

1.3. Start Up and path

1.3.0. 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 manner 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:

- Ø *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.

- Ø *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:

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

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

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

— at least 1 000 employees within the Member States,

— at least two group undertakings in different Member States,

and

— at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State.

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

Go to 2.2.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 5.3. Glossary annex business accounting

In particular B