
- Prepare SNB members for their role in the negotiating process.
- Guide and assist the SNB members in the negotiating process
- Know other EWC agreements and provide best practice examples.

Support group cohesion and a European perspective:

- Make SNB members aware of the differences in national legislations and industrial relations

- Detect possible sources of conflict and help to find solutions in order to support the advancement of the negotiations.
- Promote the position that the interests of employees from all countries should be fairly represented and that the composition of the SNB should reflect the composition of the workforce.
- Promote and initiate training possibilities.
- Provide contacts to other experts (financial, economic, legal, etc.) if needed. Advise on negotiating strategy.

Together with all these tasks and characteristics, the EF Coordinator must be able to be accepted by the EWC and the company, in particular demonstrating immediately their professionalism in handling the norms, the procedures and the practices, giving the EWC an perceivable support, without appearing as someone that wants to more or less surreptitiously take over roles and tasks of other institutional positions in the EWC. It is always necessary to remind that the only juridically relevant and recognized as an external professional is the EXPERT, that should de facto absorb the role of the external coordinator, a non-recognized role, and a such lacking the resources and tools to perform their role in autonomy.



2.H. EWC EXPERT ROLE

2.H.o. The role of the expert

The role of an expert may change depending on the phase during which it is requested and depending on the various typologies.

Starting from the “external skills” typology used in the project, these are examples of skills that may be required during the establishment phase of the DSN, and during EWC activities.

It is noted that the expert can be of union origin.

In particular, art. 5 par. 4 of the Directive 2009/38 establish that the special negotiating body may request assistance from experts of its choice which can include representatives of competent recognized

Community-level trade union organisations. Such experts and such trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body.

2.H.a. Skills required

Expert in charge of the EWC-related processes, bargaining, information

The expert is normally a “union” one that covers a role that requires “experience” and an even knowledge of the main fields of financial laws.

It has to be underlined that the experts are subject to the confidentiality clause. In fact, art. 8 par. 1 of the Directive provides that 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.

2.H.b. The Directive’s rules on experts

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.

With regard to the expenses, art. 5 par. 6 of the Directive cited provides that any expenses relating to the negotiations 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.

2.H.c. Financial aspects

Go to 1.2.c. Business accounting: use of the manual

Expert in charge of the financial aspects to point out the skills in company balance accountability for the workers' reps; and of the skills needed in business accounting and interpretation of balance sheet data, needed by the workers Representatives

Go to 4.3. Glossary annex business accounting

2.H.d. Communication skills

Expert in charge of the methodology, didactics / training and communication / dissemination aspects

2.H.1. Expert role in negotiation of EWC establishment – annex

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 both the role of technical expert and the one of political coordinator, also having to be very careful to avoid overlapping his role of President, Secretary and member of the select committee.

When establishing an EWC, it would be easier if the EEFF shared with the DSN a list of possible experts.

Skilled in the European Law and in significant Court of Justice and National cases.

A register of experts could be established among the European Federations. In this way, these would certify the competence of the expert in aiding in the activities of the EWC. If the European Federations should decide to proceed with the update of the experts by signaling the most relevant issues and how they were resolved, a balanced management could be assured.

The Directive explicitly recognizes the role of the experts only in negotiation of the SNB.

However, the agreement establishing the EWC may provide the assistance of experts in every or in specific meetings.

Go to 1.2.c. Business accounting: use of the manual

Expert in charge of the financial aspects to point out the skills in company balance accountability for the workers reps; and the skills needed in business accounting and interpretation of balance sheet data, needed by the workers Representatives

Go to 4.3. Glossary annex business accounting



3. TOOLS

3.1 TEMPLATES

3.1.1. Template: Request for a Special Negotiation Body

To be printed on your union's letter head

Mr.....

CEO

Name of Company

Address

Country

Cc: ...

UNI Europa

Date

Re: *Name of Company* - Request for a Special Negotiation Body

Dear Mr/Ms ...

In line with the European Directive 2009/38/EC of 6th May 2009 , we hereby request that Name of company takes the necessary steps to convene a Special Negotiating Body to negotiate a European Works Council.

This request is made on behalf of the ***YOUR UNIONS NAME*** representing ***Name of company*** employees in ***YOUR COUNTRY***. As you will know ***Name of compa-***

continued on next page

ny has a legal responsibility to convene a Special Negotiating Body within 6 months of receipt of a legitimate request from 100 employees or, in this case, their representatives in two or more countries in the European Economic Area.

In order to enable the necessary preparations to be made we request that you provide the name of the representative agent and full details of Name of company subsidiaries and locations in the European Economic Area, i.e. the twenty-seven EU member states, plus Liechtenstein, Norway and Iceland (ECJ ruling C-62/99 and C-40/00 Kühne & Nagel AG & Co.KG). In order to aid the negotiations it would also be useful to have such a breakdown for your global business.

In addition, we would like that our European Industry Federation, UNI Europa, be represented in the negotiating process.

Should you require any further information please do not hesitate to contact me.

I should be grateful if you would acknowledge receipt of this letter by return.

Yours sincerely,

Your name

Your union's name and your function

3.1.2. Draft Template for trade unionist and EWC' members; EXAMPLES/DRAFTS

3.1.2.1. List of EWC Components' Companies ...

From: Global Policy Department your Union

To: Your Union at national and local level

Cc: European Trade Union Federation UNI EUROPA

Other Unions involved (for example: Filcams CGIL, Fisascat CISL, Uiltucs UIL, ... FIOM, SLC ... FABI, HANDELS, MUBE, FNV, FSAB)

Date:

Re: **LIST OF EWC COMPONENTS' Companies**

European Works Council

COMPANY	Role	SURNAME NAME	COUNTRY	TRADE UNION	EMAIL	PHONE
	Main					
	Alternate					

Select Committee

COMPANY	SURNAME NAME	COUNTRY	TRADE UNION	EMAIL	PHONE	SKYPE

3.1.2.2. Next EWC/SNB meetings list

From: members of your EWC/SNB

To the local your trade union

Cc: Your Union at national level

European Trade Union Federation UNI EUROPA

Other Unions involved (for example: Filcams CGIL, Fisascat CISL, Uiltucs UIL, ... FIOM, SLC ... FABI, HANDELS, MUBE, FNV, FSAB)

Date:

Re: Next EWC/SNB meetings

Here are the dates and the places where the next EWC meetings will take place

Country	City	Pre-meeting	EWC	Post-meeting	AoB

The following expert will be present In the role of E.g.. SNB/EWC coordinator, appointed by UNI Europa.

I remind you that based on the establishment agreement of the EWC, the agenda is agreed amongst.....AND..... and will be communicated Days before the meeting, and the meeting documents will be sent to members days before the meeting and translated in the following languages:

Other noteworthy information:

- 1 ...
- 2 ...
- 3 ...

Regards in solidarity

The EWC/SNB member

3.1.2.3. EWC/SNB meetings report

From: members of your EWC/SNB

To the local your trade union

Cc: Your Union at national level

European Trade Union Federation UNI EUROPA

Other Unions involved (for example: Filcams CGIL, Fisascat CISL, Uiltucs UIL, ... FIOM, SLC ... FABI, HANDELS, MUBE, FNV, FSAB)

Date:

Re: **EWC/SNB meetings report**

Date of the meeting:

Participants:

Agenda:

- 1.
- 2.
3. Confidential information **No**
4. Confidential information **Yes, until dd/mm/year**
5. A.O.B.

Regards in solidarity

The EWC/SNB member

3.2. COMPONENTS OF THE SUPERVISORY BOARD

3.2.o. Introduction

Two examples:

Co-managing in Germany

Notion of participation in SE (societas europea)

Directive 2001/86/EC

Art. 2 let. k) “participation”, the influence of the representation body of workers and/or workers’ representatives in the administration of the company through

- The right to designate some members in the surveillance body or in the company administration,

Or

- The right to recommend the designation of some or all members of a surveillance body or in the company administration, and to oppose them.

3.2.b. Legal notes

Co-managing in Germany

Participation of workers’ representatives in the surveillance board of capital companies.

The co-managing system is formed by three different legal blocks:

1. *Co-managing in companies that operate in the carbon and metals sector, with at least 1000 employees*
2. *companies with a number of employees ranging between 500 and 1000*
3. *companies that employ more than 2000 employees, also consumer or production cooperatives.*

Notion of participation in an SE (Societas Europea)

3.2.c. Supervisory board and balance sheet

Go to 1.2.c. Business accounting: use of the manual

Knowledge of Balance Sheet and Consolidated Balance Sheet in order to identify and evaluate the most important indexes

Go to 4.3. Glossary annex business accounting

3.3. ILO - OECD SHEET

The **International Labour Organisation (ILO)** is the UN’s agency specialized in establishing and monitoring the International Labours Standards. The ILO is the unique UN system’s tripartite structure: decisions and management depend “equally” on Governments, Workers’ (Unions) and employers’ representatives of 186 member States. Established in 1919 together with the Nations’ Society, the ILO has since approved 189 international labour Conventions and 204 Recommendations. The member States have to implement them, when ratified, into the national rules. 8 of them are Fundamental Conventions (Core Labour Standards): 87 and 98 on freedom of association and collective bargaining; 29 and 105 for the eradication of forced labour; 138 and 192 on minimum age at work and eradication of child labour; 100 e 111 on equal wages and non discrimination in the workplace.

In 1977 the ILO approved the **Tripartite Declaration on Multinational Enterprises and the Social Policy** (updated on 2000 and 2006), committing MNEs to respect the national laws of the foreign countries in which they work and the ILO labour Conventions, and Governments – beginning from the MNEs headquarters’ countries – to promote and monitor the respect of these principles from the MNEs themselves.

The **OECD, Organisation for Economic Co-operation and Development**, groups 34 countries with advanced economies (major emerging economies are not affiliated).

In 1976, the OECD adopted the **Guidelines for Multinational Enterprises**, a body of recommendations from the Governments to the MNEs, including principles and rules for a behaviour in line with the national and international laws.

The Guidelines have been revised 5 times, the last time in 2011.

Adhering Governments (45, at the moment) assume the MNEs have the potential role of economic development, transferring knowledge and know how, local entrepreneurship’s stimulus, sustainable investments, better work’s methodologies and more advanced industrial systems. At the same time, they afford concerns on an economic development that affects essential public goods, as environment, social and economic development, fair competition, in favour of the society’s sustainable development.

The Guidelines cover all the sectors and the whole supply chain.

Adhering States accept several commitments: to the business, securing they adhere to the Guidelines; to other Governments, against any protectionist use of

the Guidelines and guaranteeing their national rules are in line with the international standards; to their own country for effective internal structures for enterprises' equal treatment, fair legislation and fair and effective Public Administration.

The **National Contact Point (NCP)**, established in any adhering country, ensures the Guidelines' promotion and sound implementation and receive – through a simple **instance**, even on line – the **Guidelines violations' cases**, from any country the MNEs are operating.

The Guidelines cover the whole range of MNEs' activities and relations: Information Delivery, Human Rights, Employment and Industrial Relations, Environment, Fight against Corruption and Bribery, Consumers' Interests, Science and Technology, Competition, Taxes. The second part is devoted to the NCPs' and OECD Investment Committee's functions and activities.

Innovations on 2011 Guidelines' upgrade: insertion of a chapter (IV) on the Respect of Human Rights, with the enterprise's and its partners' clear responsibility to respect them in any activity and a linkage to the UN Principles on Business and Human Rights; the strengthening of the struggle against forced and child labour; closer link between Workers and Human Rights; the enterprise duty to enforce a due diligence system for Guidelines related risks' prevention; the clear MNE's responsibility for the whole supply chain activities; the responsibility for a correct relationship with all the stakeholders; innovations on procedure to manage the instances, strengthening cooperation among NCPs, complex situations' resolutions, transparency and accountability.

3.4. LEGAL FRAMEWORK ON TRAINING OF EWC MEMBERS

In order to perform their representation 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**.

As provided by art. 10 par. 4 of directive 2009/38, in so far as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall be provided with training without loss of wages.

According to the Directive, the central management shall bear the costs of organization and interpretation of meetings, and the costs of accommodation and travel of the European Works Council and its select committee members.

Usually, the training of EWC members is regulated by the agreement on the establishment of the EWC.

In particular, the EWC agreements provide for the right of delegates to receive training at individual, collective or EWC level as well as abstaining from work to attend training courses.

In line with the EU directive, it is also expected that the costs of training are borne by the central management.

Usually the organization of the training is a matter of the employee representatives that determine:

- the content of the training
- the organizational details of the courses (at the individual, national, or EWC level).

Workers' representatives also choose the trainers.

Training is a very important right because it allows the EWC delegates to perform their duties with full awareness of its role as ensuring the knowledge of the law and the applicable practices, as well as the working methods for an effective and fruitful dialogue and management of information flow.

Proper and continuous training of EWC delegates also allows to achieve additional goals. In fact, beyond the understanding of the role of the EWC member and representative of workers, and the knowledge of the tools to carry out its functions, the training is a useful and effective tool to develop strategies for a transnational representation of workers, evaluating the best solution for the EWC and to share experiences with other participants.

4. APPENDIX

4.1. BIBLIOGRAPHY

4.1.a. Sources

The texts for this manual have made use of previous documents produced by EU Commission co-funded projects such as:

<http://www.teamewc.eu/>

<http://mummia.filcams.it/>

<http://www.icaruspartecipation.eu/>

<http://item.filcams.it/>

For more information

<http://www.worker-participation.eu/European-Works-Councils/Resources>

<http://www.tobeeewc.eu/>

4.1.b. Case law and legal sources most relevant

Treaty on European Union and the Treaty on the Functioning of the European Union

- Directive 2009/38/EC on European Works Councils <http://bit.ly/1YCoqN7>
- Directive 2001/86/EC supplementing the Statute for a European Company (SE) with regard to the involvement of employees <http://bit.ly/1YCoqN7>
- Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community <http://bit.ly/1LU01DH>
- Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of Undertakings <http://bit.ly/1LeKmfg>
- Directive 2005/56/EC on cross-border mergers of limited liability companies <http://bit.ly/223dluz>

- The national transpositions of these Directives within the 30 countries of the European Economic Area

SENTENCE OF THE EUROPEAN COURT OF JUSTICE *Ads Anker*, 15 July 2004 C-349/01 <http://bit.ly/223crNW>

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SENTENCE OF THE EUROPEAN COURT OF JUSTICE *Kühne & Nagel* 13 January 2004, lawsuit C-440/00 <http://bit.ly/1LeKz24>



4.1.c. Legal and Business sources most relevant

- “Reserves, liquidity and money: an assessment of balance sheet policies” 2011
- Basel III, (2010). “International Framework for liquidity risk measurement, standards and monitoring”, <http://www.bis.org/publ/bcbs188.htm>.
- Chiara Coluzzi, Annalisa Ferrando and Carmen Martinez-Carrascal: “FINANCING OBSTACLES AND GROWTH AN ANALYSIS FOR EURO AREA NON-FINANCIAL CORPORATIONS” <http://www.ecb.europa.eu> JANUARY 2009
- IAS/IFRS (International Account Standard/International Financial Reporting Standards), used in over 110 countries (including in the EU) (<http://www.iasplus.com/en/standards>)
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- Giuseppe Grossi “Analisi del Bilancio Consolidato” – Business Administration – Università di Siena 2015
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- Jonida Carungu - Gli attori della regolamentazione contabile internazionale: IASB (struttura e governance) Dipartimento di Studi Aziendali e Giuridici Università degli Studi di Siena A.A. 2014/2015 Jagjit S Chadha, Luisa Corrado and Jack Meaning
- Angelo Zambelli and Davide Contini “La recente Direttiva europea sui sistemi di prevenzione degli abusi di mercato e le prospettive nazionali in materia di whistleblowing”, february 2016 referral to Directive 2013/34/EU las n. 27 Consolidated Financial Statements and Accounting for Investments in Subsidiaries;

Directive 2003/6/EC (*Market Abuse Directive* or MAD).

MAD is known as the first Directive that has pursued the objective of a progressive harmonization of norms in the member States of the Union. The European law makers thought that repression of market abuses should happen in a uniform manner throughout all Europe.

Following this path, the new dispositions on market abuse in Europe have been promulgated:

1. Regulation (UE) n. 596/2014 of the European Parliament and Council, of 16th April 2014, relative to market abuses (the “Regulation”), that abro-

gated Directive 2003/6/EC of the European Parliament and Council;

2. Directive 2014/57/EU of the European Parliament and Council of 16th April 2014, relative to penal sanctions in case of market abuses (the “Directive”).

The Regulation will be enforced from the 3rd of July 2016; no later than the same day all member States will have to adopt the Directive.



4.2. SYNTHETIC GLOSSARY AND ACRONYMS



4.2.O. Actors and paths

A Trade Union Organizers

B Shop Stewards

C EWC Member

D EWC Steering Member

E President/Secretary

F Technical Secretary

G SNB /EWC Coordinator

H Expert

**I Member of Board of Directors B.O.D.
and/or Supervisory Board**

START UP

**Construction of the Trade Union Alliance
Setting up of the Special Negotiating
Body SNB**

**EWC founding negotiation process Man-
agement of the EWC**

Renewal of a EWC Agreement

4.2.a. Key acronyms

EWC= European Works Council =

(see in particular EU Directive 2009/38, but also the 94/45 and 2002/14 on Information and Consultation + the 2001/86 on European Company)

SNB=Special Negotiating Body (see 2009/38 art.5)

TUA= Trade-Union Alliance: alliance promoted through Uni Europa, made of the trade-unions from the countries concerned by the Transnational Group where the EWC is going to be set up and involving the SNB members.

Organizer: trade-union officer in charge of linking the EWC members from his own country and the concerned national union (see art.12 2009/38)

Sel.Co.: Select Committee = board composed by a variable number of EWC members (minimum three), from the most rep-

resentative countries, in charge to ensure organizational and political continuity in terms of the EWC functions off the plenary meetings (see in particular Subsidiary Requirements in 2009/38)

President/Secretary: the main employees rep. He/She is called Secretary when the President is the main employer's rep (very often this is the French case)

Expert/Coordinator: the expert is the one in charge of assisting at first the SNB and then the EWC in particular for juridically related matters and/or organizational issues. The expert enjoys a specific recognition in the 2009/38. It may be at the same time the Coordinator (who does not enjoy the Directive recognition) playing also the role of linking the EWC and the TUA with Uni Europa, mainly in order to ensure a correct functioning and a growing unionisation rate of the EWC.

4.2.b. Legal glossary and acronyms

Legal glossary

- administrative or judicial procedures*
- Community-scale undertaking*
- Community-scale group of undertakings*
- controlling undertaking*
- exercise a dominant influence*
- transnational issues*
- employees' representatives*
- spirit of cooperation*
- Special negotiating body (SNB)*
- Content of the agreement*
- Confidential information*

List of acronyms:

- EWC = European Work Council
- SNB = Special Negotiation Body
- TCA(s)=Transnational company agreement(s)
- REPS=employees' representatives
- I&C=information and consultation
- SE=Societas Europaea
- TU=trade union
- WC=work council

4.2.c. Business glossary and acronyms

Go to: 4.3. Glossary annex business accounting part G

Acid test - is a strong indicator of whether a firm has sufficient short-term assets to cover its immediate liabilities. **Quick Ratio:** is an indicator of a company's short-term liquidity. The quick ratio measures a company's ability to meet its short-term obligations with its most liquid assets.

Leverage: how much capital comes in the form of debt (loans), or assesses the ability of a company to meet financial obligations.

ROI (Return on Investment): evaluate the efficiency of an investment or to compare the efficiency of a number of different investments. ROI measures the amount of return on an investment relative to the investment's cost

ROE (Return on Equity) The amount of net income returned as a percentage of shareholders equity.

ROS (Return on Sales) – evaluate a company's operational efficiency

ROT (Return on Turnover)-evaluate how dynamic the company is on the market

NWC Net Working Capital - is a measure

of both a company's efficiency and its short-term financial health.

Productivity - (Statement of financial Position) Labor productivity measures the amount of goods and services produced by one hour of labor. More specifically, labor productivity measures the amount of real GDP produced by an hour of labor. Growing labor productivity depends on three main factors: investment and saving in physical capital, new technology and human capital.

Financial statements in pills

Balance Sheet

Statement of financial Position

Snapshot of the patrimonial situation of the company/group in a specific moment; with this, it is possible to identify the sources of capital and the investments of the company.

Assets – tells how the company money was spent or invested:

fixed assets, meaning the long term investments (eg. Buildings, land, equipment, patents, red tape when starting an initiative);

current assets, meaning all goods supposedly transformable in cash very rapidly.

Liabilities

Defines the financing sources, including what invested by the owners themselves:

net capital, which includes the owner's funds, which is the money "borrowed" by the owners of the company;

long term loans- (expiry date longer than one year);

current liabilities (within one year).

Equity - (also called book value of equity: the net assets represent what is controlled by the shareholders once current liabilities towards third parties are deducted from the assets activity

reserves – virtual amount indicating how much is accrued from the profit every year

share capital – or risk capital, is the capital provided by the shareholders.

Income Statement

The income statement shows a summary of costs and revenue of the undertaking and the income produced by the undertaking during the administrative period being taken in account.

Revenues – value created by a company through the implementation of its economic process.

Expenses – any kind of expense for the acquisition of the production means.

profit (loss) for the year – company profit (loss) is the economic result achieved during the management of an administrative period.

Statement of Cash Flow - (CFS), records the amounts of cash and cash equivalents entering and leaving a company. The CFS allows investors to understand how a company's operations are running, where its money is coming from, and how it is being spent. Here you will learn how the CFS is structured and how to use it as part of your analysis of a company.

notes on (to) the accounts (UK, EU); footnotes (US) – fundamental and integral part of the company balance, it has the function of illustrating and commenting on the synthetic data reported by the company balance. Its main function is to favor the comprehension of data present in the numerical charts of the balance sheet through descriptive analysis, explicating and detailing the points of the patrimonial state and of the economic situation.

Provide information on the consolidation area.

Operating Profit – the result of the characteristic activity.

EBITDA (*Earnings Before Interest, Taxes, Depreciation and Amortization*) Profitability of the characteristic management, before

amortization costs and reserves. It's an indicator of the economic result achieved through the ordinary activity.

Market Value - the price an asset would fetch in the marketplace

Fair Value - «the amount that allows an activity to be exchanged or a liability cancelled, among available and aware parts, in a transaction between independent third parties (IAS/IFRS): usually represents the market value.

The "**whistleblower**" is a worker that during his working activity within a company, reports a possible fraud, danger or other serious risk that could damage customers, colleagues, shareholders, the public, or the reputation of the company; for this reason, he decides to report it (danger on the working place, frauds within and against or performed by the company, environmental damage, false social communications, medical negligence, financial operations, threats to health, corruption or malfeasance, and many other). It's clear from the definition that those working inside a company may be more efficient sentinels.



4.3. GLOSSARY ANNEX: BUSINESS ACCOUNTING

A	B
Financial Statement:	Company group
Aims of the financial statement	A “company group” distinguishes itself for:
Provide information:	<ul style="list-style-type: none">• the existence of a plurality of undertakings;• a direct or indirect control by a single economic subject;• a unity of aims.
<ul style="list-style-type: none">• on the financial position,• on the economic performance, summed up in the net income,• on the changes in financial position	This single subject has to draft a report of the “consolidated balance”, to provide information on the patrimonial and financial structure, and on the formation of the comprehensive economic result.
Of the entity or the group,	
To the stakeholders	
Documentary evidence of the financial statement	The company that exerts its control on the others is known as head company or holding.
<ul style="list-style-type: none">• Report on operations• Balance Sheet or Statement of Financial Position• Income Statement• Statement of the Comprehensive Income• Changes in Equity Statement• Cash Flow Statement• Notes to the financial statements	The group is composed by a number of companies.
	A financial holding is a company whose company objective is the acquisition of participations.

Nature of the Group

Influences the behaviour and the aims pursued by the companies that are part of it.

It is necessary to assess the nature of the majority company:

Public/Private = Based on the nature of the juridical and economic subject

Financial = the relation among subsidiary companies and holding are of a financial nature, performing different kind of activities

Economic = the relation among subsidiary companies and holding are of an economic/technical nature at various levels of production

Horizontal integration = companies perform homogeneous activities within the same sector

Vertical integration = companies perform complementary activities, that are different parts of the same productive cycle

Conglomerate = Companies operate in diversified sectors

C

But who manages the group?

In case of a high number of owned shares, it is necessary to define the level of true control

1) Share leverage

Relation between total share capital of the group and that invested by the holding. It allows the controlling shareholder to own a share of stocks that is inferior to the share of controlled votes in a subsidiary thanks to the capital of minority shareholders. Share leverage therefore increases the value of the block of controlling shares in the holding (the vote of which controls the whole capital of the group) compared to that of a similar number of shares owned by minority shareholders. Such an effect is reached also in companies that emit shares with no voting rights or with multiple voting rights.

2) Credit leverage

Expresses the proportion of third party capital (meaning debt load) mobilized by the equity of the holding.

D**Consolidated Financial Statement**

Must be presented by any “controlling entity” an entity that controls one or more companies

Must be drafted observing the “accounting principles”:

- IAS/IFRS (International Account Standard/International Financial Reporting Standards), used in over 110 countries (including in the EU) (<http://www.iasplus.com/en/standards>)
- US GAAP (Generally Accepted Accounting Principles), used in the USA.

As any other financial statement, the accounting effects of a company operation must be observed at the moment of their economic maturity and NOT at that of their monetary manifestation (accrual basis)

It considers the “company group” as a single entity and registers only the relations between “company group” and external economic system

The companies that must be considered for the drafting of the “consolidated financial statement” are part of the “consolidation area”.

All those items that represent operations between the companies of the group are eliminated:

- debts and credits among group companies;

- purchases or sales of goods and services among group companies;
- interests and dividends related with operations occurred within the group;
- participations in companies of the group, and relative fractions of net assets of these.

D.1**Scope of consolidation**

The “scope of consolidation” includes all those companies whose financial statements must be taken in account when drafting the “consolidated financial statement”.

The parent company must present the “consolidated balance” which includes all companies under its control (controlled, subsidiaries).

Control is defined as the power of the parent company to determine the administrative and management decisions of a company and to reap the relative benefits (a concept that was redefined and expanded since 2013).

The holding must consolidate all national and foreign controlled companies, regardless of their activities.

Analysis of the scope of consolidation

Identifying the scope of consolidation:

- allows to identify the core business of the group
- provides information on the complexity, nature, international ties and level of integration and degree of heterogeneity of performed activities

The study of its evolution allows to assess the strategic decisions of the holding, in terms of:

- acquisitions, develop/abandonment of strategic business areas
- changes in the level of company and/or financial integration

E**The questions that guide us when reading a financial statement**

Is the group growing or in decline?

Is the growth/decline of an “operative” nature (sales, income) or “structural” (investments, operators,...)?

In general, is the group producing wealth?

What is the contribution of the various managements (core business, atypical management, financial management, extraordinary management)?

What is the economic performance of the various segments (geographical and/or business) of the Group?

Where is it growing/decreasing? Where is it earning/losing?

What is the performance of market shares in the various segments?

What is the performance of the Group investments? Are they of industrial or financial nature?

Were there important disinvestments? Which?

Were participations in new companies acquired?

Were company participations sold?

What is the debt load of the Group?

What is the nature of the debt (investments, acquisitions, lack of cash, low self-funding, ...)?

What is the role of the means provided by the associates?

Does the core business produce cash flows?

“Cooking the book”?

What is our assessment on the “health” of the Group on terms

- solidity
- profitability
- efficiency
- liquidity
- growth

F

Financial Statement analysis

Of course, these are very involved questions, and there are literally hundreds of others you might have about a group.

- Think of fundamental analysis as a toolbox to help you answer these questions
- Importance of the role: sometimes we could need external experts
- A financial Statement analysis is a complex operation that makes use of mainly quantitative techniques of data elaboration, with which studies on financial statements (comparison of figures in time and space) are done to obtain information on the management and on the company.
- Through the comparative budget analysis of the various elements available, we may reach a “judgment” on the health of the company.
- Through the rework of financial statements, many indicators may be established.

A financial Statement analysis is a complex operation that makes use of mainly quantitative techniques of data elaboration, with which studies on financial statements (comparison of figures in time and space) are done to obtain information on the management and on the company. Through the comparative budget analysis of the various elements available, we may reach a “judgment” on the health of the company.

Through the rework of financial statements, many indicators may be established.

Therefore, the calculation of balance sheet indicators requires a good knowledge of the classification techniques of these indicators.

It is too complicated for a brief glossary!

Let's take the figures provided by the companies, but let's try to be aware of the meaning.

Always read the notes to the financial statements. They provide more in-depth information on a wide range of figures reported in the three financial statements.

G

A brief explanation of balance sheet indicators

No indicator in general has any meaning on its own, and must be compared with something else:

- to the same indicator in the previous years
- to the same indicator in similar environments
- to the same indicator in different geographical areas

These are therefore generic indicators, that may give some insight, but must be considered carefully.

In some cases it is possible to give some generic indications.

Structural Margin (capital strength) – Net worth – Fixed assets (information on: scope of fixed assets with own capital; capitalization of company,

Primary structure

indicator =>
$$\frac{\text{Net Worth}}{\text{Net equity total fixed assets}} > 1$$

Acid test (Solvency– Liquidity): immediate solvency indicator –

AT =
$$\frac{\text{Immediate liquidity}}{\text{Short term liabilities}}$$

Quick Ratio: (important that this is positive, negative values show an unbalanced capacity to face immediate debts)

QR =
$$\frac{\text{Immediate and deferred liquidity}}{\text{Current liabilities}} > 1$$

Financial independence ratio

RIF =>
$$\frac{\text{Net worth}}{\text{Total Active}} > 25\%$$

Leverage debt load indicator:

LEVERAGE =
$$\frac{\text{Own capital} + \text{Third party}}{\text{Own capital}}$$

Chart:

Leverage = 1 Financial independence (no debts)

1,5 < leverage < 2 Good financial situation

2 < leverage < 3 financial structure tends to be unbalanced

Leverage > 3 Unbalanced financial structure

There is no magic wand to assess the health of a company only from its debt level, but we may say that, on average, if the ratio starts to reach values between 1 and 2, the company is currently in a state of balance regarding funding sources, while if the level reached is above 2, the company must be considered undercapitalized (own capital is insufficient).

The higher the indicator, the higher the debt load. That means to be dependent on external loans (credit crunch)

Analysis of group profitability

Instrumental for the durability and autonomy of the group

Profitability indicators allow to observe the capacity of a company to produce profit and generate resources.

Such indicators are useful both for investors, that may calculate an economic return for their investment, and in general to analyse the reliability of a company, assigning to it a specific rating.

High Profitability Indicators could mean that created wealth is distributed to the Capital Factor to detriment of Labour factor, considered only as a cost and not as a resource.

ROI (Return on Investment) – Core business
Represents the profitability of the core business compared to all investments done in it.

$$\text{ROI} = \frac{\text{Operating income}}{\text{Total uses}} \%$$

ROE (Return on Equity – comprehensive efficiency and effectiveness) = Profitability of invested capital

Tells us the yield of € 100 of capital invested in the company by the associates.

$$\text{ROE} = \frac{\text{Net profit}}{\text{Own capital}} \%$$

ROS (Return on Sales)

Expresses the percentage of gross income in terms of operating result on 100 net sales. The indicator is more satisfactory the higher it is. The ROS increases when revenues increase and costs decrease (WARNING! Here labor is a COST...for us it is a RESOURCE)

$$\text{ROS} = \frac{\text{Operating income}}{\text{Revenues from sales}} \%$$

ROT (Return on Turnover) Ratio of task rotation

Level of plant usage and how **dynamic the company is on the market**. ROT expresses the number of times that the invested capital returns as sales in an administrative year. If the indicator is 12, it means that the invested capital return as sales once a month. The indicator increases with an equal amount of invested capital, in relation to the increase of sales volume.

$$\text{ROT} = \frac{\text{Revenues from sales}}{\text{Total uses}} \%$$

Net working capital (active circulating – current liabilities): important in companies that have warehouses and stockpiles. If excessively positive: lack of rotation in warehouse; difficulty in collecting from clients; wrong management of liquidity)

Working Capital is a measure of both a company's efficiency and its short-term financial health. Working capital is calculated as:

Working Capital = Current Assets - Current Liabilities

It indicates whether a company has enough short term assets to cover its short term debt. Anything below 1 indicates negative W/C (working capital). While anything over 2 means that the company is not investing excess assets. Most believe that a ratio between 1.2 and 2.0 is sufficient. Also known as “net working capital”.

· if the ratio is less than one then they have negative working capital.

· A high working capital ratio isn't always a good thing, it could indicate that they have too much inventory or they are not investing their excess cash

Productivity Analysis

What does productivity of labour mean? For companies, it is definable with a simple quantitative formula. But, from a worker's point of view, there is much more than this. What influences every single budget item from a labour point of view? (E.g.: wellness on the working place, safety of the working place, balance of working and living time, appropriate training, correct time management,...)

This is a key topic.

Average turnover per employee =
Revenues from sales

$$\frac{\text{Revenues from sales}}{\text{Num. of employees}}$$

Human factor performance =
Value of production (added value)

$$\frac{\text{Value of production (added value)}}{\text{Num. of employees}}$$

Average cost per employee =
Cost of Labour

$$\frac{\text{Cost of Labour}}{\text{Num. of employees}}$$

Human factor incidence =
Cost of labour

$$\frac{\text{Cost of labour}}{\text{Revenues from sales}}$$

Cost Income:

An indicator used by banks, shows the relation between operative costs (such as administrative expenses, expenses for employees and properties) and the earning margin.

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“Company words”

Statement of financial Position

Activities (Uses) (assets)
Liabilities
Equity

Income Statement

Revenues
Expenses
- capital and reserves
- share capital
- profit (loss) for the year

- operating profit (or loss)
- net profit (or loss) for the year -

Statement of Cash Flow

Highlights the annual variations in cash and cash equivalent, identifying the area that generated them:

- cash flows from operating activities
- cash flows from investment activities
- cash flows from financial activities

Operative earnings

The operative earnings are an intermediate economic result, also called operative income, operative margin or result, and is relative only to the core business of a company, and therefore is not tied to earnings components: financial, non-characteristic, extraordinary, fiscal.

EBITDA (*Earnings Before Interest, Taxes, Depreciation and Amortization*)) is a profitability indicator that highlights profits of a company based only on its core business, without considering interests (financial management), taxes (fiscal management), depreciation of goods and amortization. It indicates the productive efficiency of a company.

Earnings margin: it's an item that is present in the economic report of a bank. Based on the IFRS/IAS standard and according to Basilea, it is defined as the sum of net earnings before interests and net earnings after interests, and must be calculated before any reserve (for example for interest on arrears), operative expenses, including payment to outsourced service suppliers (while it includes payments to the bank for such services), it must exclude profits or losses caused by shares of the banking book, and for irregular or extraordinary batches, the income deriving from insurances.

Economic Value Added, EVA the value that the productive factors used by the company, the capital and labour have "added"

to the input gained externally, to obtain a specific production

Productivity: very roughly the relation between the amount of output and that of one or more inputs used in the productive process.

Cash Flow

Represents a measure of company self funding

Fair Value

Usually fair value is the market price. Even if there are circumstances where the market price does not correspond to the fv, the market price is generally accepted.

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Where may I find the financial statements?

- Official websites
- <http://www.ebr.org/>