Teollisuuden Palkansaajat
YHTEISTOIMINTARYHMÄ

EWC-Guide

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THE EWC GUIDE

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Foreword

The number of European Works Councils (later: EWCs) has increased continuously and there has been growing need for them. So far EWCs have contributed to developing cooperation between employees and the management and have provided European employees with a forum for exchanging information and experiences and for planning for the future together with the management. Instead of operating solely at the national or European level, companies are increasingly global in their activities. This is why workers also need multinational cooperation in order to be united and to participate in the development of companies. Cross-border cooperation is needed more and more amongst employees and between unions.

The new EWC directive 2009/38/EC entered into force on 5 June 2009. The starting point of the revision was the employees' right

- to receive information about the activities of the company and about its plans for the future
- to give feedback regarding the above issues
- to have discussions where feedback is given at such time as will allow the opinion of employees to be considered in the decision-making
- to discuss issues with those management representatives who are responsible for the decisions.

In Finland the directive has been incorporated into the Act on Co-operation in Finnish and Community-wide groups of undertakings which entered into force on 15 June 2011.

The revision introduced among other things the right for EWC representatives to receive training, the involvement of trade unions in EWC negotiations, and the office of the Cooperation Ombudsman in issues concerning sanctions. In addition, the basis for EWC activities, i.e. information and consultation, and the concept of so-called transnational matters have now been more precisely defined and apply to the majority of agreements which have been concluded earlier. These issues have also been included in the so-called subsidiary requirements of the law. The subsidiary requirements are to be followed if no agreement is reached.

This is the fourth EWC Guide published by the Cooperation Working Group of the Council of Finnish Industrial Unions TP (later: the TP CWG). The Guide has been written against the backdrop of Finnish legislation but it can also provide guidelines to non-Finnish EWCs. The Guide is meant to be of help in EWC negotiations and to give information on EWC issues in general. However, no guide can ever replace personal advice and therefore the TP CWG recommends that, in addition to reading the guide, employees should get in touch with trade unions as soon as there is talk of EWC issues in the company.

The Cooperation Working Group of the Finnish Industrial Unions TP has been active in EWC issues already since 1994, and it has been an official working group of the Finnish Industrial Unions TP since 1996. Over the years the TP CWG has organised more than 40 major training events and seminars, most of them international. The members of the TP CWG provide support to Finnish EWC representatives and accompany them to EWC meetings. This Guide is very much based on the TP CWG representatives' personal experiences of EWCs. In addition to working together with Finnish unions, the TP CWG is actively engaged in international cooperation. Through transnational cooperation the experts of the TP CWG are monitoring the entire European trade union sector, and are keeping an eye on major companies as well as national EWC legislation and practices. The TP CWG keeps a register of its member unions' EWC representatives and EWC agreements, and prepares political statements concerning the international participatory systems of trade unions. The TP CWG also coordinates activities in trade union federations and in the Nordic countries.

The TP CWG hopes that this Guide will enable trade union members to better promote the rights of European workers and assist them in pursuing international cooperation.

The CWG wishes to thank Europe Information for funding this learning material and Ms Inka Ukkola from the TJS* Study Centre for her help in the writing of this guide.

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The Cooperation Working Group of the Finnish Industrial Unions TP

* TJS = the Educational Federation for Unions for Professional Employees in Finland TJS

Abbreviations

Business Europe – Business Europe is a key organisation for representing employers' interests at the European level, and it corresponds to the ETUC secretariat. Business Europe was the counter-party to the ETUC in the 2009 negotiations on the EWC Directive when the European Commission insisted that social partners should negotiate and agree on key parts of the Directive before it was taken to the European Parliament

BWI - Building and Wood workers' International

ECOSOC - European Economic and Social Committee

EEA – European Economic Area

EFBWW - European Federation of Building and Wood workers'

EFFAT - European Federation of Food, Catering and allied Workers' union within the IUF

EMCEF - European Mine, Chemical and Energy Workers' Federation

EMF - European Metalworkers' Federation

EPSU - European Federation of Public Service Unions

ETF - European Transport Workers' Federation

ETUC - European Trade Union Confederation

ETUF:TCL - European Trade Union Federation: Textile, Clothing and Leather

ETUI:REHS - European Trade Union Institute for Research, Education and Health and Safety

EU - European Union

EWC - European Works Council

FI - Facken inom industri - Industrial Unions FI, Sweden

ICEM - International Federation of Chemical, Energy, Mine and General Workers' Unions

IMF - International Metalworkers' Federation

IN - Nordic IN - Nordic Industrial Workers' Union

ITF - International Transport Workers' Federation

ITGLWF - International Textile, Garment and Leather Workers' Federation

ITUC - International Trade Union Confederation

IUF - International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations

NBTF - Nordiska Byggnads- och Träarbetarefederationen – Nordic Building and Woodworkers' Federation

NTF - Nordisk Transportarbetarefederation – Nordic Transport Workers' Federation

NTO - Nordisk Telekommunikation

NU – Nordiska Unionen – Nordic Food and Allied Workers' Union

SC – Select Committee

SE - Societas Europaea - European Company

SNB - Special Negotiating Body

TP - Council of Finnish Industrial Unions

UNI - Union Network International

UNI-EUROPA – European Trade Union Federation for Services and Communication

UNI-IBITS-Norden - Nordic trade union federation for services: Union Network International – Industry, business services and information technology

YT – Yhteistoiminta, Cooperation

YTR – Yhteistoimintaryhmä, Cooperation Working group TP

1 General information about European Works Councils

1.1 What is the legal basis for EWCs

EWCs have their legal basis in an EU directive which has been transposed into national legislation in different countries. The current EWC directive in force is Directive 2009/38/EC which was adopted in 2009.

The EWC activities of a company registered in Finland, which usually means that the company has its headquarters in Finland, are based on Finnish legislation: the Act on Co-operation in Finnish and Community-wide groups of undertakings (335/2007; for the purposes of this Guide, this act shall be called the EWC Act). Some amendments were made to the Finnish EWC Act on the basis of Directive 2009/38/EC. These amendments entered into force on 15 June 2011 (620/2011).

Although Finland has a specific EWC Act, it is not applied uniformly in all groups of undertakings. EWC agreements, or agreements corresponding to them, which have been concluded at different times are covered by different legal provisions. Only Section 26 b (adaptation of the EWC procedure because of major changes in the structure of the undertaking) is applied in all of the below-mentioned situations.

- The EWC Act must be applied in its entirety if the EWC agreement has been signed on or after 6 June 2011.
- The EWC Act must be applied in its entirety also in cases where the EWC agreement has been signed between 1 July 2007 and 4 June 2009 and has not been revised between 5 June 2009 and 5 June 2011.
- Before entry into force of the EWC Act, provisions regarding works councils were included in the previous Cooperation Act. The provisions of the old Cooperation Act which was repealed in 2007 were not applied and are still not applied, if the undertaking or group of undertakings had an agreement dating prior to 22 September 1996 concerning cross-border interaction between group management and employees. In such cases (so-called Article 13 agreements), cooperation activities in the group are based on an agreement concluded before 22 September 1996, and are not based not on the old Cooperation Act or the current EWC Act.
- The EWC provisions of the previous Cooperation Act are still applied to those undertakings and groups of undertakings that have EWC agreements which were concluded between 22 September 1996 and 30 June 2007.
- The provisions of the EWC Act which were valid before 15 June 2011 are still applied to those undertakings and groups of undertakings that have concluded a new EWC agreement between 5 June 2009 and 5 June 2011, or that have had their earlier agreement revised within that period of time. The changes that entered into force with the new EWC Act on 15 June 2011 do not apply to these agreements, not even when the parties to the agreement decide to continue the agreement in a revised form.

The primary objective is that cooperation in undertakings should always be based on an agreement. The Act contains subsidiary requirements regarding cooperation but they are not applied if there is an EWC agreement. It is important to note that these subsidiary requirements do not constitute a binding set of minimum requirements in this case. In other words, the provisions of the agreement must be abided by even if the provisions of the law would seem to provide better prerequisites for the activity. If the parties wish to apply the subsidiary requirements of the law, they must be included in the agreement either specifically for the relevant parts or by making reference to the requirements in the agreement.

It is customary for companies to call their EWCs something other than a Works Council. The name can be formulated for example by joining the company name with the word 'Forum'.

1.2 What is EWC activity

The abbreviation EWC comes from the words European Works Council. It is a body consisting of employees. EWCs are a part of the European system for employee participation. EWCs enable employees to take part in the decision-making process of the company by receiving information and by giving feedback regarding that information. In short, the EWC is about information and consultation. In the background is the The Charter of Fundamental Rights of the European Union and its Article 27 which stipulates that this is one of the basic rights of employees. On the basis of this article, the workers of an undertaking and their representatives must be ensured of adequate and timely information within the provisions mentioned in the article.

1.3 What is meant by information

Information means that employee representatives are given all the necessary data at such time, in such fashion and with such content as are appropriate to enable them to acquaint themselves with the subject matter and prepare for consultations with the management (EWC Act, Section 13 (c)). Primarily this means a written report of the most important issues which must be submitted to employee representatives well in time before the meeting. This makes it easier to prepare for meetings. In addition it would be advisable to agree on written quarterly or semi-annual reports concerning certain financial matters.

This constitutes one half of the core activity of EWCs.

Information is followed by consultation, which is the topic of the next chapter.

1.4 What is meant by consultation

Consultation is the other half of EWCs' core activity. After the corporate management has provided employee representatives with a written report on the issues subject to consultation, the representatives must have adequate time and information in order to express their opinion to the management. According to the provisions of the current directive, information and consultation should occur in two separate meetings.

Both information and consultation apply of course in particular to any exceptional circumstances (see chapter 3.6 of the Guide: WHAT SHOULD BE AGREED CONCERNING TRANSNATIONAL MATTERS) where the employees must be heard adequately and in a timely fashion. In ordinary EWC meetings (see chapter 3.9 PREPARING FOR MEETINGS) it is customary to agree in advance which issues are to be covered, such as the annual accounts.

The EWC Act has detailed provisions on information and consultation (Sections 34, 13(b) and 13(c)) and it is not possible to agree on a lower level of implementation (with the exception of companies which are not covered by the EWC Act 620/2011, in other words mostly the so-called Article 13 agreements that have been concluded prior to 23 September 1996).

1.5 Which undertakings and business units are in the scope of EWC activity

EWC activities cover all undertakings and units controlled by a group of undertakings in the area of the EU and the EEA. The undertaking must have at least 1 000 employees within the Member States and at least two group undertakings must each have at least 150 employees in different Member States.

An undertaking is obliged to give to the employee representatives, when they so request, a complete list of all those establishments where the undertaking has significant activity and, for all those units, a breakdown of the number of employees, shareholder information, and the names

and addresses of employee representatives. [Judgement of the Court of Justice of the European Communities, 29 March 2001, case C-62/99, Bofrost]

In the so-called joint-venture companies, the problem may arise that because of the 50/50 share of ownership, none of the shareholders has a majority of shares required by the EWC law or the right to appoint more than half of the members of the Board of Directors, or holds a controlling position in the company. This type of a company does not fall within the scope of the EWC Act directly – the matter will be decided on a case-by-case basis. However, join-venture companies may establish their own EWCs, provided that they fulfil the required criteria.

1.6 Which countries are in the scope of EWC activity

Legally, the EWC directive applies to EU member states and countries in the EEA, i.e. in addition to actual EU Member States, it also applies to Norway, Iceland and Liechtenstein.

The Directive does not oblige EU applicant countries to come into the sphere of EWC activity, however, it is possible to involve them in this activity either as full members or as observers. This can be agreed between the EWC and the undertaking. Countries outside of Europe, such as Russia, can also be granted observer status – however, this also must be agreed between the EWC and the undertaking.

1.7 Which agreements are within the scope of EWC legislation

When, on the basis of an EU Directive, new legislation is passed in an EU Member State or existing legislation is amended, this process often entails a so-called transitional period. The EWC Act does not apply to agreements concluded during the transitional period. Thus, the Finnish EWC Act is not applied to those agreements concerning employee participation systems that were concluded prior to 23 September 1996, nor does it apply to agreements concluded between 5 June 2009 and 6 June 2011.

EWC Agreements concluded during the transitional period are not automatically covered by the new act even in the case that they are revised or amended after the transitional period. It is, however, possible to make specific provisions in a revised EWC agreement to concur that the agreement will be covered by the new EWC legislation.

Agreements that were revised or amended during the transitional period also fell outside the scope of the new law even if, prior to 5 June 2009, they had been covered by EWC legislation in force at the time.

1.8 What is the composition of an EWC

The law stipulates that an EWC shall consist of one (1) representative for each Member State. In addition, there shall be one (1) representative per portion of employees employed in a Member State amounting to 10% or a fraction thereof, of the number of employees employed in all the Member States taken together. Member States here mean those countries that are covered by EWC activities and also countries of the EEA, if the company operates in such countries. As has already been mentioned, employer's representatives cannot be members of the EWC. The Directive states that the European Works Council shall be composed of employees of the Community-scale undertaking or group of undertakings elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees. In the absence of employee representatives, EWC representatives shall be elected by direct ballot by the entire body of employees from among their number.

It is of course possible to agree on a different kind of composition for the EWC. However, the composition of the EWC must in all cases be representative and be such that it meets the requirements set for an EWC. This means that there must be an adequate number of representatives in proportion to the number of employees in each Member State.

1.9 Which matters are not dealt with in an EWC

The EWC is not meant to deal with such national issues which do not even indirectly involve more than just one country. This may rule out issues such as collective bargaining, unless it is specifically decided that such matters should be included in issues to be dealt with under the EWC agreement. The EWC process must take place either at the same time as the national co-operation negotiations or after such negotiations.

1.10 Relationship between EWC procedure and national procedure

If the EWC agreement does not contain provisions on how national cooperation negotiations are to be linked to the EWC procedure, transnational issues which imply significant changes in work arrangements or contractual relations must be discussed both in the national cooperation negotiations and in the EWC. For instance, mass redundancies involving several countries must be dealt with in such a manner that will allow the European Works Council and national employee representatives to influence the employer before any final decisions are made. Transnational and national procedures may take place either simultaneously or consecutively. If the order of procedures has not been specifically agreed, it is the obligation of the company to ensure that the informing and consulting of employees takes into consideration the objectives of informing and consultation as well as possible, while taking due note of the special requirements of the situation at hand.

1.11 What kind of knowledge and skills are needed in cooperation

All who take part in EWC activities have a role to play in making the EWC process successful. Employee representatives can provide insight into how decisions taken by the company are seen and felt at the workplace. They also bring with them experiences about the different ways of achieving the ideals of a good workplace, such as occupational safety, equality and fair pay, with the help of trade unions in different countries.

Management representatives bring to the joint meetings their views on the direction in which the activities of the company are developing, the sort of skill needs there will be for the workforce in the future, and the targets that the management would like to steer the employees towards with the help of incentive systems.

Employee representatives are supported by an EWC Coordinator appointed by trade unions. The coordinator can offer information about best practices in EWC work and can warn about likely obstacles. S/he is familiar with the current European practices and has contacts with the actors of different European trade unions. If need be, the coordinator will also be able to find contacts in unions operating in another country who can talk to the employee representative with his/her own language. More information on how to choose a coordinator and on the coordinator's tasks can be found in the following chapters of the Guide: 2.5 WHAT KIND OF EXPERTS MAY BE USED IN NEGOTIATIONS, 2.6 WHY SHOULD EXPERTS BE USED, 5.2 WHO CAN BE INVITED TO MEETINGS, 6.1 WHAT IS AN EWC COORDINATOR, 6.2. HOW IS THE EWC COORDINATOR SELECTED and 6.3 CHECK-LIST FOR THE EWC COORDINATOR.

It is not possible to define exactly the type of situations where an employee representative might need the help of the coordinator. Employee representatives in EWCs are typically seasoned shop stewards who are usually very knowledgeable about and experienced in employee representation. However, multinational activities always present special challenges. The same words may carry different meanings in the trade unions of different countries or they may give rise to completely different connotations in people's minds. It is therefore advisable to get in touch with the coordinator rather too often than too seldom, at least during the start-up stage of activity. With more experience, representatives will learn to recognise when, for example, an interpreter has made an error in translation. Coordinators are also constantly monitoring trends, and might thus be interested in learning about minor changes, even if an employee representative does not feel that s/he needs assistance.

It is important to have a good working relationship with your coordinator - this will allow you to take up any issue that is on your mind, whether big or small.

2 From putting together an SNB to signing the EWC agreement

2.1 How to establish an EWC

The EWC negotiations can be initiated either by the employees or the management of a company. In case the management takes the initiative, employees should get in touch with their union without delay to ensure that the negotiations proceed according to rules and regulations. According to Section 22 of the EWC Act, the central management must also inform the competent European workers' and employers' organisations about the invitation to negotiate.

Establishing an EWC will improve the employees' possibilities to get more extensive information about the company. At the same time, it will enhance their ability to have a say in issues that relate to them at the international fora in Europe. Today, things that happen outside one's own country have more bearing on one's employment and work environment.

If the request to initiate negotiations comes from the employees, the request to start EWC negotiations shall come from at least two countries. The request must be backed by at least 100 employees in total. This requirement is met, even if there is just one employee (or an employee representative) from one country, putting forward this request together with employees (or employee representatives) from another country, as long as there are in total enough employees behind the request. The request can be put forward by the employees as a group, or, as is customary, by their representatives. In Finland, these requests are usually presented by the representatives of all employee groups' together.

When Finnish employee representatives have requested or have decided to request that EWC negotiations be started, they are not necessarily required to find out on their own, where the other request that is needed could be issued. In such a case, employee representatives may ask the Co-operation Working Group of the Council of Finnish Industrial Unions TP to find out with the help of other European trade union federations whether employees of the group in other countries would be in a position to issue the second request.

Similarly, when a request to initiate EWC negotiations has been made in another country, the Co-operation Working Group of of the Council of Finnish Industrial Unions TP will convey this information to the Finnish employee representatives and will find out whether the other request that is needed could be issued from Finland.

2.2 What is the objective of EWC negotiations

The objective of EWC negotiations is to draft an agreement about EWC activity to be implemented in the company and about the practices relating to this. Section 26 of the EWC Act defines the key issues that are to be settled in the agreement. If no agreement can be reached, the subsidiary requirements shall apply.

2.3 That is the Special Negotiating Body

The Special Negotiating Body is established for the negotiations. The objective of the SNB is to conclude an EWC agreement together with the employer. The SNB must have at least one employee representative from each EU/EEA country where the company has a unit (see more detailed guidelines in the following chapter 2.4).

Experience has shown that getting an employee representative from every country where the company operates can be arduous. It is worth striving for, however. Countries that are involved in cooperation already at the SNB stage are more committed to the actual EWC activity arising from

the negotiations than those countries that join the process in midstream. Members of the SNB often become representatives in the EWC proper, so it is important for this reason also that all the countries are on board from the very beginning. It is advisable to use available experts, such as representatives of trade unions, when putting together an SNB because at this stage both the employee representatives and the management representatives often have a lot of questions on their mind.

According to the EWC Act (Section 23) the employer shall bear the expenses arising from the selecting of SNB members, the negotiations by the SNB in order to reach an EWC agreement as well as costs incurred from the use of experts needed in these negotiations.

2.4 How are negotiators or SNB members selected

Employees will select their representatives by either agreeing on who will be appointed or by holding an election. If the employees cannot agree on the procedure to be adopted, it will be the responsibility of Occupational Safety and Health Officers representing the highest number of workers and salaried employees to organise an election or another selection procedure, in which all employees are entitled to participate.

Section 20 of the EWC Act contains provisions on the composition of the SNB. The law stipulates that employees must choose as their representative at least one member from every EU/EEA Member State where the company has an establishment. One representative shall be allocated per portion of employees in a Member State amounting to 10%, or a fraction thereof, of the number of employees employed in all the Member States taken together. The size of the Special Negotiating Body is not restricted - it is defined on a case-by-case basis. The mandate of the SNB representatives will last throughout the negotiations.

In the case of a Finnish group of undertakings, the employee representatives from Finland together with the central management will decide the number of members.

2.5 What kind of experts may be used in the negotiations

There are three kinds of experts appointed by European trade union federations and/or trade unions:

1) An expert who is appointed to help during the negotiations for an agreement.
2) A coordinator i.e. an expert whose task it is to participate continuously and actively in the EWC activities of the company and otherwise monitor the operations of the company.
3) Experts who are used in EWC meetings to introduce issues relating to a specific theme and/or to activate discussion. Examples of experts in this category would be lawyers, economists or trade union officials who can help with issues relating to their area of expertise.

The task of the EWC coordinator and expert is to support EWC activities. EWC coordinators especially have extensive know-how and experience about EWCs, best practices and legislation.

The coordinator is an expert on the labour law and negotiation practices of the company's domicile. It is his/her task is to prevent personnel problems before they arise. The company also benefits when certain legality issues can be checked free of charge from a legal advisor.

2.6 Why should experts be used

In the Nordic countries, we are not used to trade union officials taking part in local negotiations in companies. In many countries trade union staff are involved even in local collective bargaining negotiations, for instance when a company-specific collective agreement is being negotiated. The fact that practices vary greatly between countries gives rise to many problems and questions at the European level.

EWC activity, and especially the setting-up of an EWC, places great demands on employee representatives and on the company itself. The use of experts will ensure an appropriate start and continuity for the EWC. Misunderstandings or differing interpretations concerning EWC work will lead to friction between the parties and will slow down or at worst seriously hamper the development of well-functioning EWC practices.

The EWC agreement must contain a clause about the use of experts which will guarantee the participation of an expert in the EWC's work. This will allow the EWC to be supported by a person whose EWC expertise will benefit the EWC's work. In the operations of a company there may be situations, for instance in connection with mergers, where the employees would like to request that a union lawyer participate in the EWC meeting. Adding a clause about the use of experts to the EWC agreement is advisable in order to guarantee the participation of an expert in the meetings. Experience has shown the use of experts to be beneficial in many ways.

One key requirement by European trade union federations and trade unions is that the agreement must entail provisions on the use of a coordinator and at least one expert in the work of the EWC. The coordinator is responsible for giving advice and providing guidance to employee representatives in the EWC and ensuring high-quality EWC activity. The coordinator can also inform representatives about best practices in EWC work and give advice and support with difficult issues. The coordinator usually comes from the country where the company has its domicile.

According to the new EWC Act (Section 20), the SNB may request assistance from experts of its choice in the negotiations. These experts may be representatives of European-level workers' organisations. What is often done is that a European worker's organisation (trade union federation) will appoint and authorise an expert from a union in the country where the company has its European headquarters. European trade union federations are European-level consortia of trade unions representing the interests of workers at EU level.

In Finland, for instance, the Cooperation Working Group of the Council of Finnish Industrial Unions names a candidate for the EWC coordinator's task. The coordinator's mandate is then confirmed by a European workers' organisation. The EWC coordinator represents all employees of the company in the different member states and the trade unions that operate in them.

2.7 Announcement of EWC negotiations

The Special Negotiating Body must inform the central management of the Community-scale undertaking or group of undertakings, the management of undertakings under the control of the Community-scale group of undertakings or the management of local units of the Community-scale undertaking and the competent European workers' and employers' organisations of its composition. (Section 20)

The central management must announce the invitation to negotiate also to competent European workers' and employers' organisations.

When the initiative comes from the employees, employee representatives have usually already been in touch with trade unions. However, it is useful to make sure that information about the negotiations has also reached European workers' and employers' organisations. In most cases, notification is sent to the European Trade Union Confederation (ETUC) and to the employers' organisation, Business Europe.

At its simplest, information about the negotiations can be conveyed so that the employee representatives ask their EWC coordinator, appointed by the Cooperation Working Group of TP, to make sure that notification is taken care of.

2.8 Who should lead the negotiation process

Personnel groups and representatives from the different countries shall conduct their negotiations in a spirit of cooperation. In practice the responsibility for leading the negotiation process rests with the employee representatives and trade unions of the country where the

company has its headquarters. The employee representatives of this country often meet already before the actual start of negotiations and produce a draft version of the EWC agreement outlining the joint objectives of the employees.

Experience has shown that this draft agreement should not be too detailed. This is because the aim is that the representatives of all countries should have their say in defining the employees' objectives and official proposals.

2.9 Description of the EWC negotiation process

The following is a short and simplified description of the EWC negotiation process.

1 Request is made to initiate the negotiations
   - The request is made by at least 100 employees or their representatives from two different countries,
   - Or the negotiations are initiated by the central management of the company

2 European organisations are notified of the invitation to negotiate

3 The SNB is established
   a Determining the size of the negotiating body
   b Selecting the members

4 The SNB puts together the negotiation objectives of employees and draws up a draft agreement

5 EWC negotiations are held
   a Employee representatives must have the opportunity to meet and consult without the representatives of central management being present
   b If necessary, simultaneous interpretation shall be provided in these meetings
   c If necessary, documents shall be translated into the languages needed
   d Employee representatives have the right to use experts of their choice

6 Negotiations are concluded
   - An EWC agreement is reached and it is approved by the SNB
   - No agreement is reached, and it is noted that the subsidiary requirements of the law have entered into force
   - Two thirds of the members of the SNB decide that no EWC shall be established. Unless otherwise agreed, a waiting period of two (2) years must lapse before new negotiations can commence. Subsidiary requirements shall not enter into force.

7 EWC activity begins
   a The date of the first EWC meeting is set for the same year
   b The SNB is dissolved
   c EWC representatives are appointed (they may be the same as in the SNB)
   d The EWC is established

3 EWC agreement and its content

3.1 How do negotiations normally proceed

The negotiating parties' understanding and knowledge about EWC activity and the overall willingness of central management and employees to cooperate are likely to have an impact on how smoothly the negotiations proceed.

Concluding an EWC agreement usually takes more time than expected. This is something that both parties should prepare for. An appropriate negotiation process takes time since it involves several different stages. These include for example translating the draft agreement and discussing it at national level. In addition, it is often very time-consuming to resolve differences of opinion between the undertaking and the employees. However, negotiations may not exceed three years.

Unless an agreement is concluded within three (3) years following the start of negotiations, the subsidiary requirements of the law will enter into force, see chapter 3.22 SUBSIDIARY REQUIREMENTS, and EWC activity will start on the basis of these provisions. The three-year time limit is stipulated in the law.

Experience has shown that ample time and, when necessary, simultaneous interpretation, should be provided for the SNB meetings also. It is of utmost importance to gather contact information from the SNB members already at the outset, and to create a network that will enable an exchange of views also in between meetings. The role of the expert is important at this stage because the parties often have many different questions to ask.

Negotiations do not always lead to a result, and this is something that should be prepared for. At the latest during the last stages of negotiations, either when an agreement is reached or the three-year limit is met, the SNB should meet in order to take stock of the situation. Section 22 of the EWC Act has provisions on the right to convene during the EWC negotiations.

3.2 What should the agreement contain

When concluding the agreement, Section 26 of the EWC Act is to be followed. Below you will find the text of a model agreement in English.

AGREEMENT

ON THE ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL AT MODELBUSINESS CORPORATION

This agreement has been prepared between modelbusiness and its employee representatives. The agreement covers the entire workforce of the modelbusiness group in the european union, the european economic area and the eu candidate countries.

1. Purpose of the contract

1.1 The common goal is to establish a European works council (EWC) to promote the open flow of information, exchange of ideas and dialogue between the management and the employees of the company at the European level.

1.2 The parties are familiar with the content of European Union Directive 2009/38/EC and honour the goals and spirit of it.

1.3 The Agreement complements existing national and local forms of cooperation and practices.

2. Composition of the EWC

2.1 The EWC is a co-operation body that is composed of employees of the Community-scale undertaking or Community-scale group of undertakings. Furthermore, specialists, to be invited separately, shall be entitled to participate in the meetings, when necessary, in accordance with Section 4.7.

2.2 The employees shall select from among themselves representatives and their deputies for a term of four (4) years, in accordance with the legislation, collective bargaining agreement or labour market practices of each respective country. The selection shall take note of the representation of each employee group and regional and gender equality. If necessary, evidence should be provided of the selection processes of representatives in each country, and the processes must be objective and transparent.

2.3 One employee representative is to be selected from each country in which Modelbusiness operates. Furthermore, additional members are to be selected in proportion to the number of employees in each country, with the total number being xx. The number of employees shall be monitored annually. Should major changes occur in the number of employees, the Select Committee can agree on revising the number of members. Moreover, the EWC can, if a qualified majority in the EWC so decides, also nominate observer members from non-European Union/EEA countries where Modelbusiness operates.

The presentation from each country for the year 2012 is attached to this agreement, see annex 1.

2.4 Corporate management is represented in the EWC meeting by the President and the Chief Executive Officer, the Administrative Officer/Chief Financial Officer and the Chief Human Resources Officer. If necessary, corporate management may appoint another representative with specific knowledge of a particular matter.

2.5 The EWC and the employer's representatives shall select from among themselves a chairman/woman and a deputy chairman/woman for a term of two (2) years at a time. One of them must represent the employees. In performing this selection, an attempt is to be made at rotating functions among representatives from the various countries. The employer shall nominate a technical secretary from among itself for the EWC meetings.

2.6 The EWC shall appoint from among itself a Select Committee comprising of five (5) representatives. One (1) deputy shall also be selected for each representative among the EWC representatives of the country in question. The Select Committee shall select a chairman/woman and a deputy chairman/woman amongst itself.

2.7 If necessary, the EWC can set up Working Groups or other supporting bodies to prepare matters or conduct studies.

2.8 Furthermore, deputies may always participate in the meetings of the EWC. This applies also to situations when they are not replacing the representative when he/she is absent.

3. Contents of the activities

3.1 The EWC functions as a forum for open information exchange, exchange of ideas and dialogue between corporate management and the employee representatives in matters of importance to the corporation and its employees pertaining to at least two countries or the corporation as whole. Moreover, EWC meetings should also deal with matters which concern only one member country if these matters may have a significant impact on all employees or if the matters are of great importance (transnational). The parties concerned will also find it important to develop mutual cooperation between employees, improve staff spirit and participate actively and proactively in the activities of the EWC.

3.2 The matters that may essentially affect the position of employees in the above mentioned way have to be brought to the EWC as soon as possible and before making a decision. Informing and due consultation, as regards timing, substance and action, shall be implemented in a manner that allows employees ample time to study the information in depth and, based on this, to express their opinion, on which corporate management shall formulate its position on a separate occasion (information and consultation procedure). Therefore, these issues are to be dealt with at two separate meetings.

3.3 EWC meetings shall discuss, among other things, the following matters (list is not exhaustive):

- corporate strategy and anticipated changes to it
- the economic and financial situation
- the production, investment, cost and profitability outlook
- employment situation and future changes in it
- major collective redundancies and layoffs in the workforce
- major changes pertaining to the organisation
- company acquisitions and mergers
- introduction of new working or production methods
- production relocation, scaling-back or closure of work sites
- occupational health and safety
- environmental affairs
- corporate social responsibility
- human resources policy and guidelines
- gender equality
- training

3.4 The EWC is not designed for dealing with matters coming under national or local collective bargaining agreements unless this agreement or Directive otherwise so provides or the parties so agree.

3.5 The task of the Select Committee are among others:

- to prepare EWC meetings
- to agree on the venue, agenda and programme for meetings together with corporate management

- to prepare memoranda and notices of meetings together with corporate management
- in exceptional cases, to negotiate with the management on measures and the convening of possible extraordinary meetings of the EWC
- if necessary, to invite experts to EWC meetings and to the meetings of employee representatives
- to maintain contact with the members of the EWC and collect country-specific information
- to oversee and conduct a dialogue between the various countries in between council meetings
- to produce and circulate necessary status reports

4. Working method

4.1 EWC meetings

As a rule, the EWC shall meet twice a year, with the meetings scheduled for the second and fourth quarter of the year. One meeting will be held in Finland and the aim should be to alternate the venue of the meetings between the various production facilities and countries. Three (3) consecutive working days may be spent on the meeting, including meetings for the employee representatives only.

The practical arrangements of these meetings shall be handled by the corporate human resources department.

4.2 Preparatory meeting and summary meeting

The employee representatives shall have the opportunity to assemble without the presence of management one day prior to (preparatory meeting) and one day after (debriefing meeting) the actual meeting of the EWC.

4.3 Select Committee

The Select Committee shall convene between the EWC meetings at its discretion - however, no less than three (3) times a year in addition to the ordinary (plenary) council meetings.

4.4 Exceptional circumstances

If exceptional situations result in consequences for employees in one, two or more countries in the above mentioned way (Section 3.2), the management is obliged to immediately notify the Select Committee of the matter and to negotiate with the Select Committee as soon as possible and always prior to the national discussion on the matter or at the same time as negotiations have started. Furthermore, the representatives of the countries in question shall be summoned to attend the meeting.

In case management decides to act against the position of the Select Committee, the Select Committee may convene a meeting in order to reach an understanding and before the binding decision is made by the management. If, due to the situation, the Select Committee deems it necessary to hold an extraordinary EWC meeting, such a meeting shall be convened if a qualified majority of the Select Committee so decides. Under such circumstances EWC meetings may be held more frequently than twice a year as stipulated in Section 4.1.

4.5 Agendas of meetings

The agendas of EWC meetings are to be prepared by the Select Committee, assisted in technical matters by the secretary of the management (technical secretary) or another secretary from the human resources department. Proposals for items to be placed on the agenda shall be submitted to the Select Committee no later than six (6) weeks prior to the EWC meeting. Invitations to EWC meetings, the agenda and all pertinent documents shall be sent to the members, translated into the native language of each representative, no later than three (3) weeks prior to the meeting.

4.6 Language of the meeting, translation and interpretation

The language of the meeting shall be XXX. Translations of documents and simultaneous interpretation shall be provided at the meetings of the EWC, the employee representatives and the Select Committee from and to all the languages represented in the EWC.

4.7 Coordinator and experts

The coordinator appointed by respective European Federation is entitled to participate both in the meetings of the EWC and the Select Committee. The Select Committee shall also have the right to invite such experts as are deemed necessary to attend the meetings of the EWC and the employee representatives.

The corporation shall bear reasonable costs for the travel and accommodation, as well as other costs, of coordinators and outside experts. The confidentiality clause that binds the employee representatives shall also bind the coordinator and other experts.

4.8 Minutes

The minutes of EWC meetings shall be inspected and approved by the chairman/woman, the deputy chairman/woman and the Chief Executive Officer. The minutes shall be translated into all the languages represented in the EWC and a copy of the minutes in the respective language shall be mailed by electronic mail to the members within four (4) weeks of the closure of the meeting.

4.9 Dissemination of information

Corporate management shall report on the EWC meetings on the Intranet, in staff publications and through other ordinary channels in a manner decided by the Select Committee. The members of the EWC shall also participate in disseminating information and collecting feedback through their own channels.

5. Costs, resources and training

5.1 Modelbusiness shall bear all the costs of the activities of the EWC and the Select Committee.

5.2 The time taken to attend the meetings of the EWC, the employee representatives and the Select Committee, as well as the time required for preparing the meetings, shall be deemed as working time and must not lead to any loss of income.

5.3 Modelbusiness shall see to the organising of the necessary resources for the employee representatives. These include, among other things, a proper working space, telephone, fax machine, electronic mail connections, the required translation and interpretation services and a sufficient amount of exemption from ordinary working duties.

5.4 Moreover the Select Committee is entitled to a reasonable amount of money/XXX € budget to be used at its own discretion and for taking care of its duties and/or for necessary trips.

5.5 The EWC members and deputies are entitled to such company-paid training as is necessary for the successful performance of their duties. Such training shall be available at least five (5) days a year and the content and form of training be ultimately decided by the Select Committee. Otherwise the training plan can be discussed annually in the EWC meeting.

Among other things the training shall include:

- training in one foreign language on a regular basis
- training in the knowledge and skills needed for liaising with the EWC members
- training in financial matters needed for interpreting financial information
- information about labour market relations, legislation and the cultures of the countries represented in the EWC
- other types of training necessary for the proper performance of members' duties.

6. Changes in the company

Changed circumstances in the company may include significant organisational changes, adaptations of new working methods, relocations of production lines, company mergers or acquisitions, major deductions or abolitions, collective redundancies etc.

Regarding these situations it has been agreed as follows: XXX.

7. Job security of EWC members

EWC members and deputy members shall have the same job security as is guaranteed to shop stewards and other employee representatives, in accordance with the national legislation, collective bargaining agreements and labour market practices in their places of work. In addition to this the employment contracts of employee representatives in the EWC may be terminated based on the Finnish legislation only and, if it emerges that no such basis has existed, the matter will be settled at least in accordance with the provisions of Finnish legislation regarding the unlawful termination of the employment contract of a (Finnish) shop steward.

Moreove, the Select Committee has to be informed before implementation of any decision concerning termination of the employment contracts of a member of the EWC, and the Select Committee should be able to give its own opinion on any such termination.

8. Confidentiality

EWC members, deputy members, the coordinator, and invited experts are allowed to discuss matters that have come to their knowledge in confidence only with the employee representative(s) to whom the matters pertain. Revealing information to others is not permitted. Corporate management must make a separate mention of matters deemed business or professional secrets at each meeting separately and motivate these.

9. Applicable law

This Agreement has been prepared in accordance with European Union Directive 2009/38/EC. The agreement shall be governed by the Finnish law on Cooperation in Finnish and European Works Councils.

10. Duration of the agreement

The Agreement shall become valid on the day of signing and will be valid for four (4) years and thereafter until further notice on the joint decision of the parties. Either party may terminate the Agreement at a six (6) months' period of notice. Such a decision can be made as a majority decision in the EWC. The Agreement shall be adhered to during negotiations for a new Agreement until the new Agreement has been signed. If an agreement cannot be reached in 12 months´ time, the EWC shall start to follow the subsidiary regulations of the law.

Furthermore, if amendments have been enacted in legislation or elsewhere that are beneficial to employees, these amendments shall become part of this agreement without separate negotiations.

If the EWC unanimously agrees, the Agreement may be revised during its period of validity so as to guarantee smoothness of operation.

The legal version of this agreement will be the Finnish version.

Signatures

Helsinki ...st/nd/rd/th of (month) 2012

Modelbusiness Corporation

(signatures of the corporate management)

On behalf of the employees of Modelbusiness Corporation

(signatures of the employees of Modelbusiness Corporation)

(Signatures of trade unions)

Annex 1.
In the year 2012 the representation from each country is as follows:

Country	No. of employees	No. of representatives	No. of deputies
Finland			
Country 1			
Country 2			
Country 3			
Country 4			

3.3 What should be decided about the number of representatives

In principle, each country where the undertaking operates should be represented. Additional representatives may be elected in proportion to the number of employees. A Works Council usually comprises 15-30 representatives but it should not be made too large in proportion to the size of the company. Employees should agree on the number of representatives that they will aim for before negotiations with the management begin. Experience has shown that EWCs where a great majority of employees come from one country do not function as well as those EWCs where broad-based representation has been sought.

If a country or a pair of countries dominates the work of the EWC, other countries may be left without any representation or their motivation to participate in the activity may be weak. In such circumstances the EWC can no longer serve its prime purpose, i.e. group-wide information and consultation.

It is not always possible to have representatives from each site. This may be because the company's activities are fragmented into small and geographically far-removed locations. The lack of language skills or differences in the type of activity of the different sites may also lead to this situation. This is why national participation systems and informal as well as formal contacts between units are important. European cooperation begins on home ground. It is important to remember that international cooperation does not exclude the need for domestic (national) cooperation – on the contrary, it supports it.

3.4 Which issues are covered by information and consultation

As was mentioned in the first chapter, information and consultation are the key elements of EWC work. The EWC Act contains a list which can be considered as guidelines as to the kind of issues that employees should be informed about and consulted on. They include information about development and outlook regarding in particular the structure of the group, economic and financial situation, probable development of the business activity, production and sales, the situation and probable trend of employment, investments, substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

The list can be complemented by issues relating to occupational safety, the environment, development of equality and qualifications, training policy and corporate social responsibility policy. It is important not to make the list exclusive. The issues listed should serve as a guideline, allowing also other issues raised by employees to be taken up on the agenda.

In principle, information shall be given on all strategic matters which may involve at least two countries in the future. There are also issues which are considered transnational irrespective of the number of countries involved – issues which are important to European workers because they may affect the employees to a considerable extent or they may involve transfers of operations between member states.

Documents relating to important measures shall be available to the representatives in advance so that they have time to form an opinion on the matters at hand. The documents shall also be translated into all the necessary languages.

In order to ensure a smooth operation of the EWC it is important that the employee representatives shall meet both before and after the meeting at a national level. The purpose of the pre-meeting is to discuss the joint view of the employees. The topic of the debriefing meeting is how to report to national employee representatives. In order to be able to stay in contact, the EWC representatives should have access to up-to-date means of communication such as the telephone, email, the Internet and possibly their own discussion forum on the Internet.

3.5 Exceptional circumstances and extraordinary meetings

According to Section 34 of the EWC Act, an exceptional situation refers to providing information about such exceptional matters or decisions which have or may have considerable effect on the position of employees. Such matters are specifically relocations, closure of the undertaking or one its units and other situations implying a reduction in the workforce. Since such situations may sometimes develop quickly, they place considerable demands on information and consultation. Information shall still be given well in advance and consultation shall still take place in an appropriate manner and *before* any actual decisions are made. The EWC Act is very specific on these points.

It is noteworthy that this may also apply to a situation involving only one member state, see chapter 3.6 WHAT SHOULD BE AGREED CONCERNING TRANSNATIONAL MATTERS. It is important to note that the situation does not have to involve two countries at the time that it is discussed in the EWC. It is enough, if it is possible that it will affect more than one country in the future.

The convening of extraordinary (exceptional) EWC meetings should be regulated in the agreement in order to avoid disagreement over conflicting interpretations. Possible questions in relation to extraordinary meetings are: in which circumstances should an extraordinary meeting be held, who shall make the decision about having an extraordinary meeting and who shall participate in such a meeting. Section 34 of the EWC Act defines the criteria for exceptional circumstances that may justify the convening of an extraordinary meeting. Since the EWC agreement supersedes, inter alia, Section 34, it should be written into the EWC agreement that this section and its definition shall be complied with as part of the agreement.

An extraordinary meeting shall be held in a situation where the undertaking's decision may have considerable effects on employees irrespective of the number of member states taking part in the EWC. As regards so-called transnational issues, see chapter 3.6 WHAT SHOULD BE AGREED CONCERNING TRANSNATIONAL MATTERS.

The decision may entail for example the transfer of operations to another location or another country, the closure of the company or a unit, or mass redundancies. If, for instance, a unit is closed in one country and some of the operations are transferred to another unit in another country, this constitutes an exceptional situation and an extraordinary meeting shall be convened.

Nowadays corporate management may also be required to convene an extraordinary meeting when something exceptional happens. The employees must thus have the right to request at their own initiative that an extraordinary meeting be held.

The agreement should also make clear mention of the fact that the Select Committee can also convene a meeting concerning exceptional circumstances.

Participants to extraordinary meetings can be limited to those countries which are either directly or indirectly affected by the situation and to the Select Committee. If the issue relates to the transfer of production from Belgium to France, it is not necessary for the Germans to participate unless the transfer were to have indirect consequences such as impacting production in Germany. Both internal and external experts may be invited to these meetings.

3.6 What should be agreed concerning transnational matters

The law defines transnational matters as matters concerning the entire Community-scale undertaking or group, or at least two undertakings or establishments of the group, or as matters which have or may have a significant impact on the position of employees irrespective of the number of member states. The definition of these matters is of key importance especially in so-called exceptional situations when it has to be considered whether a matter is transnational, i.e. whether it should be discussed in the EWC or not. When defining transnational matters, one must take into consideration both the extent of possible impact as well as the relevant level of representation of management and employees.

Thus, transnational matters may be understood to cover a reorganisation of business which involves only one undertaking or unit in the group of undertakings in just one member state, provided that the effects of the reorganisation on employees are or may be significant (detailed reasoning behind Section 13(a) can be found in the Government proposal 1/2011). Transnational matters may also include a decision concerning a unit situated in a member state other than the country where the company's headquarters are, provided that the decision has or may have significant impact on employees. However, if the decision only concerns an undertaking situated in the same country as the headquarters, the matter is not transnational.

Situations shall also be considered transnational when the decision and its effects take place in the same country but may eventually be reflected in another member state within the sphere of EWC activity (e.g. a change in the working methods in one country, if this would sooner or later have an impact on other countries as well).

It is advisable to provide some guidelines for this already in the EWC agreement.

3.7 How many ordinary meetings should be held annually

According to the subsidiary requirements of the EWC Act (Section 33), the Works Council has the right to meet at least once a year. In addition, employee representatives shall have the possibility to meet without the management before and after the joint meeting.

The number of EWC meetings should be agreed on and written into the EWC agreement. It is advisable to have at least two meetings a year – one of these should preferably rotate at the different sites of the group.

Otherwise the number of EWC meetings depends first and foremost on the topics to be discussed and the current status of the company. In addition, in the so-called exceptional circumstances there should always be the possibility to convene extraordinary meetings. Exceptional circumstances are defined in the agreement or are defined as stipulated in the law (Section 34). Exceptional circumstances are also discussed in chapter 3.6 of the Guide: WHAT SHOULD BE AGREED CONCERNING TRANSNATIONAL MATTERS.

3.8 Other meetings

If there is only one meeting per year, it is usually held in connection with the presentation of the annual accounts. There are also other important events in groups of undertakings when it would be good to have additional meetings. Examples of such times are the drafting of the budget and the planning of next year's production.

The employee representatives' internal meetings are of utmost importance. Employee representatives must have the opportunity to hold their own meetings both before and after the joint meeting. In principle, it is enough if the agreement provides that in connection with the joint meetings, the employee representatives have the right to hold their own meetings in which the company management do not participate. The employees' right to decide on the rules of their own internal meetings is a given. It is also necessary to decide on the duration and venue of these meetings and on the role of the company in their organisation (simultaneous interpretation, translating of documents, and possibly a separate budget for these meetings). This meeting also provides the possibility to introduce last minute topical issues that the employee representatives would like to discuss in more detail in the joint EWC meeting.

It is a well functioning practice to have a preparatory meeting before the actual joint meeting. In the preparatory meeting, employee representatives will go over issues that they wish to raise in the joint meeting and will agree on how to do this. This will make the joint meeting flow more smoothly.

Employee representatives shall also have the possibility to convene after the joint meeting. A summary meeting can be used to evaluate the success of both the pre-meeting and the joint

meeting. It is also useful to agree on the tasks and things to do after the meeting. This will make the activity in the time period between EWC meetings more efficient.

Experiences gleaned from EWC representatives so far show that a summary meeting, in other words coordinating activity, is just as important as the preparatory meeting. Quite often the presentations by the management give rise to issues that the employee representatives need to ponder together immediately. It is important that employee representatives have this opportunity to discuss and to comment on information given to them by the management.

Experience has shown that at least half a day is needed for the preparatory meeting. At least some hours are needed for the meeting to be held after the joint meeting.

Other meetings must also be held in so-called exceptional circumstances which are discussed in chapter 3.5 of the Guide: EXCEPTIONAL CIRCUMSTANCES AND EXTRAORDINARY MEETINGS.

3.9 Preparing for meetings

All EWC meetings (ordinary EWC meetings, meetings organised in exceptional circumstances as well as Select Committee meetings) are efficient only if they have been prepared well.

The time and venue of the meeting should be decided well in advance. The agreement should stipulate who is to make these decisions. Normally these decisions are made by the Select Committee together with the management.

The Select Committee and the management decide on the agenda together. They must also consider already at this time which general matters should be taken on the agenda by the central management, and decide on the theme for the meeting. Thought should also be given as to what kind of additional information and experts would be needed in the meeting.

If the agenda is to be confirmed jointly, the agreement must have some mention of a mechanism for the resolving of disputes. As a rule, matters could be resolved in the Select Committee by majority decision. Disputes relating to the preparation of meetings could be resolved for instance by the Select Committee and management representatives together.

The agreement should set a time limit by which the representatives must inform the Select Committee of topics that they wish to be taken on the meeting agenda.

Once the agenda has been approved it is time to determine which documents are to be sent to the representatives together with the agenda. According to the guidelines by the Cooperation Working Group of the Council of Finnish Industrial Unions TP this should take place at least four weeks before the meeting. There are various meeting documents linked to the agenda items, such as reports and financial reviews. The translating of documents into all the necessary languages must also be seen to. This should also be stipulated for in the agreement.

The Select Committee will prepare for the meeting and monitor the preparations.

The same basic principles apply to the procedures for additional meetings and Select Committee meetings. However, with these meetings shorter preparation times are to be reckoned with. Nevertheless, it is important to have as precise documents as possible available on the matters to be discussed also in the additional meetings, and they should be available in the different languages of the representatives. In these cases the employer may suggest organising a video conference but their use is to be considered with great caution. Video conferencing may be used in urgent cases but it should not be allowed to develop into a practice for the entire EWC.

3.10 Where should meetings be held

The EWC Act does not contain provisions on where EWC meetings should be held. The parties are free to decide on the meeting venues.

It is advisable to write into the agreement that meetings should be held in those locations where the company operates in Europe. This way the EWC representatives will become familiar with different mills, sites, production methods as well as working terms and conditions. The EWC representatives' right to visit production facilities and sites should also be written into the agreement. This would make different personnel groups better informed about the operations of the company.

3.11 Translation of documents and interpretation

The European information and consultation procedure can only be implemented if all parties understand what is being talked about, i.e. what kind of information is given on the various issues. There must be no ambiguity about issues because the matters that are dealt with may be quite detailed and the concepts used in the meetings may be completely different from those used by the employees in their daily work. Therefore it is not enough just to provide language training to employees. Simultaneous interpretation must be available in the joint meetings and in the internal meetings by employees, as well as in the Select Committee meetings. Detailed enough provisions on simultaneous interpretation must be included in the agreement. Attention should also be paid to ensuring the services of adequately professional interpreters in order to avoid mistakes and misunderstandings.

The language question must also be taken into consideration when electing the members of the Select Committee. Since the members of the Select Committee have to be in touch on a regular basis, language skills are more important to them than to EWC representatives in general. Preferably, the Select Committee should have one common language. However, if some members do not possess the necessary language skills, intensive language training is needed to ensure regular and fluent communication. The costs of language training are the employer's responsibility but it is advisable to have this written into the EWC agreement.

It is also important to translate the meeting documents into all the languages that are represented in the EWC and this, too, is something that should be agreed on already in the agreement. In addition, there should be the possibility to produce information material in all the necessary languages.

Interpretation and translation costs are usually the single biggest expense in a company's EWC activity. This is why there may be attempts to make compromises with the representatives and to limit the number of languages. In actual fact, the total costs of EWC activities are negligible when compared to the total revenue of the company.

3.12 Use of experts

This must be agreed on separately, see chapter 5.2 WHO CAN BE INVITED TO MEETINGS and chapter 6.2 HOW IS THE EWC COORDINATOR SELECTED

3.13 Provisions concerning the Select Committee

This must be agreed on separately, see chapter 4.4 THE SELECT COMMITTEE AND ITS COMPOSITION

3.14 Informing those who are represented

This must agreed on separately, see chapters 5.4 INFORMING THOSE WHO ARE REPRESENTED and 5.6 WHAT IS CONFIDENTIAL INFORMATION

3.15 Changes in the company

This should be agreed on separately, see chapter 5.7 CHANGES IN THE COMPANY AND IN THE NUMBER OF REPRESENTATIVES and chapter 3.2 WHAT SHOULD THE AGREEMENT CONTAIN, paragraph 6 of the model agreement.

3.16 Responsibility for the costs of EWC activity

The company shall bear the costs of all EWC related activities, not only the meeting costs. According to the EWC Act, the employer will also reimburse any other costs arising out of the EWC activity within the group.

More detailed provisions can be agreed on for instance as regards the following costs:

- travel and training costs
- costs arising from communication between the EWC representatives and with the central management
- necessary materials
- personnel resources for the EWC Select Committee
- communication equipment
- costs relating to experts are always to be agreed on separately

3.17 The right to training and provisions concerning this

The current EWC Act presupposes that the EWC representatives must have the necessary means to exercise their legal rights (Section 40). In addition to the right to have adequate IT equipment, for instance, the law also specifically mentions the right to training. Training is to be paid for by the employer, and participation in training must not result in any loss of wages.

Nevertheless it is important to make specific provisions regarding the right to training in the EWC agreement because there may be differences in the national provisions between the different countries. Training may include language training or other training deemed necessary. It is advisable to write into the agreement that the representatives have the right to training and, for example, are entitled to five training days per year, and that the content of the training shall be decided by the Select Committee. In addition, the representatives should receive information about negotiation procedures and about practices in place in different countries. Training may also be provided on international business and finance.

3.18 Provisions concerning confidentiality

The confidentiality provisions of the Agreement shall not infringe on the legal rights of employee representatives, see chapters 5.5 EXCHANGING OF INFORMATION BETWEEN EMPLOYEE REPRESENTATIVES and 5.6. WHAT IS CONFIDENTIAL INFORMATION

3.19 Fair treatment of EWC representatives

The EWC Agreement must contain a clause guaranteeing EWC representatives protection against unfair treatment, discrimination and other similar actions. Experience has shown that problems

can best be avoided, if the agreement contains a provision giving EWC representatives the same level of protection as is enjoyed by shop stewards at national level.

Including a provision on the protection of employee representatives in the agreement is sensible even though the Finnish EWC Act stipulates that employee representatives and deputy representatives elected for international cooperation in groups of undertakings shall enjoy the same level of protection against dismissal as shop stewards under the national Employment Contracts Act. This protection of shop stewards does not necessarily apply to EWC representatives from all the different countries (the directive has not been transposed to national legislation for example in Switzerland or in countries outside the EU and the EEA). The above-mentioned provision in the agreement is thus by no means irrelevant.

Because there is lack of or inadequate protection in some countries it is advisable that, at least as regards agreements concluded under Finnish legislation, the level of protection enjoyed by EWC representatives should be defined as being at least on a par with that of Finnish shop stewards. This means that in some cases this level of protection needs to be expanded with specific provisions in the agreement, see chapter 3.2 WHAT SHOULD THE AGREEMENT CONTAIN.

It should also be agreed that any termination of the employment contract of an EWC representative should be brought to the attention of for example the Select Committee before the termination decision is implemented.

3.20 Who shall sign the agreement

The agreement which is reached as a result of negotiations shall be signed on behalf of the company by the representatives of the company authorised by management, and by members of the SNB on behalf of the employees. The Cooperation Working Group of the Council of Finnish Industrial Unions TP recommends that members refrain from signing the agreement until it has been approved by an expert. An expert may approve the agreement provided that it fulfils the minimum requirements for EWC agreements set by the Cooperation Working Group of TP and the international trade union federation of the sector. This will ensure the international acceptability of agreements and the implementation of a true spirit of cooperation. These requirements will also ensure minimum standards for EWC agreements and EWC activity and will help prevent falling short of the subsidiary requirements.

3.21 How long will the agreement be in force

The EWC agreement must state the validity period of the agreement and the period of notice for the termination of the agreement. Parties usually agree that the agreement can be revised during its period of validity. If such a provision is included in the agreement, the procedure for this must also be determined, defining who can put forward amendments and the length of time that needs to be given to the other party to consider the amendment, and whether a revision of the agreement requires unanimity or whether for example a majority decision will suffice. The agreement must contain some mention of the duration of the agreement. Agreements may be concluded for a fixed period or they may be valid until further notice. If an agreement is valid until further notice, the parties shall have the possibility to terminate it.

Setting the validity period of the first agreement at a few years, for example four years, has proven to be a practical approach especially at the early stages of EWC activity. After that it is time to assess the activity and possibly negotiate a new agreement or continue with the old agreement.

It is important to make sure that there will be no time period without any agreement, i.e. without an EWC. This kind of a situation may arise if the EWC agreement has been terminated or has seized to be valid because the period of validity has run out, and no new agreement has been concluded. A situation where no valid agreement exists means that negotiations for an EWC have to start afresh. A new Special Negotiating Body has to be set up with representatives selected in accordance with the provisions of the EWC Act. Previously elected EWC members cannot be used

and instead there shall be a new selection process. It is of course possible to elect the same persons as long as the selection process is repeated. In a situation without a valid contract, nothing remains of the previous EWC agreement – all the work done so far and all the best practices that have been adopted will expire. No EWC meetings can be convened. Without a valid agreement the company has no transnational cooperation body that it would need to inform for instance in case of significant reorganisation of production. The SNB can only discuss the draft agreement for an EWC in its meetings.

Entering a period without a valid agreement does not mean that it would be possible to start applying the subsidiary requirements of the EWC Act directly. The subsidiary requirements can only be applied if the negotiations by the SNB do not lead into the conclusion of an EWC agreement within three years.

It is possible to avoid ending up in a situation without a valid agreement for example by including a clause in the EWC agreement to the effect that the agreement shall be valid until a new agreement has been concluded. The EWC Act provides the possibility to use an expert from a trade union in the agreement negotiations. With the help on an expert, the text of the agreement can be drafted so that it will not be necessary to end up in a situation without a valid agreement inadvertently.

The EWC Agreement should also include a provision on the time period allowed for renegotiation of the agreement. The text could say, for instance, that renegotiations may not exceed 12 months. If no provisions are made about the duration of renegotiations, it will not be clear when negotiations can be deemed as failed, from which time onwards the subsidiary requirements of the law would apply. The Cooperation Working Group of the Council of Finnish Industrial Unions TP recommends that the time limit for renegotiations should be set at a maximum of three years which would keep the agreement in line with the EWC Act. It can also be agreed that the subsidiary requirements of the EWC Act will enter into force even sooner, if the parties are unable to reach agreement in the negotiations. C.f. chapter 3.2 WHAT SHOULD THE AGREEMENT CONTAIN, paragraph 10 of the model agreement.

If the negotiations concern the revision of an EWC agreement which had been concluded during the transitional period, the new agreement must contain a clause stating that from now on it is the currently valid EWC law that applies. Agreements concluded during the transitional period have been discussed in chapter 1.7 of this Guide: WHICH AGREEMENTS ARE WITHIN THE SCOPE OF EWC LEGISLATION.

3.22 Subsidiary requirements

In a situation where negotiations do not lead to a conclusion of an EWC, the subsidiary requirements of the law shall be followed. These provisions define the key elements of EWC work and set minimum standards for the activity.

Subsidiary requirements are a better alternative than a weak EWC agreement that does not meet the minimum legal requirements, in which case the law would not be complied with at all. Subsidiary requirements do not function as a minimum set of requirements when an agreement is concluded. Those provisions in the subsidiary requirements (often all of them) that the parties want to abide by, must be specifically included in the agreement. The application of subsidiary requirements is normal procedure in a situation where negotiations do lead to an understanding. Efforts to reach an agreement may well be continued even after EWC activities based on subsidiary requirements have started. One might, however, give some thought as to the image portrayed by a company that is unable to reach an agreement of its own, on which to base its EWC activity.

4 Starting of EWC activity

4.1 Setting-up of EWC activity in a group of undertakings

The EWC Act presupposes that EWC activities are to be implemented in a group of undertakings under a single system. In companies with completely different areas of operation, it may sometimes be useful to set up separate European Works Councils for several different areas of operation. This may improve the flow of information in some cases but at the same time it is important to make sure that all the companies and units of the group are included in the system. This kind of a division can only be applied to specific sectors or business units, for example. The EWC cannot be divided on a geographical basis.

The decision to have several EWCs in one group of undertakings shall be made on a case-by-case basis because many groups of undertakings have a centralised management, and the above-mentioned solution does not always allow for mutual meetings of the EWC and central management. If a group decides to have more that one EWC, it must make sure that all of the EWCs have the chance to get together and enter into a dialogue. In practice this means that joint gatherings of EWCs should be provided for in each of the EWC agreements.

4.2 Who can become a Works Council representative

The term EWC representative can only be used about a person who represents the employees of a company. An EWC representative may be employed by the company or s/he may be an expert authorised by the employees. The management has its own representatives but they are not called EWC representatives. The management representatives and the EWC representatives together are parties to the EWC activity.

In Finland it is usually the shop stewards who elect EWC representatives either from among themselves or in some other way. Persons who are in a managerial position usually cannot represent employees. It is also important to remember that the EWC itself is a body for the employees, and only employees or their representatives can be members in it.

The chairperson of a European Works Council can either be an employee representative or someone appointed by the management. In some countries (such as France) the law stipulates that EWC meetings shall be chaired by a company manager or by some other corresponding person, whereas in some other countries it is up to the Works Council to choose its chairperson. In an EWC based on an agreement also trade union representatives, e.g. trade union officials, may serve as EWC representatives. However, this must be agreed on jointly. For instance in the UK it is customary for the trade union officials to be in charge of negotiations with companies.

4.3 How are representatives for the different countries selected

Representatives are selected in accordance with national legislation and practice. Some agreements specify how representatives are to be selected and which criteria the candidates should fulfil. If the requirements are in contradiction with Finnish practices, this particular part of the contract should be looked at more closely. Often it is necessary to look into the way in which the representatives for different countries have been selected in order to find out whether some of the representatives have in fact been unilaterally appointed by the local management.

The selection of EWC representatives and the composition of the Select Committee should take note of equal representation of men and women, regional representation and to reflect equal treatment of all the different personnel groups and trade unions.

The Finnish EWC Act does not define the term of office of a representative. The term usually only lasts the time that has been agreed on nationally, irrespective of a possible definition of the length of the mandate in the agreement. This means that if the EWC representative of a particular country were to lose his/her national mandate – i.e. s/he is not elected for another term – s/he no longer has the possibility to continue as an EWC representative. EWC representatives often also act as local employee representatives (shop stewards or occupational health and safety officers) and it is through this activity that they receive their mandate as EWC representatives. If they lose this mandate, they often also lose their position as EWC representatives. The length of the term of office varies from one country to another – e.g. in France the term of office is two years, in Luxembourg it is five.

4.4 The Select Committee and its composition

The EWC representatives shall appoint a Select Committee from among themselves. The task of the Select Committee is to coordinate the activities of the EWC, and it can only comprise employee representatives. The chair of the Select Committee must also be an employee representative. The committee shall have the possibility to exercise its activities on a regular basis. According to the subsidiary requirements of the law, the Select Committee shall comprise at most five (5) members. It is possible to make exception to this rule in the agreement – the select committee may then comprise more than five members. If no EWC agreement has been concluded, employees should appoint a Select Committee with five members. An adequately large Select Committee is better equipped to manage its tasks and divide the work between its members.

The Select Committee and management representatives may have discussions whenever there is need or willingness to do so. The Select Committee should in any case meet at least three to five times a year in addition to the EWC meetings. It is important that the Select Committee meets as frequently as possible, in order to have regular discussions on the efficiency of the adopted structure of activity, issues that need to be raised in the meetings and also to talk about the possibility of introducing changes to the agreement and practices.

In addition to the composition of the Select Committee, other issues to be decided are the appointing of the Select Committee, its tasks and its rules of procedure. Usually it is however the management representatives (e.g. a management assistant) who take care of other meeting arrangements such as reserving the meeting venue and accommodation. These issues also should be written into the agreement.

4.5 Other working groups

In addition to the Select Committee, other committees or working groups may also be established. They can be either permanent or temporary. Setting up a permanent committee or working group may be sensible, if the company has in its operations a specific permanent challenge or an objective which should be discussed by employees and central management together. Competence development is an example of this kind of a permanent objective in a workplace where expert skills are required. There could be a special committee or working group for this theme in order to avoid cramming the joint agenda of the EWC with issues relating to this objective. Setting up a temporary committee or working group may also be necessary if the company wants to introduce significant reorganisation of production.

4.6 Management representatives and who chairs the EWC

In practice it is a company's internal decision-making structure and organisation that determines who shall participate in EWC meetings from the management side but according to Section 13(c) of the EWC Act, the *appropriate* level of management shall participate in the information and consultation process. It is recommendable that alongside the persons responsible for company HR or group HR, the most important decision-makers should also participate in the meetings. These include e.g. the chairman of the board of directors and the managers responsible for different areas of activity at the European level. The Select Committee must agree on the agenda in advance together with corporate management.

The task of chairing the meetings shall be agreed on in advance, preferably in the agreement. Finnish legislation does not have provisions on who shall chair the meetings.

In Works Councils at the Nordic level, meetings are often chaired by a representative of the employer – however there are other approaches as well. In Germany there are Works Councils which according to German legislation comprise only employee representatives and are always chaired by an employee representative. Also in meetings held together with management, an employee representative chairs the meeting. In France, joint meetings are chaired by a management representative whereas in Holland the task of chairman rotates. Often it is the practice applied at the company's domicile which determines the approach that is adopted.

A representative of the employer can only chair the joint meetings. It is important for the employee side to have a good internal structure because internal meetings by employees always have to be chaired by an employee representative. This means that the employees need to be well organised and able to share responsibility. The employee group must have its own chairperson, vice-chair and preferably also a secretary (just as you would have in an association).

It is important that at least the Select Committee should be chaired by employees. Some consideration should also be given to the selection of other bodies and officials, such as a permanent technical secretary.

4.7 Check-list for an EWC representative

- Build good relations within your own personnel group; cooperation with other personnel groups is also important
- Know the ways of working of your company (management, HR etc.) but also familiarise yourself with other units of the group and the structure of corporate administration
- Educate yourself. Language skills are an asset, even though there is no shame in using the interpretation services - it is a right guaranteed by the agreements.
- Be actively in touch with the Select Committee, if you want to bring matters to the discussion
- familiarise yourself with the issues that are going to be discussed, study the background material as well as possible
- Talk to other representatives from your country about the issues at hand, find out also where the other personnel groups stand on these issues
- Be there on time, the pre-meeting of employee representatives before the joint EWC meeting is important
- The meeting provides an excellent opportunity to get to know representatives from other countries and their thoughts – it is also a good opportunity to make your own views known
- Discuss with others in order to formulate a common stand on the issues at hand
- Build cooperation networks with representatives from other countries in order to be able to exchange information and to engage in other activities (email, phone etc.)

- Be an active participant in the ordinary EWC meeting. If you have opinions, let others know about them
- After the meeting, attend the short debriefing session to discuss the following: how did the meeting go, how did things move forward, what could the next steps be
- When back at home, inform the different personnel groups about the outcome of the meeting
- Make use of the EWC expertise of your own union
- Keep your trade union informed
- Make use of the support that your EWC coordinator can provide

4.8 Check-list for the Select Committee

- Prepare the meetings together, possible by discussing things (such as the agenda) with the employer's side
- Make sure you have clear justification for organisational decisions, such as
    - the venue of the EWC meeting
    - the number of languages for interpretation
    - the number of languages for the translation of documents
- Adopt the agendas preliminarily and make sure that the agenda is finalised and distributed in good time
- Take care of the day-to-day issues such as the creation of a network of contacts both for the employee representatives and for the management
    - When necessary, convene extraordinary meetings
    - Make sure that the EWC representatives have access to the experts' support

4.9 Check-list for the management

- Implement information and consultation as a continuous process – this will make the process run smoothly and will create an atmosphere of mutual trust for the dialogue
    - in EWC meetings
    - in between EWC meetings
- Organise the EWC meetings
    - Agree on the meeting venue with the EWC Select Committee
    - Discuss issues raised in the meeting in addition to issues agreed in the agreement
    - Arrange the meeting venue and accommodation
    - Reserve the meeting room also for the preliminary meeting and the debriefing meeting by EWC representatives
    - Send out the invitations to the meeting
    - Put together and send the meeting documents. If necessary, have documents translated into other languages.
    - Arrange interpretation
        - for the joint EWC meeting
        - for the employees' pre-meeting and debriefing meeting

– In exceptional circumstances
  - Make sure that adequate information is given to EWC representatives
  - Make sure that EWC representatives are consulted
  - If necessary, organise an extraordinary EWC meeting
  - Monitor the situation to see how it develops

5 The EWC in action

5.1 Convening an EWC meeting and participation in an EWC

Invitation to joint EWC meetings is sent by the employer. Usually the time of the meeting, agenda, venue and practical arrangement will have been agreed between the employer and the Select Committee. The employer is responsible for the meeting arrangements and for the costs incurred by the meeting.

The employer must also make sure that employee representatives have the possibility to attend meetings without any restrictions imposed in the country of departure. The local management in different countries should be informed about the nature of EWC activity and about the rights of EWC representatives, such as the right to attend meetings. It is up to the central administration to make sure that every EWC representative has the financial means to participate in meetings. This entails among other things being released from work without any loss of income and the full compensation of travel costs. If necessary, central administration will also take care of other necessary expenditure related to this.

The EWC will take care of invitations to the internal employee meetings. The agenda for these meetings can be decided freely. When necessary, the EWC may invite trade union officials and other experts to these meetings.

5.2 Who can be invited to meetings

As has been explained before, provisions should be included in the agreement as to who shall have the right and the duty to participate in joint meetings from the employee and employer side.

Joint meetings are always attended by EWC representatives elected at the workplaces. Extraordinary meetings are usually attended by members of the Select Committee and the representatives from those countries that are involved in the matter to be discussed. It is worthwhile to use representatives of national unions as experts in extraordinary meetings. The EWC coordinator should also always be invited to extraordinary meetings, see Chapter 6 of the Guide: EXPERTS AND THE COORDINATOR

Sometimes companies try to include ideas about the independence of the company and its personnel vis-à-vis trade unions in the company values or guidelines. This must not be allowed to hamper cooperation between EWC representatives and trade unions. In practice, EWC activity is not possible without the support of trade unions. Trade unions provide up-to-date information about legal developments and best EWC practices.

The representatives of European trade union federations should also have the right to attend EWC meetings when necessary. This right can also be transferred to the responsible trade union. When invited by the EWC, experts may attend the joint meetings but especially the internal EWC meetings of employees.

The participation of experts shall not be restricted. Experts and the coordinator will ensure that matters will have been understood correctly and that the EWC activity meets the objectives and expectations set out for it. Trade union officials may be invited as experts. More information on this can be found in chapter 5.2 of the Guide: WHO CAN BE INVITED TO MEETINGS and 6.2. HOW IS THE EWC COORDINATOR SELECTED.

In addition to representatives and experts, other guests may be invited to meetings. The rules of confidentiality naturally apply to these visitors, just as they apply to all other participants. Employees shall have an equal right to invite experts to meetings, just as management representatives have. The agreement must clearly state who decides on the right of other visitors

to participate in meetings. If the EWC and central management make this decision together, they must also decide on a procedure to be applied in case of disputes on this issue.

5.3 EWC participation by representatives from outside the EU/EEA countries

Switzerland and the non-EU countries in Eastern Europe (such as Russia and Ukraine) are also a part of Europe and should thus be included in the agreement even though the EWC Act does not apply to them as they are not members of the EU or the EEA. The purpose of EWC activity is to have a dialogue between the employees and the management of a company, so it is logical to invite employee representatives from those countries where the company operates.

In some countries the international trade union movement has, together with the corporate management, taken works council cooperation to a global level. These are called Global Works Councils (GWCs) even if the company has no body corresponding to an EWC, and has instead, for example, simply had regular joint meetings convened by the management. If the decision is made to expand an EWC to a GWC, it is important to make sure that expanding the activity will not lead to its weakening, for instance by reducing the number of annual meetings or by restricting the content of those meetings.

5.4 Informing those who are represented

All participants to the meeting are obliged not to disclose confidential information to people outside the company. However, the confidentiality rules do not prevent giving information to the coordinator of the EWC. Even if there are external participants in the employees internal meeting, the obligation of central management to give information shall not be restricted. The internal meetings of employees are needed to provide employee representatives with the possibility of discussing issues freely.

Otherwise, according to Section 40(a) of the Act, employee representatives have the right to inform other employee representatives, or if no such representatives have been selected, employees directly, about the content and the results of the information and consultation process. This right may only be restricted by the confidentiality rule, discussed in chapter 5.6 of the Guide: WHAT IS CONFIDENTIAL INFORMATION.

The agreement should contain clear provisions regarding the right and the obligation of EWC representatives to distribute the information that they have been given to national employee representatives. The agreement must also clearly mention the right of employee representatives and all other employees to approach the EWC representatives and the Select Committee. The agreement must make it clear that EWC representatives have the right and the obligation to inform employees at local and/or national level. This will strengthen national and European unity and is in accordance with the requirements of EWC legislation.

The agreement shall also specify how and by whom EWC information is to be conveyed to such countries and those employees or their representatives that may not have an EWC representative.

The meeting minutes written by the EWC and central management can be used to convey basic information. However, this must not be the only information that employees receive. EWC representatives have the right to keep minutes at their internal preparatory and debriefing meetings and distribute information about them. Information should be allowed to flow relatively freely between employee representatives who have been assigned to positions of responsibility and the officials and experts who assist them, since they are all bound by the responsibility of their position. Confidentiality rules may be observed more strictly when information is distributed to ordinary members. It should not be forgotten that information shall also be sent to trade unions represented in the companies. National pre-meetings and debriefing meetings

should, when possible, also be organised for employee representatives and representatives of trade unions.

5.5 Exchanging of information between employee representatives

Already from the SNB stage onwards, employee representatives should exchange email addresses and create a network for information exchange. EWC representatives should have to a joint discussion forum on the Internet to make communication easier. The lack of a common language may hamper direct contacts between EWC representatives. Communication in between EWC meetings therefore remains very much the responsibility of the Select Committee. More information on the establishing of the Select Committee in chapter 4.4 of this Guide: THE SELECT COMMITTEE AND ITS COMPOSITION.

Tasks which clearly fall under the responsibility of the Select Committee should be written into the agreement (see check-list for the Select Committee in chapter 4.8 of the Guide. In order to perform its tasks the Select Committee must have the possibility to convene at other times in addition to the EWC meetings. Interpretation may be needed because the members of the Select Committee should be representatives of different countries. Similarly, translation services may also be needed in order to guarantee that employee representatives are properly informed in between meetings. Provision for this should be included in the agreement.

In general, thought should be given to the kind of infrastructure, tools and services that are needed so that the Select Committee and the EWC may keep in regular contact.

5.6 What is confidential information

Section 40(a) of the EWC Act stipulates that EWC representatives have the duty to inform the employees that they represent. Exception to the rule are confidential matters which have been defined in Section 43 of the EWC Act.

The law stipulates that members of the employees' negotiating body have to keep confidential information obtained in connection with the cooperation procedure relating to business and trade secrets of the group of undertakings or the undertaking, information relating to the financial position of the group of undertakings or the undertaking, the said information not being public information according to other legislation, and the dissemination whereof would probably be prejudicial to the group of undertakings or the undertaking or any of their business partners or contracting parties, and information relating to the security of the group of undertakings or the undertaking and the corresponding security system, the dissemination whereof would be prejudicial to the group of undertakings or the undertaking or their business partners or contracting parties.

For instance, actions which will have a significant impact on the position of the employees, such as mass redundancies cannot be declared confidential information. Nor can actions such as closures of sites be considered to fall under confidentiality rules. However, confidentiality can be applied to manufacturing methods or customer information. If the information to be provided to employees, for instance in the case of the closing down of operations in some sites, contains confidential information, such as information concerning production volumes, the confidentiality requirement can only applied to these production volumes, not to the actual information concerning the closing down of sites.

Confidentiality rules do not, however, prevent the persons bound by the obligation of confidentiality from disclosing the information to other employees or their representatives or experts assisting them referred to in the said subsection, if necessary in order to carry out the cooperation duties. In this case the representative shall inform those s/he represents about the confidentiality obligation.

One of the preconditions for confidentiality is that the management of the group of undertakings or the undertaking have indicated to the persons bound by the obligation of confidentiality what information is considered as business and trade secrets. The obligation of confidentiality shall

continue during the entire duration of the contract of employment of the employee and his representative, and the expert's confidentiality obligation shall continue after termination of the task of the expert.

Employers are usually keen to expand this obligation by introducing provisions on confidentiality in the agreement as well as the right to sanction those who violate these provisions.

However, this is not the aim of the legislation, and negotiators should be careful not to include such clauses in the agreement. As regards confidentiality, it is sufficient if the agreement includes reference to national confidentiality regulations. Under no circumstances should the negotiators agree to list issues which would be defined as confidential already in advance. The informing of employees as intended by the law will not be achieved if, for example, strategic changes are listed as confidential matters.

The law stipulates that the employer must indicate specifically which business or trade secrets are to be considered confidential. However, information concerning a private individual shall always be considered confidential, unless the person in question has allowed the information to be disclosed. According to the law, matters which are to be considered confidential may, however, be discussed among those workers and salaried employees or employee representatives whom the matter concerns, if disclosing this information is necessary in carrying out the cooperation tasks. The more sensitive the information, the more careful consideration should be given to its disclosure. For example the mere informing of employees by representatives might not be considered necessary. On the other hand, sometimes it may be necessary to disclose even what is considered insider information in the meaning of the Securities Markets Act to a carefully defined group of recipients, if, without disclosing this information, the EWC representative would be unable to get from the said recipients information which is needed in the performance of his/her duties. It should also be noted that not all insider information is equally sensitive.

When considering the disclosure of confidential information to fellow-employees or for example to the trade union in order to get legal advice, one always has to find out whether it would be possible to perform the cooperation tasks without divulging this information, and if no other alternative exists, still to weigh the sensitivity of the information against the importance of the issue at hand in the EWC. Neither the law nor the EWC Agreement can thus provide in advance detailed provisions on what kind of matters are to be considered confidential without exception.

5.7 Changes in the company and in the number of representatives

Acquisitions and sales of companies happen all the time, and therefore the need may arise to make changes to the composition the EWC or EWCs. The EWC Act has a specific section on this - Section 26(b) which describes the required procedure. It is advisable to follow the provisions of this section. It is also possible to make provisions for this eventuality in advance in the EWC Agreement, if that is deemed best.

5.8 Training needs

Although EWC representatives have recourse to trade union officials, they must be trained for the task. As was mentioned earlier, language training is necessary. EWC representatives are to agree among themselves, whether a common language is to be used.

The EWC Act emphasises the representatives' right to training which is necessary and relevant to the performance of their duties (Section 40). Training is paid for by the employer, and participation in training shall not lead to loss of income.

Language skills here mean the ability of EWC representatives to communicate also in between meetings. Language training may never replace simultaneous interpretation.

Training is also needed in other areas. Representatives must be familiar with the negotiation procedures and the methods for representing employees' interests at workplaces in the countries belonging to the EWC. It is a good practice to have presentations on trade union activity and

operating methods in each country e.g. during the preparatory meeting by employees. Also, training on international business economics is usually needed.

It is important that the right to training is written into the EWC agreement since national regulations may differ. Provisions relating to these, such as the right to take leave and the sharing of training costs, vary from country to country.

5.9 Who is responsible for the costs of EWC activity

The company shall bear the costs of all EWC related activities, not only the meeting expenses. According to the EWC Act, the employer shall also reimburse other costs arising from cooperation in groups of undertakings in accordance with this Act. More detailed provisions may be made concerning the following costs:

- travel and training costs
- costs arising from communication among EWC representatives and between EWC representatives and central management
- necessary materials
- personnel resources for the EWC Select Committee
- communication equipment
- costs arising from the use of experts are to be agreed on a case-by-case basis

More information on the reimbursement of costs arising from the use of experts can be found in Chapter 6.4 of this Guide.

5.10 Resolution of disputes

The new EWC Act contains provisions for the resolving of EWC disputes involving companies that have their headquarters in Finland. The Finnish Cooperation Ombudsman can only investigate disputes which concern EWCs based on the Finnish EWC Act.

Examples of issues that disputes may relate to:

- need for information in connection with important decisions concerning the company
- timing of information
- the need to use experts
- deciding on the agenda of a meeting
- convening additional meetings
- inviting visitors, observers and representatives of companies to EWC meetings
- sending and translating documents
- confidentiality of a particular piece of information
- formulating the minutes of joint meetings
- adapting to a changed corporate structure

According to the EWC Act, the Cooperation Ombudsman may take up disputes or other matters that s/he has been notified about. The Cooperation Ombudsman can give detailed instructions and may issue an improvement notice to remedy the situation. If necessary, the Cooperation Ombudsman may also impose a conditional fine on the company in order to encourage compliance or, when necessary, may notify the police to have the matter investigated and taken to court subject to public prosecution. The possibility to utilise the expertise of the Cooperation Ombudsman may reduce the need to resort to other dispute resolution models that have been

used earlier. The Cooperation Ombudsman may also be contacted by someone other than the EWC representative, an employee representative or a company representative. If someone from the company decides to contact the Cooperation Ombudsman, it would be advisable to inform the Cooperation Working Group of the Council of Finnish Industrial Unions TP also.

However, the situation is different as regards EWC agreements based on the legislation of other countries. Many agreements may contain provisions for instance on the use of arbitration in disputes. This is usually not the best possible approach to resolving issues. Arbitration is often a very expensive method. What is usually agreed on this method is that the parties will have to split the costs, irrespective of which party is found to be in the right. Because the costs of arbitration are considerable, it follows that trade unions cannot afford to contest contract disputes even when they should. Usually arbitration decisions cannot be appealed, and there is thus no recourse to having possibly incorrect decisions overturned. Arbitration decisions and their reasoning are usually confidential information, so they do not provide precedents to which one could appeal. As to whether litigation takes place in public or in secret, this is also significant from the point of view of promoting law-abiding in general and preventing illegal practices. If both the proceedings and the decision are secret, the party who has broken the law can avoid bad publicity which would be brought about by court proceedings.

It is thus highly recommendable that negotiators should familiarise themselves with the legislation of the country where the company's headquarters are. They should also find out what the procedures are for taking an EWC related matter to court, and who would pay the expense. This will enable them to demand best possible provisions regarding dispute resolution in the agreement.

In EWC agreements based on legislation of other countries, it is also possible to agree on an internal procedure for the settling of disputes. This type of a procedure may for example entail a committee consisting of both parties and a neutral chairperson. When including such a procedure in the agreement, there should also be provisions on who will be responsible for the costs from this.

The Finnish Criminal Code also contains provisions on violations regarding the selection of employee representatives, protection against unfair dismissal and confidentiality.

6 Experts and the coordinator

6.1 What is an EWC coordinator

The EWC coordinator is an expert who has extensive experience and know-how in EWC activity. S/he has also been specifically trained for the task. The EWC coordinator provides support to the EWC representatives and helps them with all EWC related issues.

The tasks and the competence of a coordinator cover for instance the following areas:

- EWC legislation
- Best practices in EWCs
- International cooperation
- Area of industry in which the company operates
- Cooperation of employee groups and unions and promotion of this cooperation at EU and national level
- Situations involving change at EU and national level
- Training of EWC representatives or organising training in the company
- Providing support to the EWC group
- Supporting the EWC Select Committee in its work

The coordinator represents the European trade union federation and provides an interface between the federation and the EWC. The coordinator is also obliged to represent all unions active in the company. In addition, the coordinator promotes cooperation between employee groups and unions at EU level and at national level, and acts as a contact person at these levels in situations involving change.

When necessary, the coordinator will take part in EWC meetings. The coordinator's right to participate and the covering of costs incurred by this should be specifically provided for in the EWC agreement.

For the company, an EWC coordinator is a specialist whose expertise the company can utilise.

6.2 How is the EWC coordinator selected

European trade union federations and different trade unions keep a register of nationally selected EWC coordinators. They also organise training for coordinators and thereby ensure that their expertise is up-to-date. The federation usually requires that a coordinator be selected from the parent country of the group of undertakings since this will ensure that the coordinator is familiar with the EWC legislation in that country, this being the legislation that the company must abide by. The coordinator is appointed in accordance with national practices. In Finland EWC coordinators are appointed by the Cooperation Working Group of the Council of Finnish Industrial Unions TP, and the administration of the federation confirms the appointments.

6.3 Check-list for the EWC coordinator

- Familiarise yourself with EWC legislation
- Learn about best practices in EWC work and bring those to the fore

- Learn about international cooperation
- Familiarise yourself with the sector that the company operates in
- Support the cooperation of employee groups and unions both at EU level and at national level
- Act as a coordinator in situations involving change at EU level and at national level
- Make sure that EWC representatives receive training in the company
- Support the activity of the EWC
- Support the EWC Select Committee in its work

6.4 Who is responsible for the costs of an expert

According to the Finnish EWC Act costs incurred by experts are to be borne by the company, and the number of experts is not restricted to one, as has been done in some countries. According to the law, reasonable expert expenditure would mean, depending on the complexity of the issue to be dealt with, at most a few experts with reasonable fees. However, according to Section 37, subsection 3, the central management of the company is only obliged to pay for travel expenses and accommodation for one expert per meeting.

The use of an expert is possible both in the ordinary EWC meetings and in the meetings of the Select Committee. The coordinator's services can also be utilised when preparing for meetings, in so far as is necessary for the exercise of the duties of the body in question.

6.5 How to ensure communication among employee representatives and between employees and the employer

Successful working of the EWC requires well-functioning relations between EWC representatives and representatives of the management. Communication is not only about concrete, well-functioning communications technology, it is part of the building of trust.

In practice, well-functioning communication boils down to two-way communication between the EWC Select Committee and the management representative/representatives responsible for EWC issues.

Communication can well be taken care of by regular telephone conferences complemented by face-to-face meetings. Written material is an essential part of communication. Clear memoranda should be drawn up from discussions. When a meeting memorandum is dispatched after the meeting, the participants can check whether they understood things in the same way. If all that the participants have after a meeting are their personal notes, and a member of the Select Committee uses these notes to put together an information bulletin to employees s/he represents, an unfortunate misunderstanding may spread far and wide. Memoranda and other materials shall be distributed to all participants of the EWC. If the Select Committee has discussions with management without reporting to other EWC representatives, this may undermine the mutual trust of EWC representatives.

The EWC also provides information to the management. It is a good idea to draft memoranda about the meetings and send them to management representatives, so that both parties can see what has been focussed on in the discussions.

Directive

L 122/28 EN Official Journal of the European Union 16.5.2009

DIRECTIVE 2009/38/EC OF THE EUROPEAN PARLIAMENT AND OF 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)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Having consulted the Committee of the Regions,

Acting in accordance with the procedure referred to in Article 251 of the Treaty [2],

Whereas:

(1) A number of substantive changes are to be made to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees [3]. In the interests of clarity, that Directive should be recast.

(2) Pursuant to Article 15 of Directive 94/45/EC, the Commission has, in consultation with the Member States and with management and labour at European level, reviewed the operation of that Directive and, in particular, examined whether the workforce size thresholds are appropriate, with a view to proposing suitable amendments where necessary.

(3) Having consulted the Member States and management and labour at European level, the Commission submitted, on 4 April 2000, a report on the application of Directive 94/45/EC to the European Parliament and to the Council.

(4) Pursuant to Article 138(2) of the Treaty, the Commission consulted management and labour at Community level on the possible direction of Community action in this area.

(5) Following this consultation, the Commission considered that Community action was advisable and again consulted management and labour at Community level on the content of the planned proposal, pursuant to Article 138(3) of the Treaty.

(6) Following this second phase of consultation, management and labour have not informed the Commission of their shared wish to initiate the process which might lead to the conclusion of an agreement, as provided for in Article 138(4) of the Treaty.

(7) It is necessary to modernise Community legislation on transnational information and consultation of employees with a view to ensuring the effectiveness of employees' transnational information and consultation rights, increasing the proportion of European Works Councils established while enabling the continuous functioning of existing agreements, resolving the problems encountered in the practical application of Directive 94/45/EC and remedying the lack of legal certainty resulting from some of its provisions or the absence of certain provisions, and ensuring that Community legislative instruments on information and consultation of employees are better linked.

(8) Pursuant to Article 136 of the Treaty, one particular objective of the Community and the Member States is to promote dialogue between management and labour.

(9) This Directive is part of the Community framework intended to support and complement the action taken by Member States in the field of information and consultation of employees. This framework should keep to a minimum the burden on undertakings or establishments while ensuring the effective exercise of the rights granted.

[1] Opinion of 4 December 2008 (not yet published in the Official Journal).
[2] Opinion of the European Parliament of 16 December 2008 (not yet published in the Official Journal) and Council Decision of 17 December 2008.
[3] OJ L 254, 30.9.1994, p. 64.

(10) The functioning of the internal market involves a process of concentrations of undertakings, cross-border mergers, take-overs, joint ventures and, consequently, a transnationalisation of undertakings and groups of undertakings. If economic activities are to develop in a harmonious fashion, undertakings and groups of undertakings operating in two or more Member States must inform and consult the representatives of those of their employees who are affected by their decisions.

(11) 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 affecting those employees. This may lead to the unequal treatment of employees affected by decisions within one and the same undertaking or group of undertakings.

(12) Appropriate provisions must be adopted to ensure that the employees of Community-scale undertakings or Community-scale groups of undertakings are properly informed and consulted when decisions which affect them are taken in a Member State other than that in which they are employed.

(13) In order to guarantee that the employees of undertakings or groups of undertakings operating in two or more Member States are properly informed and consulted, it is necessary to set up European Works Councils or to create other suitable procedures for the transnational information and consultation of employees.

(14) The arrangements for informing and consulting employees need to be defined and implemented in such a way as to ensure their effectiveness with regard to the provisions of this Directive. To that end, informing and consulting the European Works Council should make it possible for it to give an opinion to the undertaking in a timely fashion, without calling into question the ability of undertakings to adapt. Only dialogue at the level where directions are prepared and effective involvement of employees' representatives make it possible to anticipate and manage change.

(15) Workers and their representatives must be guaranteed information and consultation at the relevant level of management and representation, according to the subject under discussion. To achieve this, the competence and scope of action of a European Works Council must be distinct from that of national representative bodies and must be limited to transnational matters.

(16) The transnational character of a matter should be determined by taking account of both the scope of its potential effects, and the level of management and representation that it involves. For this purpose, matters which concern the entire undertaking or group or at least two Member States are considered to be transnational. These include 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.

(17) It is necessary to have a definition of 'controlling undertaking' relating solely to this Directive, without prejudice to the definitions of 'group' or 'control' in other acts.

(18) The mechanisms for informing and consulting employees in undertakings or groups of undertakings operating in two or more Member States must encompass all of the establishments or, as the case may be, the group's undertakings located within the Member States, regardless of whether the undertaking or the group's controlling undertaking has its central management inside or outside the territory of the Member States.

(19) In accordance with the principle of autonomy of the parties, it is for the representatives of employees and the management of the undertaking or the group's controlling undertaking to determine by agreement the nature, composition, the function, mode of operation, procedures and financial resources of European Works Councils or other information and consultation procedures so as to suit their own particular circumstances.

(20) 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.

(21) It is necessary to clarify the concepts of information and consultation of employees, in accordance with the definitions in the most recent Directives on this subject and those which apply within a national framework, with the objectives of reinforcing the effectiveness of dialogue at transnational level, permitting suitable linkage between the national and transnational levels of dialogue and ensuring the legal certainty required for the application of this Directive.

(22) The definition of 'information' needs to take account of the goal of allowing employees representatives to carry out an appropriate examination, which implies that the information be provided at such time, in such fashion and with such content as are appropriate without slowing down the decision-making process in undertakings.

(23) 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.

(24) The information and consultation provisions laid down in this Directive must be implemented in the case of an undertaking or a group's controlling undertaking which has its central management outside the territory of the Member States by its representative agent, to be designated if necessary, in one of the Member States or, in the absence of such an agent, by the establishment or controlled undertaking employing the greatest number of employees in the Member States.

(25) The responsibility of undertakings or groups of undertakings in the transmission of the information required to commence negotiations must be specified in a way that enables employees to determine whether the undertaking or group of undertakings where they work is a Community-scale undertaking or group of undertakings and to make the necessary contacts to draw up a request to commence negotiations.

(26) The special negotiating body must represent employees from the various Member States in a balanced fashion. Employees' representatives must be able to cooperate to define their positions in relation to negotiations with the central management.

(27) 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. In order to enable them to monitor the establishment of new European Works Councils and promote best practice, competent trade union and employers' organisations recognised as European social partners shall be informed of the commencement of negotiations. Recognised competent European trade union and employers' organisations are those social partner organisations that are consulted by the Commission under Article 138 of the Treaty. The list of those organisations is updated and published by the Commission.

(28) The agreements governing the establishment and operation of European Works Councils must include the methods for modifying, terminating, or renegotiating them when necessary, particularly where the make-up or structure of the undertaking or group of undertakings is modified.

(29) 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.

(30) Those agreements must provide, where necessary, for the establishment and operation of a select committee in order to permit coordination and greater effectiveness of the regular activities of the European Works Council, together with information and consultation at the earliest opportunity where exceptional circumstances arise.

(31) Employees' representatives may decide not to seek the setting-up of a European Works Council or the parties concerned may decide on other procedures for the transnational information and consultation of employees.

(32) Provision should be made for certain subsidiary requirements to apply should the parties so decide or in the event of the central management refusing to initiate negotiations or in the absence of agreement subsequent to such negotiations.

(33) 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.

(34) Provision should be made for the employees' representatives acting within the framework of this Directive to enjoy, when exercising their functions, the same protection and guarantees as those provided to employees' representatives by the legislation and/or practice of the country of employment. They must not be subject to any discrimination as a result of the lawful exercise of their activities and must enjoy adequate protection as regards dismissal and other sanctions.

(35) The Member States must take appropriate measures in the event of failure to comply with the obligations laid down in this Directive.

(36) In accordance with the general principles of Community law, administrative or judicial procedures, as well as sanctions that are effective, dissuasive and proportionate in relation to the seriousness of the offence, should be applicable in cases of infringement of the obligations arising from this Directive.

(37) For reasons of effectiveness, consistency and legal certainty, there is a need for linkage between the Directives and the levels of informing and consulting employees established by Community and national law and/or practice. Priority must be given to negotiations on these procedures for linking information within each undertaking or group of undertakings. If there are no agreements on this subject and where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged, the process must be conducted at both national and European level in such a way that it respects the competences and areas of action of the employee representation bodies. Opinions expressed by the European Works Council should be without prejudice to the competence of the central management to carry out the necessary consultations in accordance with the schedules provided for in national legislation and/or practice. National legislation and/or practice may have to be adapted to ensure that the European Works Council can, where applicable, receive information earlier or at the same time as the national employee representation bodies, but must not reduce the general level of protection of employees.

(38) This Directive should be without prejudice to the information and consultation procedures referred to in Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community [1] and to the specific procedures referred to in Article 2 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies [2] and Article 7 of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses [3].

(39) Special treatment should be accorded to Community-scale undertakings and groups of undertakings in which there existed, on 22 September 1996, an agreement, covering the entire workforce, providing for the transnational information and consultation of employees.

(40) Where the structure of the undertaking or group of undertakings changes significantly, for example, due to a merger, acquisition or division, the existing European Works Council(s) must be adapted. This adaptation must be carried out as a priority pursuant to the clauses of the applicable agreement, if such clauses permit the required adaptation to be carried out. If this is not the case and a request establishing the need is made, negotiations, in which the members of the existing European Works Council(s) must be involved, will commence on a new agreement. In order to permit the information and consultation of employees during the often decisive period when the structure is changed, the existing European Works Council(s) must be able to continue to operate, possibly with adaptations, until a new agreement is concluded. Once a new agreement is signed, the previously established councils must be dissolved, and the agreements instituting them must be terminated, regardless of their provisions on validity or termination.

(41) Unless this adaptation clause is applied, the agreements in force should be allowed to continue in order to avoid their obligatory renegotiation when this would be unnecessary. Provision should be made so that, as long as agreements concluded prior to 22 September 1996 under Article 13(1) of Directive 94/45/EC or under Article 3(1) of Directive 97/74/EC [4] remain in force, the obligations arising from this Directive should not apply to them. Furthermore, this Directive does not establish a general obligation to renegotiate agreements concluded pursuant to Article 6 of Directive 94/45/EC between 22 September 1996 and 5 June 2011.

(42) Without prejudice to the possibility of the parties to decide otherwise, a European Works Council set up in the absence of agreement between the parties must, in order to fulfil the objective of this Directive, be kept informed and consulted on the activities of the undertaking or group of undertakings so that it may assess the possible impact on employees' interests in at least two different Member States. To that end, the undertaking or controlling undertaking must be required to communicate to the employees' appointed representatives general information concerning the interests of employees and information relating more specifically to those aspects of the activities of the undertaking or group of undertakings which affect employees' interests. The European Works Council must be able to deliver an opinion at the end of the meeting.

(43) Certain decisions having a significant effect on the interests of employees must be the subject of information and consultation of the employees' appointed representatives as soon as possible.

[1] OJ L 80, 23.3.2002, p. 29.
[2] OJ L 225, 12.8.1998, p. 16.
[3] OJ L 82, 22.3.2001, p. 16.
[4] Council Directive 97/74/EC of 15 December 1997 extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 10, 16.1.1998, p. 22).

(44) The content of the subsidiary requirements which apply in the absence of an agreement and serve as a reference in the negotiations must be clarified and adapted to developments in the needs and practices relating to transnational information and consultation. A distinction should be made between fields where information must be provided and fields where the European Works Council must also be consulted, which involves the possibility of obtaining a reasoned response to any opinions expressed. To enable the select committee to play the necessary coordinating role and to deal effectively with exceptional circumstances, that committee must be able to have up to five members and be able to consult regularly.

(45) Since the objective of this Directive, namely the improvement of the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(46) This Directive respects fundamental rights and observes in particular the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the right of workers or their representatives to be guaranteed information and consultation in good time at the appropriate levels in the cases and under the conditions provided for by Community law and national laws and practices (Article 27 of the Charter of Fundamental Rights of the European Union).

(47) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.

(48) In accordance with point 34 of the Interinstitutional Agreement on better law-making [1], Member States are encouraged to draw up, for themselves and in the interests of the Community, tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(49) This Directive should be without prejudice to the obligations of the Member States relating to the time limits set out in Annex II, Part B for transposition into national law and application of the Directives,

[1] OJ C 321, 31.12.2003, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

SECTION I

GENERAL

Article 1

Objective

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

2. To that end, a European Works Council or a procedure for informing and consulting employees shall be established in every Community-scale undertaking and every Community-scale group of undertakings, where requested in the manner laid down in Article 5(1), with the purpose of informing and consulting employees. The arrangements for informing and consulting employees shall be defined and implemented in such a way as to ensure their effectiveness and to enable the undertaking or group of undertakings to take decisions effectively.

3. Information and consultation of employees must occur at the relevant level of management and representation, according to the subject under discussion. To achieve that, the competence of the European Works Council and the scope of the information and consultation procedure for employees governed by this Directive shall be limited to transnational issues.

4. 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.

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

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

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

Article 2

Definitions

1. For the purposes of this Directive:

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

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

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

— at least 1 000 employees within the Member States,

— at least two group undertakings in different Member States,

and

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

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

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

(f) 'information' means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings;

(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;

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

(i) 'special negotiating body' means the body established in accordance with Article 5(2) to negotiate with the central management regarding the establishment of a European Works Council or a procedure for informing and consulting employees in accordance with Article 1(2).

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

Article 3

Definition of 'controlling undertaking'

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

2. The ability to exercise a dominant influence shall be presumed, without prejudice to proof to the contrary, when 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.

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

4. Notwithstanding paragraphs 1 and 2, an undertaking shall not be deemed to be a 'controlling undertaking' with respect to another undertaking in which it has holdings where the former undertaking is a company referred to in Article 3(5)(a) or (c) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings [1].

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

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

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

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

SECTION II

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

Article 4

Responsibility for the establishment of a European Works Council or an employee information and consultation procedure

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

[1] OJ L 24, 29.1.2004, p. 1.

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

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

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

4. The management of every undertaking belonging to the Community-scale group of undertakings and the central management or the deemed central management within the meaning of the second subparagraph of paragraph 2 of the Community-scale undertaking or group of undertakings shall be responsible for obtaining and transmitting to the parties concerned by the application of this Directive the information required for commencing the negotiations referred to in Article 5, and in particular the information concerning the structure of the undertaking or the group and its workforce. This obligation shall relate in particular to the information on the number of employees referred to in Article 2(1)(a) and (c).

Article 5

Special negotiating body

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

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

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

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

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

(b) The members of the special negotiating body shall be elected or appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or Community-scale group of undertakings, by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together;

(c) The 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.

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

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

Before and after any meeting with the central management, the special negotiating body shall be entitled to meet without representatives of the central management being present, using any necessary means for communication.

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.

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

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

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

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

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

Article 6

Content of the agreement

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

2. Without prejudice to the autonomy of the parties, the agreement referred to in paragraph 1 and effected in writing between the central management and the special negotiating body shall determine:

(a) the undertakings of the Community-scale group of undertakings or the establishments of the Community-scale undertaking which are covered by the agreement;

(b) the composition of the European Works Council, the number of members, the allocation of seats, taking into account where possible the need for balanced representation of employees with regard to their activities, category and gender, and the term of office;

(c) the functions and the procedure for information and consultation of the European Works Council and the arrangements for linking information and consultation of the European Works Council and national employee representation bodies, in accordance with the principles set out in Article 1(3);

(d) the venue, frequency and duration of meetings of the European Works Council;

(e) where necessary, the composition, the appointment procedure, the functions and the procedural rules of the select committee set up within the European Works Council;

(f) the financial and material resources to be allocated to the European Works Council;

(g) the date of entry into force of the agreement and its duration, the arrangements for amending or terminating the agreement and the cases in which the agreement shall be renegotiated and the procedure for its renegotiation, including, where necessary, where the structure of the Community-scale undertaking or Community-scale group of undertakings changes.

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

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

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

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

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

Article 7

Subsidiary requirements

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

— where the central management and the special negotiating body so decide,

— where the central management refuses to commence negotiations within six months of the request referred to in Article 5(1),

or

— where, after three years from the date of this request, they are unable to conclude an agreement as laid down in Article 6 and the special negotiating body has not taken the decision provided for in Article 5(5).

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

SECTION III

MISCELLANEOUS PROVISIONS

Article 8

Confidential information

1. Member States shall provide that members of special negotiating bodies or of European Works Councils and any experts who assist them are not 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.

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

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

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

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

Article 9

Operation of the European Works Council and the information and consultation procedure for workers

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

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

Article 10

Role and protection of employees' representatives

1. Without prejudice to the competence of other bodies or organisations in this respect, 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.

2. 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.

3. Members of special negotiating bodies, members of European Works Councils and employees' representatives exercising their functions under the procedure referred to in Article 6(3) shall, in the exercise of their functions, enjoy 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 or any other meetings within the framework of the agreement referred to in Article 6(3), and the payment of wages for members who are on the staff of the Community-scale undertaking or the Community-scale group of undertakings for the period of absence necessary for the performance of their duties.

4. 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.

Article 11

Compliance with this Directive

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

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

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

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

Article 12

Relationship with other Community and national provisions

1. Information and consultation of the European Works Council shall be linked to those of the national employee representation bodies, with due regard to the competences and areas of action of each and to the principles set out in Article 1(3).

2. The arrangements for the links between the information and consultation of the European Works Council and national employee representation bodies shall be established by the agreement referred to in Article 6. That agreement shall be without prejudice to the provisions of national law and/or practice on the information and consultation of employees.

3. Where no such arrangements have been defined by agreement, the Member States shall ensure that the processes of informing and consulting are conducted in the European Works Council as well as in the national employee representation bodies in cases where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged.

4. This Directive shall be without prejudice to the information and consultation procedures referred to in Directive 2002/14/EC and to the specific procedures referred to in Article 2 of Directive 98/59/EC and Article 7 of Directive 2001/23/EC.

5. Implementation of this Directive shall not be sufficient grounds for any regression in relation to the situation which already prevails in each Member State and in relation to the general level of protection of workers in the areas to which it applies.

Article 13

Adaptation

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 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 pursuant to Article 5(2).

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.

Article 14

Agreements in force

1. Without prejudice to Article 13, the obligations arising from this Directive shall not apply to Community-scale undertakings or Community-scale groups of undertakings in which, either

(a) an agreement or agreements covering the entire workforce, providing for the transnational information and consultation of employees have been concluded pursuant to Article 13(1) of Directive 94/45/EC or Article 3(1) of Directive 97/74/EC, or where such agreements are adjusted because of changes in the structure of the undertakings or groups of undertakings;

or

(b) an agreement concluded pursuant to Article 6 of Directive 94/45/EC is signed or revised between 5 June 2009 and 5 June 2011.

The national law applicable when the agreement is signed or revised shall continue to apply to the undertakings or groups of undertakings referred to in point (b) of the first subparagraph.

2. Upon expiry of the agreements referred to in paragraph 1, the parties to those agreements may decide jointly to renew or revise them. Where this is not the case, the provisions of this Directive shall apply.

Article 15

Report

No later than 5 June 2016, the Commission shall report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive, making appropriate proposals where necessary.

Article 16

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1(2), (3) and (4), Article 2(1), points (f) and (g), Articles 3(4), Article 4(4), Article 5(2), points (b) and (c), Article 5(4), Article 6(2), points (b), (c), (e) and (g), and Articles 10, 12, 13 and 14, as well as Annex I, point 1(a), (c) and (d) and points 2 and 3, no later than 5 June 2011 or shall ensure that management and labour introduce on that date the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them at all times to guarantee the results imposed by this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 17

Repeal

Directive 94/45/EC, as amended by the Directives listed in Annex II, Part A, is repealed with effect from 6 June 2011 without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of the Directives set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

Article 18

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 1(1), (5), (6) and (7), Article 2(1), points (a) to (e), (h) and (i), Article 2(2), Articles 3(1), (2), (3), (5), (6) and (7), Article 4(1), (2) and (3), Article 5(1), (3), (5) and (6), Article 5(2), point (a), Article 6(1), Article 6(2), points (a), (d) and (f), and Article 6(3), (4) and (5), and Articles 7, 8, 9 and 11, as well as Annex I, point 1(b), (e) and (f), and points 4, 5 and 6, shall apply from 6 June 2011.

Article 19

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 6 May 2009.

For the European Parliament	*For the Council*
The President	*The President*
H.-G. PÖTTERING	J. KOHOUT

ANNEX I

SUBSIDIARY REQUIREMENTS

(referred to in Article 7)

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

(a) The competence of the European Works Council shall be determined in accordance with Article 1(3).

The information of the European Works Council shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings. The information and consultation of the European Works Council shall relate in particular to the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

The consultation shall be conducted in such a way that the employees' representatives can meet with the central management and obtain a response, and the reasons for that response, to any opinion they might express;

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

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

(c) The members of the European Works Council shall be elected or appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or Community-scale group of undertakings, by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together;

(d) To ensure that it can coordinate its activities, the European Works Council shall elect a select committee from among its members, comprising at most five members, which must benefit from conditions enabling it to exercise its activities on a regular basis.

It shall adopt its own rules of procedure;

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

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

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

2. The European Works Council shall have the right to meet with the central management once a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly.

3. Where there are exceptional circumstances or decisions affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed. It shall have the right to meet, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted.

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

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

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

The information and consultation procedures provided for in the above circumstances shall be carried out without prejudice to Article 1(2) and Article 8.

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

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

5. 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.

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

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

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

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

ANNEX II

PART A

Repealed Directive with its successive amendments

(referred to in Article 17)

Council Directive 94/45/EC	(OJ L 254, 30.9.1994, p. 64)
Council Directive 97/74/EC	(OJ L 10, 16.1.1998, p. 22)
Council Directive 2006/109/EC	(OJ L 363, 20.12.2006, p. 416)

PART B

Time limits for transposition into national law

(referred to in Article 17)

Directive	Time limit for transposition
94/45/EC	22.9.1996
97/74/EC	15.12.1999
2006/109/EC	1.1.2007

ANNEX III

Correlation table

Directive 94/45/EC	This Directive
Article 1(1)	Article 1(1)
Article 1(2)	Article 1(2), first sentence
—	Article 1(2), second sentence
—	Article 1(3) and (4)
Article 1(3)	Article 1(5)
Article 1(4)	Article 1(6)
Article 1(5)	Article 1(7)
Article 2(1)(a) to (e)	Article 2(1)(a) to (e)
—	Article 2(1)(f)
Article 2(1)(f)	Article 2(1)(g)
Article 2(1)(g) and (h)	Article 2(1)(h) and (i)
Article 2(2)	Article 2(2)
Article 3	Article 3
Article 4(1)(2) and (3)	Article 4(1)(2) and (3)
Article 11(2)	Article 4(4)
Article 5(1) and (2)(a)	Article 5(1) and (2)(a)
Article 5(2)(b) and (c)	Article 5(2)(b)
Article 5(2)(d)	Article 5(2)(c)
Article 5(3)	Article 5(3)
Article 5(4), first subparagraph	Article 5(4), first subparagraph
—	Article 5(4), second subparagraph
Article 5(4), second subparagraph	Article 5(4), third subparagraph
Article 5(5) and (6)	Article 5(5) and (6)
Article 6(1) and (2)(a)	Article 6(1) and (2)(a)
Article 6(2)(b)	Article 6(2)(b)
Article 6(2)(c)	Article 6(2)(c)
Article 6(2)(d)	Article 6(2)(d)
—	Article 6(2)(e)
Article 6(2)(e)	Article 6(2)(f)
Article 6(2)(f)	Article 6(2)(g)
Article 6(3)(4) and (5)	Article 6(3)(4) and (5)
Article 7	Article 7

Directive 94/45/EC	This Directive
Article 8	Article 8
Article 9	Article 9
—	Article 10(1) and (2)
Article 10	Article 10(3)
—	Article 10(4)
Article 11(1)	Article 11(1)
Article 11(2)	Article 4(4)
Article 11(3)	Article 11(2)
Article 11(4)	Article 11(3)
Article 12(1) and (2)	—
—	Article 12(1) to (5)
—	Article 13
Article 13(1)	Article 14(1)
Article 13(2)	Article 14(2)
—	Article 15
Article 14	Article 16
—	Article 17
—	Article 18
Article 16	Article 19
Annex	Annex I
Point 1, introductory wording	Point 1, introductory wording
Point 1(a) (partly) and point 2, second paragraph (partly)	Point 1(a) (partly)
Point 1(b)	Point 1(b)
Point 1(c) (partly) and point 1(d)	Point 1(c)
Point 1(c) (partly)	Point 1(d)
Point 1(e)	Point 1(e)
Point 1(f)	Point 1(f)
Point 2, first paragraph	Point 2
Point 3	Point 3
Point 4	Point 4
Point 5	—
Point 6	Point 5
Point 7	Point 6
—	Annexes II and III