

Company Agreements – a practical guide

Hellmut Gohde

European Works Councils

Analysis and Recommendations



Hans Böckler
Stiftung

Faktor für eine faire Arbeitswelt



BUND
VERLAG

Hellmut Gohde
European Works Councils

Hellmut Gohde

Company Agreements – a practical guide

European Works Councils

Analysis and Recommendations

Bund-Verlag

Bibliografische Information Der Deutschen Bibliothek

Die Deutsche Bibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über <http://dnb.ddb.de> abrufbar.

© 2005 by Bund-Verlag, Frankfurt am Main
Redaktion: Manuela Maschke, Düsseldorf
Textgestaltung: Henriette Pohler
Übersetzung: Helen Bicknell, Mainz
Herstellung: Inga Tomalla, Frankfurt am Main
Umschlag: Angelika Richter, Heidesheim
Satz: Dörlemann-Satz, Lemförde
Druck: Ebner + Spiegel, Ulm
Printed in Germany 2005
ISBN 3-7663-3724-6

Alle Rechte vorbehalten,
insbesondere die des öffentlichen Vortrags,
der Rundfunksendung
und der Fernsehausstrahlung,
der fotomechanischen Wiedergabe,
auch einzelner Teile.

www.bund-verlag.de
www.boeckler.de
www.betriebsvereinbarung.de

Introduction

Ten years after adoption of the European Works Council (EWC) Directive in 1994, the time has come to take a closer look at how the Directive has in fact been implemented at company level. Today, more than 800 EWCs, representing well over 13 million employees, have been established to represent the transnational interests of employees in a European works council. These impressive numbers clearly demonstrate that within companies operating on a European scale, transnational forms of information and consultation have developed into important instruments of social dialogue at company level.

For many workplace representatives within the scope of the EWC Directive, participation at regular meetings in London, Paris or Brussels has long become a routine matter. Yet in spite of this, the era of establishing European works councils seems to have only just begun. More than 1,400 enterprises which qualify to establish a EWC – more often than not smaller or medium sized companies – still have no valid agreement on the establishment of such a body. The law nonetheless requires that in these enterprises, too, workplace representatives have a fundamental right to comprehensive participation in company decision-making processes with a transnational impact.

There are currently no exact figures on how many new enterprises fall within the scope of the Directive as a result of the EU enlargement on 01.05.2004. Research in this area is extremely complex and the situation is constantly changing. There are strong indications that the EU Directive already applies to numerous enterprises which have their headquarters in accession countries, and that small undertakings in the West with new employees from accession countries will exceed the threshold of 1000 employees. The first EWCs have already been established in enterprises with their headquarters in accession countries.

This analysis is based on 120 European works council agreements held at the Hans-Böckler-Stiftung's Company Agreements' Archives. Of the 120 agreements analysed, 58 are selected from companies with their headquarters in Germany. The number of »German« agreements analysed is disproportionate to the overall number of agreements negotiated. Our first publication in 2004 was primarily aimed at readers in German-speaking countries and the study therefore focused on agreements negotiated in Germany based on the EU Directive and the national transposition laws. It is now appropriate that we place our observations on developments in Germany into an international context. For this reason this English edition has included additional agreements not negotiated in Germany. At the same time the English edition addresses an international readership to examine the analysis presented here.

The study consciously avoids attempting to make concise proposals or provide a model agreement based on the material evaluated. This would contradict our series of publications and the character of the EU Directive, which specifically provides for a variety of solutions to reflect size, sector, national origin, company culture and position of strength. We hope, however, that the agreements documented here will encourage others to formulate their own agreements and that they highlight the wide range of alternatives available. This is in line with the guiding principle behind this series of publications: to provide practical assistance to those involved at a shopfloor level.

Contents

Introduction	5
Index of abbreviations	9
1. Framework conditions	11
2. Content of regulations	15
2.1 Aims and tasks (preamble)	15
2.2 Composition and structure	17
2.2.1 Joint bodies or employee-only bodies	17
2.2.2 Area of application	19
2.2.3 Number and distribution of seats	21
2.2.4 Election and nomination procedures	24
2.2.5 The chair and steering committees	28
2.3 Participation structures	32
2.3.1 Information and consultation procedures	32
2.3.2 Consultation issues	37
2.3.3 Transnationality and subsidiarity	38
2.4 Organisation of meetings	41
2.4.1 Frequency and duration	41
2.4.2 Extraordinary meetings	44
2.4.3 Experts	46
2.4.4 Confidentiality	50
2.5 Resources	53
2.5.1 Expenses	53
2.5.2 Time-off	55
2.5.3 Protection of delegates	58
2.5.4 Translation and interpreting work	59
2.5.5 Working resources	61
2.5.6 Training	64
2.5.7 Working groups	67

3. Codetermination rights	69
4. Unresolved problems	70
5. Concluding assessment	73
6. Information on shaping an agreement	76
6.1 Checklist	76
6.2 How can workplace representatives exert influence?	78
6.3 Essential legal considerations	80
7. State of agreements	83
Glossary	88
Internet addresses	91
Bibliography	93
The Hans-Böckler-Stiftung's archive of company agreements	95
Index	97

Index of abbreviations

Benelux	Belgium, Netherlands, Luxembourg
SNB	Special Negotiating Body
CEO	Chief Executive officer
EWC	European Works Council
ETUC	European Trade Union Confederation
ETUI	European Trade Union Institute
EMCEF	European Mine, Chemicals and Energy Workers' Federaton
EU	European Union
KBR	German Company Works Council (»Konzernbetriebsrat«)

1. Framework conditions

Representing the transnational interests of employees through European works councils (EWCs) is a relatively recent development. The first pilot agreement was signed by the French undertaking, *Thomson Electronics* in 1985. In the years that followed it was at French publicly owned enterprises in particular that employees were successful in making their demands for international forms of information and consultation heard. At the same time workplace representatives were fostering – to a certain degree supported by their trade unions – initiatives aimed at making transnational contact with colleagues in subsidiaries abroad. These efforts were a reaction to the ongoing internationalisation of company structures and the resulting competition for investment and locations. Slogans such as »*location poker*« and »*social dumping*« dominated the discussion, and the workforce felt that their social standards were under threat. A positive aspect was that the development of transnational networks within multinationals was seen to be a welcome opportunity to breathe new life into the trade union call for international solidarity and to allow practice-oriented action. Accordingly, in the early stages employee representatives met without representatives from central management, who indeed were at first sceptical or resistant to transnational bodies of employee representatives.

During the pioneering years the first voluntary agreements and initiatives had no statutory framework. It was only on 22 September 1994, when the EU Council of Ministers adopted the European Directive to establish European Works Councils, that a decade of conflict between the European social partners and national governments came (initially) to an end. In order to reach a common consensus, the ministers responsible for labour and social affairs reached a Solomonic solution: instead of issuing generally binding rules, it was left to the companies themselves to negotiate an EWC.

Representatives of the parent company (central management) and a transnational body representing the interests of the workforce (Special Negotiating Body or SNB) were given the task of opening negotiations on the establishment of a European works council at the initiative of either of the parties involved. It was largely left to the negotiating parties to develop forms suited to the requirements of the company. This is reflected in European works councils having various titles: in addition to »workers councils« one can also find »forum«, »committee«, »workers' council« »entity« (see chapter 7, table 2).

Depending on their organisational structure and the manner in which workers' rights are set out, these bodies provide a wide range of solutions suited to meet the individual requirements of an enterprise. At a European level there are no generally binding rules such as those contained in the national labour laws of many European countries.

The variety of approaches selected is, not least, a result of the transposition of the EU Directive into the national judicial systems of the member states. The transposition procedure was either carried out by act of law, or was the result of agreement between the social partners, which was the case for Belgium and Italy. Thus different national frameworks were established for conducting negotiations. Therefore, each individual agreement always has to be judged in terms of the transposition legislation valid in the country where the European headquarters of the undertaking in question is located.

National culture and traditional working relationships have exerted a stronger influence on the agreements than the various transposition laws. French undertakings, for example, tend to give central management the chairmanship of the European works council whilst the majority of German companies select »pure« workforce bodies (consisting only of employees), even though there is no provision requiring this. The negotiating procedures to model the framework for European works councils therefore also take the wishes of the companies into consideration, based on the prevailing national practice of employee representation.

Representatives from countries with strong negotiation and/or codetermination traditions sometimes voice the criticism that the Directive does not provide workplace representatives with sufficient means to exert their influence, and that the European works council

is little more than a »toothless tiger«. Indeed, the central feature of the Directive is the opening of a dialogue for the provision of information and consultation to workplace representatives. The Directive makes no mention of additional measures to exert influence on the company's decision-making process. The wide range of procedures for providing information and consultation contained in the existing agreements are proof of how negotiations can give workplace representatives greater participation.

European works councils can be established in undertakings which employ at least 1000 persons throughout Europe as a whole and at least 150 in each of at least two of the 28 countries which signed the Directive. Current figures suggest that there are about 2,139 companies which, in accordance with the terms of the Directive, could establish a European works council. At the time of publication 737 undertakings already had such an agreement. Further agreements will also be required in undertakings which have not yet been identified, as well as in those where EWC agreements are about to expire, and for new and spin-off companies as well as merged companies. Between 1999 and 2002 alone, 30 per cent of the existing European works councils were affected by mergers and takeovers, putting them under pressure to adapt their internal organisation. Last but not least, EU enlargement also requires adjustments to existing agreements as well as the establishment of new European works councils in which workplace representatives from EU accession countries are also represented.

Some of the agreements examined have been in place for ten years and more. Company practices have changed, and in many cases have moved beyond the text of the original agreement. Meanwhile, some European works councils have updated their agreements by adding procedures, protocols or supplements, or have broadened their room for manoeuvre through informal agreements with central management. In many instances this prevents the termination of agreements and improves their work resources: training, additional meetings, access to means of communication such as email and Internet are also made available even where no automatic right exists by virtue of contract. In many undertakings steering committee meetings are also held more often than officially agreed upon. Some European works councils, however, do not fully exploit the opportunities provided for in the agreements. Some companies occasionally

refuse to fully implement the contents of the Directive, while some workplace representatives (still) lack sufficient know-how to make full use of the vested rights they have. In short, even a tailor-made agreement does not necessarily guarantee a successful European works council. There are, however, EWCs which have developed optimal information and consultation procedures from comparatively modest frameworks.

2. Content of Regulations

2.1 Aims and tasks (preamble)

The majority of agreements are preceded by an introductory text in the form of »preambles« or »fundamental principles«, »introductions«, »aims« or »mission« in which the contracting parties set out their mutual motives for establishing a European works council and the values on which it is based. Three categories of preamble can be distinguished in the agreements examined. The first group defines the tasks of the European works council in terms of the *economic efficiency* and *competitiveness* of a company – the following text is an example of this:

»The parties to this Agreement acknowledge that effective consultation can only be achieved in the context of a continuous improvement of [...] international competitiveness and strengthening of its businesses by achieving the optimum level of productivity and flexibility, making constantly increasing demands in respect of product quality and customer-satisfaction on the one hand, and safety and health of the Employees on the other.«

(Food and beverages, 110600/10/1997)

The participation of the workforce is seen here as an important mobilising resource to promote the company and improve its profile in the face of increasingly fierce international competition. Many of the preambles reflect central management's desire to mobilise the European works council as a communication platform, to inform the employees of the company's strategy and the demands on them as a result of this strategy.

A second group of preambles stress that the economic success of the company and the interests of the workforce are equally impor-

tant. In this connection the European works council, as shown in the following example, is to create a balance between economic and social interests.

»Based on the fundamental considerations of Directive 94/95/EC1 of the Council of the European Union dated 22 September 1994, the parties to this Agreement wish to establish a constructive dialogue which – owing to the quality of the information presented and the international exchange of ideas – will be of genuine benefit to the parties concerned. The parties to the Agreement are of the opinion that changes undertaken to maintain and improve competitiveness must be based on sound management-employee relations and a positive corporate culture. To this end, an organization shall be created which, in line with the existing corporate culture, guarantees regular presentation of information to and consultation of the Employee Representatives by central management.«
(Glass and ceramics, 110600/36/1996)

A third group of agreements recognise the participation of the workforce in the undertaking's development as valuable in itself. Transparency of decision-making processes, mutual respect and communication are seen as important elements of company culture – as in this case of a company from the paper industry:

»In order to do this, management, employees and their representatives must cooperate together in good will. This includes providing information in good time, as well as allowing all participants to join together in open dialogue. A transnational exchange of information and opinions will promote mutual understanding and awareness of belonging to a leading European enterprise, as well as promote international cooperation.«
(Control and instrumentation technology, 110600/42/1998)

The common interface of all the texts is the reference to the core elements of the EU Directive: to the employee representatives' right to information and consultation. There are only a few exceptions where the preamble defines the EWC as purely an informational body without consultation rights – the majority of agreements stress the significance of a »dialogue« or »exchange of views«, of »consultation« or

»involvement«. Far reaching definitions which might be interpreted in terms of direct participation, codetermination or collective bargaining rights, cannot be found in any of the agreements examined.

2.2 Composition and structure

2.2.1 Joint bodies or employee-only bodies

The EU Directive does not contain clear provisions regarding the composition of a European works council. Only if negotiations fail do subsidiary provisions contained in the annex to the Directive provide for the establishment of an employee-only body. However, as the function of the European works council is, in particular, that central management regularly informs and consults with the employee representatives, this at times requires the presence of management representatives at meetings. The negotiating parties must decide on whether management representatives are to be members of a joint body or whether the employee representatives form an independent European works council which can, as required, request the presence of representatives of central management.

In the majority of cases those agreements examined reflect traditional forms of employee representation customary at the parent company. The French European works council model integrates central management as demonstrated, for example, in the case of the following company:

»The body for the internal European-wide dialogue consists of:
(...) the Chairperson (...) (President of the Company Works Council) or his/her representative, if necessary accompanied by his/her employees.

(...) the personnel and trade union representative of the Company Works Council as stated in article 3 of the Agreement of 4. October 1984 concerning the working procedures of the Company Works Council (...) and the personnel representatives of the European subsidiaries outside of France.«

(Intersectoral, 110600/98/1995) (own translation)

Not only do the majority of agreements favour the French model of a joint body, but indeed this model is clearly favoured by the majority of all EWC agreements negotiated to date. This model is favoured by the majority of those enterprises with joint-body national works councils (France, Belgium, Denmark, Luxembourg), undertakings from countries without independent works council structures at national level (in particular the United Kingdom and Ireland), as well as those enterprises with their headquarters outside the EU (e.g. the USA, Japan, Switzerland). Especially in enterprises with an Anglo-Saxon business culture, management representatives legitimise their claim to leadership in general by pointing out that it is a »European Works Council« not a »European Workers Council«. In practice this often leads to differences of opinions between central management and employee representatives about the tasks of the EWC.

German type EWCs do not provide for management representation and indeed specifically exclude this.

»Members are only company workplace representatives. Representatives from management headquarters, independent companies and their subsidiaries are not allowed to nominate representatives«

(Construction industry, 110600/65/1999) (own translation)

EWCs consisting of only employee representative were favoured in Germany, Austria, the Netherlands and Scandinavia and in this regard reflect the prevailing national models of workplace representation. Nonetheless, joint bodies have been established in some German companies.

In some Scandinavian companies, but also in British companies with a strong trade union influence, only trade union representatives are eligible for a seat on the European works council. These few cases usually involve countries where workplace representation is solely covered by trade union organisations.

»The Council shall consist of union representatives, employed in (company name) companies in Europe and where the company has production and/or distribution centres.«

(Mechanical engineering, 110600/92/1996)

2.2.2 Area of application

Two years after its adoption, the EU Directive initially came into force in 14 countries on 22 September 1996. Within the framework of the Association Agreement between the EU and the European Economic Area, Norway, Iceland and Liechtenstein also adopted the Directive. Once the UK had signed the Maastricht Social Protocol in 1997 and adopted the Directive in 1999, Switzerland was the only country in Western Europe where employees had no legal right to representation in a European works council. With enlargement on 01.05.2004 the Directive was also introduced into the ten accession countries in central and eastern Europe, even though national implementation was delayed in some countries. Following the adoption of the Directive by Estonia in February 2005, a total of 28 countries now have national provisions.

EU enlargement made it necessary to adapt agreements which listed all the countries where the undertaking had affiliates. As a result of enlargement such lists had at least to be extended to include those central and east European countries affected. Those agreements which applied to the territory of the European Union as a whole, proved to be more flexible: with EU enlargement the accession countries automatically had a right to representation.

»The present agreement shall cover those associated companies of (...) in EU countries of which (...) owns the majority of the shares.«
(Construction industry, 110600/78/1996)

However, some agreements specifically allowed the participation of non-EU countries at the time of signing. In such a case (even before the country's accession to the EU) representatives were granted full status in the EWC.

»For the present agreement, the following terms shall be understood as below:
 a country in which the (...) is active by means of one or more undertakings and which falls within the field of the territorial application of the Directive EU 94/95/CE. Plus: Poland, the Czech Republic and Slovakia.«
(Construction industry, 110600/68/2000)

In many of the agreements, non-EU states are only allowed limited rights of participation in the European works council. The most common form of limited participation is that of observer status, which as a rule does not provide for voting rights during a meeting.

»Observers will be invited if their country has an association agreement with the European Union«

(Automobile industry: cars, 110600/06/2000) (own translation)

For the sake of completeness, two further aspects concerning the scope of agreements should be mentioned. Moving beyond geopolitical boundaries, various agreements also set out criteria defining ownership and majority relationships which identify subsidiaries as belonging to an undertaking. Such formulations usually refer to the pertinent criteria in the EU Directive of a »dominating enterprise«. Some agreements list in the annex all those companies identified at the time of the agreement's adoption.

Nearly all the agreements examined explicitly apply to the whole undertaking, even where in practice many employee bodies had originally sought to establish so-called »sector works councils« in order to receive information and consultation in more detail on matters relating specifically to their sector.

Groups with a high degree of autonomous decision making at a divisional level, such as General Electric, Courts Vyella or SCA, are an exception. The US company Sara Lee also has three European works councils in the sectors of »Personal products«, »Processed Meats« and »Douwe Egberts« (coffee).

More recent agreements anticipate possible changes in the structure of the company and make provisions for integrating any companies acquired by the controlling company.

»If the Company acquires a controlling interest (as defined in the Directive) in any new company during the term of this Agreement, the employees of such enterprise shall automatically be covered by this Agreement.«

(Other transport services, 110600/104/2003)

2.2.3 Number and distribution of seats

The overall size of the EWC and allocation of seats are amongst the more complex negotiating issues between the Special Negotiating Body and central management. The total number of employee representatives must first be established. Whilst the provisions in the Directive's annex provide for a total of 3 to 30 members should negotiations fail, numbers in the agreements under review range from 5 to 56 members.¹ The overall size of the body is by no means only dependent on the number of employees. Companies with comparatively few employees sometimes have far more seats than much larger companies. The number of EWC seats is influenced more by the following factors than by the number of employees:

- The number of countries represented in the EWC. Smaller bodies tend to be established where the company is, in general, domestically oriented, with mainly small subsidiaries in one or two further EU states. Companies – e.g. from the haulage and logistics sectors – with community-wide structures and subsidiaries in almost all the EU countries have, as a consequence, a higher number of representatives even though the overall number of employees is smaller.
- The establishment of thresholds. Many agreements contain regulations which only authorise a country to elect delegates once a minimum number of employees has been reached. With regard to enterprises in the manufacturing industry, this rule restricts EWC participation to those countries where there are production plants, whilst countries with only sales outlets are not included due to them not meeting the threshold. The spectrum of such thresholds in the agreements inspected is quite considerable and ranges from requiring »at least 20« to 1,000 employees in order to be eligible for a seat.
- The desire to reflect trade union plurality in the EWC. It is noticeable that French owned parent companies, in general, make far more seats available than EWCs in other countries. The texts of some of these agreements specifically specify the goal of duplicat-

¹ Raising the upper limit is controversial due to the extension of the EU Directive to the United Kingdom and accession countries.

ing trade union structures found in France. The desire to represent all (of the competing) French trade unions in the EWC in proportion to the results of the national works councils election, by necessity increases the total number of members.

Numerous European works councils refrain completely from stipulating an absolute number of seats. The total number of EWC delegates is assessed by adding together the number of national seats. As this is generally determined by the size of the national workforce, the overall size of the EWC is dependent on fluctuations in the number of employees in an undertaking, e.g. through the purchase or sale of companies.

In nearly all agreements, thresholds are also stipulated for the number of seats allowed for each country within the scope of the agreement, as is demonstrated in the following example.

»Composition

[...]

One representative will be nominated as a representative for the European Works Council from every country named in section 1 para. 1 in which one or more companies/firms are located.

Additional seats will be distributed according to the following scale.

The number of employees will be calculated according to the average number of employees working for the company during the past two years.

Additional representatives will be nominated according to the following scale:

261 to 500 employees	one representative
501 to 750 employees	two representatives
751 to 1000 employees	three representatives
1001 to 1500 employees	four representatives
1501 to 2000 employees	five representatives
over 2000 employees	six representatives«

(Construction industry, 110600/66/2000) (own translation)

The usefulness of such individual figures can only be understood with regard to the underlying company structure. The numbers in the agreements examined, therefore, varies quite considerably.

Contrary to the example cited above, more recent agreements tend to dispense with setting absolute numbers and try instead to reflect individual country representation as a proportion of the overall workforce. This procedure guarantees a certain stability in the overall size of the EWC even if a company expands, for example, due to a takeover:

»3 (three) representatives (hereinafter referred to as the »Delegate/s«) to the European Works Council shall be appointed by each Member Country which employs 20% (twenty percent) or more of the total number of the workforce employed within the scope of this Agreement, whereas each of the other Member Countries shall appoint one Delegate. The foregoing shall be determined by the number of the workforce employed as of December 31st of the preceding calendar year. The allocation of seats in the European Works Council at the effective date of this Agreement as set forth in Annex 2 is based on the foregoing principle«

(Metalworking and processing, 110600/39/1996)

The above agreement is characteristic of the common practice of using general criteria in the agreement to determine the distribution of seats, and preferring to state in more detail the distribution of seats in »attachments«, »protocols«, or »procedural rules«. Here too, the basis for any adjustments is always the current number of employees, which is established either each year or every four years, depending on the terms of the agreement. Recent agreements often cite different criteria for assessing overall employee number (e.g. »FTE = Full-Time-Employees«), in an effort to standardise the criteria used.

On a closer look, by setting a ceiling on seat numbers the agreements cited above attempt to avoid the dominance of any individual country based on the size of its workforce. However, the material examined also reveals many undertakings which do not make use of a cut-off limit. The European works council at PSA Peugeot, for example, is made up of the 30 members from the works council of the French parent company and 12 non-French representatives. In certain cases as many as 80 per cent of all seats are held by the employee representatives from one single country.

In addition to the official seats for the national employee representatives, many agreements contain rules for the allocation of additional seats, these include, amongst others:

- Management representatives in joint bodies
- Observers (without voting rights from non-EU states)
- Representatives of the European trade union federations or national trade unions.

2.2.4 **Election and nomination procedures**

The EU Directive does not contain detailed provisions for the election and nomination of delegates to the European works council. The agreements examined also have no universal procedures on, for example, how to conduct a preliminary ballot to elect a member. There is also legal controversy as to whether European-wide rules may overrule national election procedures. Accordingly, in almost all agreements the country members participating are to be elected in accordance with the respective national customs and practice.

»The procedure for delegating the national representatives and their deputies to the EWC shall be laid down in each individual country.«

(Electrical products, 110600/30/1996)

The agreements generally also contain details on compliance with customary national procedures and the potential circle of candidates:

»The Employee Representatives and ELRs will be elected in accordance with their national custom and practice and are appointed to represent the entire workforce of GME in the countries listed in Schedule 1, and not to represent only their local employees. Employee Representatives and ELRs may be deposed by the same process by which they are elected.«

(Automobile industry:cars, 110600/06/2000)

Only employees working at the undertaking are eligible for election – this applies to over 90 per cent of the agreements examined. There are only a few exceptions which allow an employee of a trade

union to be elected or nominated as a member of the EWC. The European works council is therefore essentially a body made up of company employee representatives.

Numerous German agreements exclude »executive managers« from elections to the European works council and do so by referring to the rules contained in German labour law. However, the term manager is defined so differently throughout Europe that it is difficult to judge how this term is interpreted in other EU countries.

In about half the cases a person's eligibility for election is linked to the period of their employment in the company. This varies between six months and two years. Individual agreements limit re-election to a maximum of one further election period. In individual cases the eligibility of a person to be elected is dependent on that person working at least 50 per cent of the average weekly working time.

Where agreements go into more detail on election and nomination procedures, these mainly rely on procedures which are common practice where the undertaking's headquarters are located. Depending on the representation model in use there, these rules either designate the trade union organisations or the works council bodies as the central body responsible for the election and nomination of members to the European works council. Below, two regulations are compared with each other. One is from an Italian and one from a German company. The first stipulates an election procedure which applies to all the counties where the company is located. The second, however, only specifically stipulates the election procedure for the German delegation.

»17 seats shall be attributed to the representatives of the Trade Union Organisations represented within ---. These representatives shall be appointed from among the employees of ---- and the officers of the Trade Union Organisations. Over half of them must be employees of -----. The seats will be distributed in proportion to the numbers employed in the various trades and will reflect the actual representative nature of the Trade Union organisations within ---. The delegates shall be appointed according to the agreement of the undersigning parties.«

(Italian agreement: food and beverages, 110600/15/1999)

»The members of the European Works Council must be employees of the group. They shall be appointed and delegated according to the legal provisions of the respective delegating countries. The representatives from the German Federal Republic shall be appointed by the group works council and must be members of the group or general works council of the --- at the time of their appointment.«

(German agreement: Construction industry, 110600/45/1996)

Many Special Negotiating Bodies are confronted with the difficulty that in individual countries there is no coordinating body for the employee representatives from different locations. In such countries there are no nation-wide works council or trade union coordinating bodies at a company level. If in such a case there are fewer seats than enterprises per country represented in the EWC, the question arises; who is to negotiate between the locations? A number of agreements have made provisions for such cases.

»In places where there are works councils constituted according to international law or under a collective agreement, such works councils shall elect the employees' representative(s). Where there is more than one works council in a given state, the employees' representative(s) shall be elected at a joint meeting.

In works councils in which there is no procedure which guarantees the representation of all employees, the employees' representative(s) shall be elected or appointed in accordance with a procedure agreed between the Management representative(s) of the undertaking(s) of the country in question and the recognised trade unions (where present).«

(Chemical Industry, 110600/32/1996)

However, it is also possible that at individual locations or in certain countries there is no local employee representation which can send representatives to the European works council. Some agreements, therefore, stipulate a compulsory ballot in such cases in order to allow the workforce to participate in the EWC.

»Employee representatives must either be nominated according to national law, custom and practice, or be elected as a result of a secret ballot involving the entire work force within the constituency in a manner which ensures that they are both representative of, and where possible reflect the gender balance of the total work force within their constituency.«

(Service Industry, 110600/34/1997)

In more recent agreements a trend can be detected to use the election procedures in the annex of the EU Directive to establish »EWCs by law« (i.e. according to the subsidiary requirements of the EWC Directive). Even where these rules were not originally intended for voluntary agreements adopted in accordance with Article 6 of the Directive, this attempts to guarantee that an orderly election procedure is conducted in all countries:

»EWC Members shall be appointed or elected in accordance with the transposition laws of the European Works Council Directive of their respective states regarding the selection of members of a European Works Council by law.«

(Other transport services, 110600/118/2005)

In addition to the election and nomination regulations, some agreements make provisions for the case that an individual representative is removed from office or leaves the works council.

»The members of the European Works Council may, in accordance with the provisions on their appointment, be recalled by the employee representatives who delegated them to the European Works Council. Where a member of the European Works Council loses his/her mandate upon recall or on leaving the undertaking or establishment, the vacancy shall be filled by a member from the country in question.«

(Construction industry, 110600/45/1996)

2.2.5 **The chair and steering committees**

European works councils usually only meet once a year and the procedures for convening and organising a plenary session are complex. A coordinating body guarantees work continuity between meetings and it therefore plays an important role. Tasks normally performed by the chairperson, speaker and secretary of the employee representatives include chairing the plenary sessions, guaranteeing the continuous flow of information, and representing this body vis-à-vis company central management on an ongoing basis. In larger European works councils they are supported in their tasks by other members. In many European works councils these bodies have become known as »steering committees«. Other terms used are »select committees«, »presiding committees«, »bureau« or »co-ordinating committees«.

There is hardly any other function which so clearly reflects the different national workplace representative practices and customs better than the office of the chairperson. The different approaches can be clearly seen in the three following agreements, which are taken from different systems of employee representation.

Agreement from a German-owned company:

»The European Dialogue Committee shall have a Chairman and a Deputy Chairman. The Chairman and Deputy Chairman of the European Dialogue Committee shall be provided by the employee representatives.«

(Chemical Industry, 110600/77/1994)

Agreement from a Dutch-owned company:

»The Chairmanship of the annual meeting will be rotated between the members of the Central Management and the Select Committee.«

(Finance, 110600/110/1997)

Agreement from a French-owned company:

»One management representative will be named by the Board [...] to chair the European Forum. The Chairperson will name a vice-chair from one of the board of directors. This vice-chair will substitute for the Chair if he is unable to attend the meeting.

The European Forum will nominate a secretary as well as an adjunct secretary from the ranks of its mandated representatives, which principle task should be to ensure a well-functioning flow of information between the representatives of the European Forum.«

(Construction industry, 110600/94/1996)

In enterprises which have their headquarters in Germany the chair, with only few exceptions, is held by an employee representative. Thus the familiar works council system practised in Germany is transferred onto the European model.

In agreements under Dutch law the chair of the European works council is regularly held by an employee representative. However, alternating chairmanship is favoured when chairing meetings – in accordance with Dutch national works council practice. The third example reflects the procedure common in France. Here an employer is chairperson whilst the employees are represented by a so-called »secretary«, whose authority in fact resembles that of the chairperson in other national systems. In British, Irish and US companies the chair is normally reserved for a member of management. The extent to which national models influence transnational agreements is quite surprising really. There are only very few exceptions where the rules relating to the chairperson of the European works council differ to the national rules practised in the undertaking's home country.

In a certain number of agreements the negotiating partners agreed that only individuals who have additional functions or tasks in the company would be considered for election as chairperson. In such cases the European works council's choice of a candidate is restricted within narrow confines. In the following agreement the chairperson of the German works council (group works council) is made chairman of the EWC.

»Another member of the (...) may be elected (...) chairperson at a meeting of the (...) by a two-thirds majority of those (...) members entitled to vote. The (...) vice-chairperson shall be the GWC vice-chairperson of (...). Another member of the (...) can be elected (...) vice-chairperson at a meeting of the (...) by a simple majority of those (...) members entitled to vote.«

(Construction industry, 110660/85/1996)

Similar restrictions on the eligibility of employee-side representatives to hold the chair could only be found in agreements negotiated before the adoption of the European Directive into national law (»Article 13 agreements«). By contrast, in cases where a transnational group negotiated a Special Negotiating Body in accordance with Article 6 of the EU Directive, all the employee representatives are eligible for election to chairperson.

Where central management holds the chair of the European works council (French model), we often find rules relating to specific management functions. Some agreements try to underline and guarantee the importance of the European works council by nominating top managers.

»The (...) shall be chaired by the Chief Executive Officer of (...) or his representative.«

(Mechanical engineering, 110600/115/1999)

»The EC shall be chaired by the (...) Vice President of Human Resources Western Europe or in his absence his designee.«

(Food and beverages, 110600/70/1996)

In as far as the agreements examined contained information on a deputy-chairperson, in joint European works councils the office of chairperson and their deputy is often divided between management and employee representatives. This is intended to express a balance in the relationship between the two sides. In wholly employee bodies, however, many negotiating partners have agreed that the chair and the deputy-chair should, if possible, be held by persons from different countries and sectors of the undertaking.

The same applies to the composition of the steering committees, in which the employee-side is represented by about three to seven persons. The agreements try to take into account the geographical and organisational structure of the undertaking. Either certain countries are given a seat in the steering committee per agreement, or the EWC is to ensure a fair distribution of seats when electing the steering committee. The steering committee's most important task is to maintain contact with central management and liaise with the workforce between meetings.

»Select Committee

The (Company) Employee Team will appoint a Select Committee of three of its members consisting of a Chairperson, a Secretary and a third member which shall, between meetings for the (EWC): (i) represent the (EWC) in communications with the management representatives, and (ii) liaise with other employee representatives. The Select Committee will work with the Management representatives to: (a) prepare and approve the agenda or the (EWC) meetings, (b) prepare and approve the minutes of the (EWC) meetings before circulation within (company), and (c) consider calling and preparing for extraordinary meetings.«

(Automobile industry: car accessories, 110600/106/1996)

The tasks of the steering committee are defined differently in the agreements; to a certain extent it is seen primarily as administrative (preparing and organising the meetings), but it is also viewed as a forum for an ongoing social dialogue with central management. Amongst the most important tasks of the steering committee are:

- Setting the agenda
- Selecting the required documentation
- Deciding on the number of languages to be interpreted
- Deciding on the venues of meetings
- Organising training programmes
- Gathering and disseminating information from the participating countries
- Deciding on the need for extraordinary meetings
- Monitoring the observance of information and consultation rights outside the meetings in cases of extraordinary circumstances. For

this purpose representatives of those countries directly affected can also participate in select committee meetings.

- Selecting and appointing experts
- Monitoring and observing the agreement itself
- Representing the EWC in public

2.3 **Participation structures**

2.3.1 **Information and consultation procedures**

Information and consultation are the most important tasks of the European works council. Provisions which go beyond this, such as veto or negotiation rights, are neither contained in the EU Directive nor in the national transposition laws. The term *information* itself is not more closely defined in the Directive. The German transposition law on the other hand, speaks of the »dissemination of information« (§19 p.1). According to the relevant legal expert commentaries, consultation must be sufficiently comprehensive to allow the employee representatives the opportunity to hold proper discussions based on the information provided, without them needing to carry out further research themselves. Correct and comprehensive information is a prerequisite for the European works council to be able to reach decisions, whereby the opportunity to fully discuss the information received must be guaranteed.

The term *consultation* is more closely defined in the Directive as the »exchange of views and the establishment of a dialogue between employee representatives and central management«. This formulation, taken from the EU Directive, has been adopted by many transposition laws. However, it does not answer the question of what influence the outcome of the dialogue has on the company decision-making process. There are no regulations on what should happen if agreement is not reached following an exchange of views and dialogue. Additional procedures such as those in the Directive on workers' involvement in the European Company (S.E.), or forms of mediation, such as external arbitration committees, have not been provided for. In a lot of national legislation in the European Union, *consultation* is defined as a process at the end of which agreement be-

tween the two parties should have been reached. In order to allow sufficient time for such an agreement, the implementation of a company proposal is often delayed for a set period within which time information and consultation are to take place. The question posed for the European works council is how it can develop consultation rights at a European level and what affect such consultation procedures will have on companies' decision-making processes.

Our analysis of the agreements revealed that the negotiating partners orientated themselves closely to the framework of information and consultation laid down in the Directive. None of the agreements contain codetermination rights such as those stipulated in the German Works Constitution Act. Neither do any of the agreements contain explicit negotiating rights: indeed in isolated cases they are specifically stated as being outside the European works council's area of responsibility. Nevertheless, many agreements articulate the European works councils' consultation rights and thus go beyond merely the right to only be informed and consulted by central management.

»Information is defined as oral and written information and the provision of oral and written explanations on such information, consistent with the terms of reference of this agreement. »Consultation« is defined as exchanging and sharing views including those on the information provided.«

(Service Industry, 110600/34/1997)

The above agreement is characteristic for companies which negotiated an agreement before the deadline of 22.9.1996. In the majority of cases the text adheres closely to the text in the Directive. More far reaching definitions are contained in the so-called »Article 6 agreements«, negotiated later. The reason for this is, in addition to changes in the legal position after 1996, the court decision in the case of the French car manufacturer Renault and the somewhat disappointing experience with the implementation of relatively general provisions. The experience of European works councils already in operation showed that employee representatives were often only provided with information and consultation when company measures had already been decided or implemented by central management. In such cases meetings of the European works councils served more as a

forum for central management to explain its actions, or for the employee representatives to voice criticism. The European Commission also found this situation to be unsatisfactory. As a result of the public debate, in new negotiations, or when existing agreements were adapted, the time at which information and consultation were to be provided was often stated:

»The Council will be informed and consulted in a timely manner through the procedure. However, (...) will, when circumstances arise which require action or a decision to avoid detriment to the business, take the necessary action or decision before informing the Council. In such circumstances, (...) will then inform the Council as soon as possible and no later than it informs the public.«

(Automobile industry: cars, 110600/06/2000)

»Information & consultation is considered a continuous process and will take place when still meaningful and relevant. Statements and opinions brought forward to the EWC will be considered by (...) in a decision making process, which will continue and will be ongoing until a final decision is implemented.«

(Other transport services, 110600/118/2005)

»The consultation process must enable the EWC to have influence on the decision making process. Consultation is the opportunity for the employee representatives to receive advance notification of any proposals from management, to discuss and comment on such proposals and for those comments to be taken into account to influence the proposal before implementation.«

(Other transport services, 110600/118/2005)

The first text calls for the timely provision of information and consultation but does not specify an exact time. By contrast, the two other examples demand that the European works council must be informed at least *before* a final decision is made. Even though the company does not have to take the views of the employee representatives into account, through the timely provision of information the EWC is far more integrated in the process than if it were merely informed of decisions which had already been taken. In order to pre-

vent discussions between the employee representatives and central management becoming bogged down in vague generalisations, some agreements oblige central management not only to listen to the EWC, but also to include the results of the consultation in future steps taken by central management.

»The EWC may also give its opinion on the above measures and topics in writing and at any time. Management shall take these opinions into consideration in the decision making process.«

(Service industry, 110600/03/1996)

As a consequence, central management must at least take the results of the discussions into consideration, even though they are free to decide otherwise. The above formulation guarantees the European works council the right to make its views known at all times and so breaks through the rigid time confines of providing information and consultation at annual meetings. The European works council thereby gains in status as a permanent body able to make its views known in a timely manner on decisions made by the company. This rule should at least improve somewhat the problem often bemoaned by employees that they are not informed or consulted in a timely manner.

Ten of the agreements analysed contain provisions for the eventuality that central management and the employee representatives do not share the same views.

»In the event of a complaint concerning the information and consultation procedure, the European Works Council shall be entitled to a further consultation and information procedure within a month.«

(Mechanical engineering, 110600/29/1996)

»Information and consultation in connection with major changes must be of sufficient scope and arranged in sufficient time to enable the (...) EFR to develop views and standpoints which can influence the company's decisions.

Information supplied by (...) management to the (...) -EFR must be provided as soon as possible, prior to consultation, in order to enable the (...) -EFR to develop views and standpoints on the matter in question.

Following a decision by the presidium, the (...) -EFR is entitled to convene additional meetings of the Employees Council, providing that there are changes in the company which affect employees in at least two countries.

Company decisions in connection with circumstances covered by Article 5 may/should not be implemented prior to information and consultation

If there is a difference of opinion between company management and the (...) -EFR, the decision will be postponed for one month. The (...) -EFR is then entitled to call in an expert on the matter in question. Reference is made in this context to Articles 5 and 6 of this Agreement.«

(Mechanical engineering, 110600/14/1996)

These agreements were negotiated in accordance with Belgian law. They not only forbid the company from taking measures if information and consultation has not been provided in a timely manner, but also freeze the company's decision-making processes – and not merely implementation – for one month. The contracting partners have clearly favoured rules contained in Belgian labour law which contain provisions allowing the works councils (Comité d'Entreprise) to delay decision-making.

With regard to taking the views of the EWC into account when implementing company business plans, it is not unimportant which management level the employee representatives conduct discussions with during the information and consultation process. While many agreements have extensive provisions for the election and eligibility of workplace representatives, rules on management representatives are kept comparatively general. Hardly a single agreement clearly states which level of management is responsible for providing information and consultation. It is usually unclear whether the member of the board responsible for company policy takes part in the meeting or a representative from the human resources department. Few agreements provide more details in this area.

»Conglomerate management and the director of the (company) must inform and hold a dialogue with the EBR in its annual meetings about the following topics that are relevant across countries and regard at least two conglomerate branches in the member countries:«

(Metalworking production and processing, 110600/28/1996)

Both negotiation parties are clearly making an effort to underline the importance of the European works council by providing that two of the highest ranking managers take part in the meetings. This guarantees that employee representatives receive first hand information and that their concerns and views are addressed directly to the decision makers.

2.3.2 Consultation issues

The EU Directive and its national transpositional laws contain a list of issues which, should negotiations break down, would have to be included in a legislated European works council. An analysis of the agreements available shows that what was originally conceived as a catalogue of backup regulations, served as a guideline for almost all the agreements. Issues proposed in the list were selected, while in some cases the whole catalogue was adopted and further issues were added. We will assume here that the issues set out in the subsidiary requirements are well known and will therefore only mentioned those items in the agreements examined which added or deviated from the topics for information and consultation. These include:

- Training and advanced training
- Environmental questions
- Marketing strategy
- Rationalisation plans
- Equal opportunities
- Workplace safety
- Strategy and personnel policy
- Research and development
- Working hours
- Working conditions

- Social benefits
- Significant changes to the number of employees
- Payment
- Joint ventures
- Participation in large European projects
- Significant effect of political developments on the company group

Normally the catalogue of issues in the agreements is not comprehensive. Many regulations allow other issues to be discussed should the negotiating parties wish to do so. However, employee representatives seldom have the right to select additional issues without the approval of central management. In some agreements certain issues are explicitly excluded from the competence of the EWC. These include:

- Political themes
- Wages
- Remuneration
- Social benefits
- Matters affecting only one person
- Complaints
- Company social responsibility
- Environment
- Work safety
- Themes regulated at a national level

2.3.3 **Transnationality and subsidiarity**

A basic principle of European social policy is that community-scale regulations shall only complement and supplement rules on workforce participation already in practice and by no means question or replace them. This is made quite clear in Article 12, Section 2 of the EU Directive: »The Directive shall not affect the rights of the workforce to information and consultation in accordance with national legislation«. The European works council therefore neither encroaches on the national employee representation bodies nor does it replace them. Many agreements expressly underline the fact that the European works council is a type of subsidiary body:

»The provisions of this Agreement shall not encroach on the rights and duties of employees' representatives at national level.«

(Control and instrumentation technology, 110600/35/1996)

In exceptional cases an existing national works council in the home country of the company was europeanised by merging its structure with that of the European works council. The national works councils, however, normally continue to function and maintain their independent structure. None of the agreements have a »hierarchy« for information and consultation procedures. However, it is not fully clear how to communicate between national and European procedures of information and consultation. The European works councils are frequently confronted by the question of whether or not national information and consultation bodies should or may be consulted, for example in the case of a transfer of production, before the EWC discusses the matter, or indeed whether national and European consultation should be held at the same time. The agreements examined leave this question completely unanswered.

In addition to subsidiarity a further important principle for information and consultation practice which should be stressed is the »transnationality« of the matters to be discussed. The subsidiary regulations in the annex of the Directive lay down that the jurisdiction of an EWC by law is restricted to those matters affecting the undertaking as a whole, or plants or subsidiaries in different member countries. Even though this regulation does not apply to agreements negotiated pursuant to Article 13 or Article 6 of the Directive, the majority of agreements have kept to the rule of transnationality.

»Central Management of [...] must inform the EWC comprehensively and in good time with supportive documentation about the economic and social affairs of the enterprise, if this affects the whole enterprise or at least two locations in different member states.«

(Service Industry, 110600/25/)

»Topics for the EWC should be of a transnational nature concerning the participating companies and the enterprise *and have considerable repercussions for employee interests.*«

(Chemical Industry, 110600/24/1995)

»Matters which only concern one member company are not applicable, but must be dealt with within the framework of the normal organizational structures and procedures of the company concerned.«

(Chemical Industry, 110600/27/1995)

Similar restrictions on jurisdiction regarding cross-border measures can be found in all the agreements looked at. Obviously, matters affecting only one country are meant to remain within the responsibility of the local or national bodies and a duplication of information and consultation is to be avoided. According to the above text, for example, the relocation of the IT department in country A would only fall within the jurisdiction of the EWC if a similar measure was also being planned in country B. By contrast, the closure of a plant in country A would be excluded from consultation as long as it could not be proven that production which had previously taken place in country A would be moved to country B.

The agreements analysed remain unclear regarding the question of when a decision fulfils the criteria of transnationality. It is therefore not surprising that differences of opinion concerning the cross-border character of a measure are common between central management and employee representatives, and indeed between individual employee representatives. In order to create clarity, some of the agreements have provisions to assess the jurisdiction of the EWC.

»Subjects which affect only individual companies within the Group or only parts of the workforce of the Group shall be dealt with preferably in suitable organs on the spot in the appropriate matter. Should a representative nevertheless consider it necessary to include an item on the agenda in the EGCI, that item shall first be discussed by the EWC Committee, which shall then take a stand on how one should proceed with the matter in collaboration with the management.«

(Intersectorial, 110600/09/1996)

2.4 Organisation of meetings

2.4.1 Frequency and duration

EWC meetings are extremely complex to arrange. Participants' travel arrangements and the necessary support by interpreters are only some of the most important aspects to be taken into consideration when planning and arranging for the necessary resources required for a meeting. It is therefore understandable that European meetings take place less frequently than local and national meetings. While the negotiating partners are free to determine the exact number of meetings, the EWC Directive, stipulating at least one annual EWC meeting, nonetheless has a significant influence. At the time of publication there were some 850 agreements, only two of which completely dispense with holding any meetings, selecting instead alternative procedures for information and consultation of the workplace representatives. In one case the foreign subsidiary is informed by the German company's works council. In the other case, information and consultation is provided in a decentralised manner by central management at the individual subsidiaries abroad. Some agreements provide for the possibility to hold video conferences. Apart from these exceptions, the annual EWC meeting is at the heart of the majority of agreements.

»The European Works Council shall, in general, meet on the first Tuesday in October of each year for a maximum of one working day«

(Intersectoral, 110600/09/1996)

»The EWC shall meet once a year. The meetings shall take place in ... at the headquarters of the management of the ... Group. They should be scheduled in conjunction with the autumn meeting of the Economic and Central Joint Committee of ...«

(Construction Industry, 110600/61/1998)

As in the above example, about half of the agreements analysed contain a clause limiting the number of annual meetings to one. Many other companies leave room for additional meetings by selecting the

term »at least«. In agreements negotiated since 2000, one can clearly detect an increase in the number of annual EWC meetings, the trend is clearly for at least two annual EWC meetings. This clearly takes into account EWC experience to date. The realisation that the quality of direct contact can not be substituted has resulted in many of those involved calling for more frequent meetings. Some central managements are willing to allow more meetings.

»... management and the ... EWC will together determine a meeting schedule that suits the demands of the business. However, a standard format of two meetings per year is recommended (annual results and budget). The ... Group EWC will follow this recommended format, ...«

(Paper industry, 110600/63/1995)

In addition to prescribing the number of annual meetings, agreements also stipulate when meetings are to take place, i.e. the month or quarter. The meetings are often linked to annual company events such as the publication of the company's annual report, financial statements or annual shareholders' meetings. The aim is to provide a binding schedule as to when meetings are to be held and to provide timely information and consultation procedures.

The EWC Directive expects the negotiating partners to regulate the duration of meetings. Results from agreements examined can only be compared to a limited degree, as the differences between the joint EWCs and the employee-only bodies are, as indicated previously, far too great. In some cases internal meetings of workplace representatives are included as part of the overall duration of the meeting, while in others it is seen as a separate item.

Apart from these rather formal questions, the majority of EWC meetings last for no more than two days and consist of three independent parts. The first day is usually taken up with internal meetings of the workforce representatives to coordinate positions and prepare for the meeting with central management. The actual information and consultation procedure takes place on the second day together with management. Increasingly, employee representatives also have the right to hold an analysis and evaluation meeting following the plenary session – this takes place either immediately after the main EWC meeting or on a further (third) day.

»The plenary meetings will usually last for one day. When the European Works Council convenes, the delegates have the right to meet for a preparatory meeting at the location of the meeting, one day before, and may hold an internal post-meeting directly after the plenary meeting is over.«

(Metalworking production and processing, 110600/39/1996)
(own translation)

The majority of agreements do not state how much time is actually reserved for the EWC meeting itself. Few agreements clearly stipulate whether arrival and departure days are included as part of the period reserved for meetings, or whether the time assigned to the meeting is exclusively reserved for actual consultation procedures.

The individual EWC models chosen (compare chapter 2.2), usually indicate who will chair the EWC meeting. In companies with their headquarters in France or Belgium, where a joint EWC model is favoured, management chairs the meetings in nearly all cases. Enterprises with Anglo-Saxon business practices have, in the majority of cases, also chosen this model. However, the EWC chairperson and the person chairing the meeting do not necessarily have to be one and the same person. Often there is a division of tasks between the presiding EWC chairperson (often the managing director of the company) and the person chairing the meeting (usually a manager from the HR department), who is directly responsible to him.

»(...) the structure and procedure of the EWC meetings (...)

The chairman of EEC Meetings shall be the Chief Executive or his nominee.

The secretariat function at the EEC will be provided by the Central Management Co-ordinator.«

(Tobacco production, 110600/05/1996)

»It is deemed, in the interest of the Information and Consultation process that Management chairs the meetings. Management and Executive Committee may – in consultation – decide (per meeting) otherwise. The chairman of the meeting will see to effectiveness of the meeting as well as to providing appropriate opportunity for

the EWC to express itself on the Information and Consultation issues to be addressed.

After Consultation with the Executive Committee, the Management sets up the agenda for the meetings with this perspective.«

(Food and beverages, 110600/10/1997)

Countries characterised by working relationships where the national works council has considerable autonomy vis-à-vis the employer-side (amongst others Germany, Austria and the Netherlands) organise the EWC meetings in accordance with their own national customs and practice. In such countries the meetings are normally chaired by an employee representative. As a rule this is usually the chairperson of the national works council from the country with the largest workforce.

2.4.2 **Extraordinary meetings**

As mentioned above, EWCs meet less frequently than national work councils. Nonetheless, in order to allow the EWCs effective participation, the European Directive makes provisions for additional meetings. These, however, require exceptional circumstances which have a considerable effect on the interests of the workforce. For example, relocations or closures of the company, parts of the company, or collective redundancies. In such circumstances the steering committee or the whole EWC have the right to meet with central management for consultation purposes. Since the adoption of the Directive, the interpretation of this right and its enforcement has led to considerable controversy between workplace representatives and central management. The conflicts culminated in the confrontation surrounding the closure of the automobile production plant at »Vilvoorde«, near Brussels. The French company was fined because it had not consulted with the EWC within the framework of an extraordinary meeting before the decision had been reached. Since this spectacular case became public, regulations concerning the question of extraordinary meetings have received far more attention. Below is a formulation commonly found in older agreements.

»In the event of exceptional circumstances an extraordinary session may be convened. The relocation and/or closure of undertakings, establishments or important parts thereof as well as mass redundancies shall be considered to constitute exceptional circumstances. At least two member countries must be directly affected to a considerable extent.«

(Construction industry, 110600/45/1996)

Companies in at least two countries must therefore be affected by extraordinary circumstances before appropriate EWC measures can be initiated. This is aimed at preventing the EWC from duplicating the information and consultation procedures required at national levels. Transnational measures are reserved for the EWC. However, the requirement that more than one member country should be affected poses new questions: at what point are problems truly transnational? Which body decides that extraordinary circumstances exist? Must these circumstances affect independent workforces of at least two countries or do company decisions made in *one* country but affecting *other* countries also count? Are redundancies which take place in two countries at different times to be viewed as an integral part of a uniform company strategy or is it a case of separate, national decisions which by chance are made in close proximity to each other? As a result of these and other questions, recent agreements have increasingly allowed room for divergent interpretations. Accordingly, extraordinary meetings can be held in cases where the workforce feels it is affected by a measure without them having to provide proof of this. Here it is sufficient if either the workplace representatives or central management call for an extraordinary meeting to be held.

»Extraordinary sessions shall be held if extraordinary circumstances occur or if requested by 50% of the employee representatives in the [...] European Forum or by the Executive Committee (Point 6 of the present agreement).«

(Other transport services, 110600/48/1996)

»Where there occurs an exceptional circumstance within the scope of this Agreement which directly affects to a considerable extent the interests of Employees covered by this Agreement, either Central Management or the Employee Representatives Co-ordinators may convene a Special Meeting of the EEC.«

(Tobacco production, 110600/05/1996)

Many companies, mostly those with a large EWC, limit the number of participants at an extraordinary meeting to the members of the steering committees. These committees can invite representatives from countries directly affected by the issue to attend a meeting for consultation purposes.

»(The Company) shall inform the managing committee of the EWC in writing and without delay of any extraordinary circumstances which:

- are directly based on planning and decisions of (the Company) and
- have a major impact on the interests of the employees in at least two of the countries represented by the EWC.

Extraordinary circumstances are, in particular, mass redundancies and significant downsizing and closures of companies, administrative units or major sections thereof.

Any consultation on the above that may be necessary shall in principle be concluded in writing. If oral consultation is required in exceptional cases, this shall form part of the managing committee's ongoing functions.«

(Postal services, 110600/102/2000)

2.4.3 **Experts**

When the EWC Directive was adopted in 1994 it was clear to all those involved that to work successfully the new bodies would require assistance. The Directive and the national transposition laws therefore gave both the Special Negotiating Bodies and the EWCs the legal right to consult experts of their own choice. Many transposition laws, however, allow central management the right to limit

the costs to a single expert. In fact, external trade union coordinators had provided considerable support during negotiations before the Directive was adopted. The trade unions, however, were unable at that time to push through their demand that full-time trade union representatives be given the right to attend EWC meetings. They were only legally entitled to participate in the meetings as »experts«.

All the agreements examined deal with consultation by experts. Aspects and approaches of individual regulations vary however:

- Unrestricted and free choice of experts by the workplace representatives
- Participation of full-time trade union officials (often from the European Industry Federations)
- Participation of experts and trade union representatives
- Invitation of »guests«: these might be representatives from trade union organisations or employers' associations
- Unspecific regulations (mention of experts only within the framework of general regulations about costs).

Relatively often the regulations on the participation of experts read as follows and adhere closely to the legal provisions.

»Access to experts

The EWC can receive support from an expert of its choice, if this is necessary for the execution of its duties. Experts may also be representatives of the (...) trade union. If experts are requested, the company is only obliged to cover the cost of one expert ...«

(Construction industry, 110600/84/1998) (own translation)

Nearly all the agreements avoid setting precise parameters on experts' tasks. The text often only indicates a right to attend the annual EWC meetings, sometimes limited to the internal preparatory meetings of the employee representatives. In the latter cases, experts are excluded from the actual meetings with central management. Hardly any of the agreements have regulated the question of whether experts can participate in meetings of the steering committees and to what degree they may be active outside meetings, (drawing up expert reports, providing assistance in disputes in court, providing ongoing advice to the chairpersons, etc.).

It is seldom the case that experts are specifically mentioned for certain tasks.

French parent companies in particular regulate the rights of employee representatives to consult with economic and financial experts. National provisions in French law, which allow for consultation by economic and financial experts close to trade unions, have obviously been adopted here.

»During one of the two preparatory meetings of the (EWC), the delegates shall have the facility of hearing the auditors certify the consolidated accounts of the (...) group and can appeal to a single chartered accountant, paid by the (...) group.«

(Food and beverages, 110600/15/1999)

In many agreements a budget is agreed upon to cover the costs of interpreters.

»Company will bear the expenses of experts up to a maximum of 10,000 Euros per year. An annual budget of 10,000 Euros will, for that purpose, be allocated to the EWC. Unspent budget can be carried-forward by the EWC for the same purpose in the following year(s). A yearly statement of related expenses will be provided by the Secretary to the Chairman and the employee representatives.«

(Automobile industry:cars, 110600/111/2002)

Experts are not always confined to an external role, some regulations allow experts unrestricted membership in EWCs. In such a case the election or nomination of an expert is not only a matter for the EWCs members but in some agreements external trade union organisations are delegated to deal with this task:

Recourse to experts

»Three permanent representatives of the EMF will be appointed by the EMF as full fledged members of the European Committee. Those representatives will be named »Counsellors«.«

(Electronical products, 110600/59/1992)

To conclude, two agreements representative of the extremes available document the wide range of regulations on the use of experts. The first allows consultation by an expert should such assistance be required. The expert's presence, however, is only allowed during negotiations of the agenda item in question. The expert is excluded from attending the joint meeting with management.

Own meetings

»Should the European Works Council experience the need for the presence of an external expert for the handling of a specific item on the agenda, then this expert may attend the Separate Meeting to assist with the handling of the relevant item on the agenda.«

(Construction Industry, 110600/76/1998)

In contrast to this strict interpretation of the use of experts, the following agreement takes a much more generous approach.

Experts

»The (EWC employee representative sub-group) shall have the right to be advised by one permanent expert of its choice.

When setting the agenda the Chairs can jointly agree upon experts for specific agenda items. These experts should preferably be (company) employees.

In extraordinary circumstances, one of the two sub-groups shall have the right to be advised by an expert of its choice for a specific agenda item without the consent of the other sub-group

Experts shall have the right to attend (company) EWC meetings (for their specific agenda item). Only persons who will not face a conflict of interests by becoming an expert shall assume such a position.

Experts shall have to obey the strict confidentiality rules pursuant to Article 11.

[The European Trade Union A.] und [European Trade Union B] shall both be entitled to appoint one representative each for the [EWC] meetings.

All necessary costs for experts shall be born by the Central Management.«

(Postal services, 110600/102/2000)

2.4.4 Confidentiality

Article 8 of the European Directive provides that each member country must create national legal provisions allowing central management the right to deny EWC members information in special cases. This refers to information which, should it be transmitted to the workforce, »might, according to objective criteria, seriously impair the operation of the company affected or harm it«. This clause is meant, in particular, to protect industrial and commercial secrets. In addition, certain information from representatives of the workforce is, under certain circumstances, to be treated confidentially. The EU Directive restricts the right of EWC members to transmit to third parties information expressly designated as »confidential«. The term confidentiality in the agreements examined, highlights the potential for conflict between the EWC's basic right to consultation on the one hand and the possible restrictions on transmitting information received to election bodies and the workforce on the other. Whilst all of the agreements examined contain provisions regarding confidentiality, there are considerable differences in the limitations imposed.

»The members and substitutes of the European Works Council, the economic committee, the subgroups' committees and the national committees are obliged not to disclose or use any information, of which they got knowledge due to their membership in the European Works Council or the aforesaid committees and which have been disclosed to them by the management under strict confidentiality. This obligation applies also to the experts and other participants.

This obligation may be asked indefinitely or for a specific period specified by management.«

(Automobile industry: other vehicles, 110600/83/2000)

According to the above regulation, workplace representatives are, as a rule, not allowed to transmit information. Such a formulation would, however, hardly withstand legal examination based on national law. Some transposition laws interpret the Directive to mean that the obligation to confidentiality does not apply within the EWC. Delegates of a country may therefore communicate or exchange confidential information within the European works council.

Information can also be transmitted to local workplace representatives who, while not members of the EWC, are subject to the confidentiality regulation.

The definition of confidentiality and secrecy in the above agreement is interpreted in a very restricted manner. Other regulations stipulate that all confidential information is to be clearly and individually marked as such. In this way one avoids a general obligation to confidentiality with regard to the results of an EWC meeting.

»The members and substitutes of the European Works Council, the economic committee, the subgroups' committees and the national committees are obliged not to disclose or use any information, of which they got knowledge due to their membership in the European Works Council or the aforesaid committees and which have been disclosed to them by the management under strict confidentiality. This obligation applies also to the experts and other participants.

This obligation may be asked indefinitely or for a specific period specified by management.«

(Automobile industry: other vehicles, 110600/83/2000)

The reference to the unlimited period restricting the transmittal of information received, even extending beyond membership in the EWC, is remarkable. Many regulations even threaten legal action as well as the possibility of claiming damages should violation of confidentiality be proven. There are even some instances of workplace sanctions, including dismissal, being listed.

Some companies do not include the precise details of confidentiality provisions in the agreement, preferring instead to regulate these in a separate document which each person has to sign personally.

»All employee substitute and replacements and experts shall sign the confidentiality letter set out in Appendix 4«

(Tobacco products, 110600/05/1996)

EWC experience shows that confidentiality regulations often come into effect when large-scale company changes are about to be implemented, such as mergers, take-overs or restructuring. In such cases the workplace representatives are often informed and consulted be-

fore such measures are made public. The obligation not to disclose confidential information clearly no longer applies once the information has been made public, and is therefore subject to a time limit. In the following extract, the confidentiality obligations of the EWC members are given defined time limitations.

»Should specific information be expressly designated as confidential, then it may not be revealed by the employees' representatives, or revealed before a specified deadline. This obligation shall continue after the expiry of the term of office.«

(Retail trade, except vehicles, 110600/89/1996)

In some companies justification is required as to why information provided should be treated as confidential.

»Where possible, the reasons for imposing an obligation of confidentiality, the duration of the confidentiality, the information subject to such obligation and those persons in respect of whom the obligation of confidentiality need not be respected shall be stated before the matter in question is considered. The Executive Board shall not transmit the information in question to those who refuse to accept the obligation of confidentiality.«

(Petroleum production, 110600/112/1996)

Whether or not central management's right to withhold information in fact fulfils objective criteria and is therefore justified (protecting industrial and commercial secrets), cannot be examined by EWC members as they are denied precisely this information. At least in retrospect, some transparency regarding company action should be guaranteed. That is why in some of the agreements central management is obliged to inform the workplace representatives as soon as possible of the reason why confidentiality had to be observed.

»The meetings stipulated in this Agreement shall not be public. If particular information is expressly labelled confidential, it may not be passed on to third parties, including following the expiration of a mandate. It may not be used vis-a-vis local staff representatives prior to a date which may be named.«

(Control and Instrumentation technology, 110600/42/1998)

2.5 Resources

2.5.1 Expenses

Organising and holding EWC meetings requires considerable financial and logistical expenditures. Such expenditures go far beyond those required by local and national workplace representatives bodies. Amongst the most important expenses are:

- Travel expenses (due to the distances involved this is far more expensive than local meetings)
- Expenses for interpreters and technical resources necessary to hold the meeting
- Accommodation and catering costs
- Costs for translating written texts
- Loss of earnings for participants
- Experts' fees.

The overall costs of maintaining an EWC varies considerably depending on the size of the EWC, the number of annual meetings held, the number of languages involved and the language abilities of the participants. There may also be additional expenses for the work carried out by chairpersons and the steering committees, the day-to-day costs of the secretariat, the consultation of experts and training courses.

Apart from a few exceptions, all EWC agreements contain regulations on EWC expenses. An analysis of the agreements revealed different approaches with respect to this. In some cases expenses are dealt with in a separate section, whilst in other cases they are linked to specific areas of expenditure, (e.g. meetings, interpreting etc.) throughout the agreement. Some agreements contain less details than the legal frameworks and only deal with specific issues taken from the whole cost catalogue. For example the following text only deals with the delegates' loss of earnings. This agreement contains no further regulations regarding expenses.

»Employee Representatives or their Substitutes shall be entitled to paid time off work to attend EEC Meetings and pre-meetings under Clause 3.9 above in accordance with the laws and practice applicable for worker representatives«

(Tobacco production, 110600/05/1996)

Instead of regulating individual items, many agreements merely oblige central management to bear expenses generally, sometimes listing individual expense items as examples but not limiting themselves to only these items. However, normally central management only covers those expenses which are deemed necessary for the EWC to carry out its tasks in an »appropriate« manner.

»Resources and Organisation

All necessary costs which the EWC incurs will be covered by the company (e.g. organisational costs such as rent for seminar rooms, travel and accommodation, simultaneous interpreters and translations of documentation.«

(Service industry, 110600/25/1996) (own translation)

»THE FINANCIAL AND MATERIAL ORGANIZATION OF THE EWC

The Group Management shall provide the EWC with the necessary financial and material resources to enable it to perform its duties in a suitable manner.«

(Petroleum production, 110600/23/1996)

In addition to general statements on expenses, some EWCs are provided with their own budget. In such cases central management agrees annually on a specific amount to allow EWC representatives to carry out their tasks. This budget principle provides the EWCs with a fixed sum of money which can be used as the EWC members see fit. This model is favoured by French parent companies as they europeanise works council (Comité d'Entreprises) procedures in operation in France. While French works councils have budgets linked to the company's total gross wage bill, other European agreements generally refrain from specifying any specific budget sum. Instead the amount in question is negotiated by central management

and the chairperson of the workplace representatives on an annual basis.

»Organisational and other expenses

[...]

The annual budget for the above mentioned organisational and other expenses is to be observed by taking economic factors into consideration and making optimal use of existing facilities [...] in agreement with the Head of Accounts and the Chairperson of the [EWC].«

(Construction Industry, 110600/55/1996)

Some agreements have both the budget principle and the general obligation to bear costs. In such cases the European works council receives a fixed budget but can also claim additional expenses which go beyond the confines of the budget, as required.

»Costs and budget

The ... Group undertakes to bear the costs of the work of the European employee representative body up to an annual budget limit ... This amount shall include interpreting costs, trade-union representatives' costs (excluding travelling expenses) and all costs which the work of the employee representative body guarantees.

The annual budget shall not affect those funds required by the European employee representative body for the performance of its duties.«

(Furniture manufacturers, 110600/13/1995)

2.5.2 Time-off

There are a variety of ways employee representatives throughout Europe can perform their tasks and obligations with regard to central management. Even though the national regulations of all EU member states provide for time-off either by law or tariff agreement, the scope of this right is interpreted differently. The German rule, which frees employee representatives in large enterprises from work, is an exception in Europe. In certain countries, such as France, specific tasks performed by the employee representatives are assigned a

certain number of hours. In other countries, on the other hand, the hours which an individual representative has a right to are accumulated in a common pool. In yet other countries there is no regulated time-off. With this in mind it is interesting to examine whether EWC agreements reflect these different approaches or whether they contribute to creating a more uniform approach to time-off.

All the agreements looked at contain a provision on time-off for employee representatives. Such provisions normally allow delegates to attend meetings during work time and be paid for the time spent at the meetings.

»Employee Representatives will be provided by their employer with time and facilities necessary to fulfil their responsibilities appropriately.«

(Automobile industry: cars, 110600/06/2000)

»Employee Representatives or their Substitutes shall be entitled to paid time off work to attend EEC Meetings and pre-meetings under Clause 3.9 above in accordance with the laws and practice applicable for worker representatives«

(Tobacco production, 110600/05/1996)

However, the question of how employee representatives can carry out additional tasks within the framework of their mandate, (e.g. arranging meetings, preparing reports and documents, informing the workforce) is left unanswered. More than half the agreements looked at had no precise rules on this and refer instead to national solutions and the transposition laws of the EWC Directive. Many of these regulations stress that the necessary time-off involved is not confined to attending EWC meetings.

»The BC and EC members shall be provided paid leave to perform their tasks within the framework of this Agreement in accordance with the respective national transposition laws; at a minimum, however, they shall be credited with the working time which they lose as a result of taking part in the meetings provided for in this Agreement.«

(Control and instrumentation technology, 110600/42/1998)

Our analysis of the agreements revealed that more recent agreements display a strong tendency to formulate regulations on time-off in a more complex manner than is the case with older agreements. Agreements negotiated on the basis of Article 6 of the Directive after 22. September 1996 contain more favourable and comprehensive regulations for the employee representatives. In spite of this, time-off rules in the agreements are somewhat watered down in comparison to the national provisions. There are only a few exceptions where agreements contain concrete references to definite time slots. An example of this approach can be seen in the following example. The text was taken from an agreement of a French-owned enterprise.

»Time-off rights

Members of the Board each have annual time-off rights amounting to six working days in total. These time-off rights shall be added, if appropriate, to the time-off rights which members of the Board have under the terms of their local employee representation mandates. The time spent at preparatory meetings, at plenary meetings, at meetings of the employees' representatives delegation and at any meeting convened with the agreement of the Management of the (co) Group, as well as the time spent travelling to these meetings shall not be deducted from these time-off rights.

Annual time-off rights amounting to one day shall be granted to each member and observer on the (EWC), apart from members of the Board. In addition, to take into account special situations, overall annual time-off rights amounting to 15 days shall be granted to employees' representatives, to be distributed at the proposal of the Board, which shall inform the Management of this beforehand. Should an extraordinary meeting be held and depending on the needs identified, additional time-off rights may be granted.

These time-off rights may not be carried over from one year to the next.«

(Air transport,110600/103/1997)

2.5.3 **Protection of delegates**

When negotiating an EWC agreement the contracting parties must decide if, and how, uniform provisions can be created to protect employee representatives. The EWC Directive avoids establishing uniform European regulations and stipulates the use of the valid national protection provisions in force in the respective countries. The national transposition laws, in general, extend national rules on protection to cover EWC members. For this reason about a third of the agreements examined contain no precise rules on protection provisions and refer instead to the valid national regulations in force.

»PROTECTION OF FORUM MEMBERS

Employee Members in the exercise of their function under the Agreement are entitled to the same protection and guarantees provided for employees' representatives by the national legislation or agreements in their country of employment.«

(Mechanical engineering, 110600/88/1995)

In this group of agreements, the extent of individual protection is solely dependent on the national legislation in force. This demonstrates the potentially wide range of national regulations within a European works council.

A second group of agreements formulate uniform principles for delegate protection without allowing interpretation of further procedures or substantial claims in the text. Numerous agreements thus demand the right to freedom of opinion or a general prohibition of discrimination or preferential treatment as a result of EWC membership.

»Protection of members

No hindrance shall be placed in the way of the activity of the members of the workers' representative bodies. Members may neither be accorded special treatment nor suffer discrimination; this applies equally in relation to the progress of their career in the company.

Protection against dismissal shall be governed by the requisite national legislative provisions.«

(Mechanical engineering, 110600/86/1996)

Only a third of the agreements examined make a delegate's right to protection dependent on their continued membership in the EWC. Some of these agreements refer explicitly to protection against unwarranted dismissal, which requires agreement by the EWC. The whole of the EWC, the steering committee or the chairperson must, in such cases, agree to the dismissal of a EWC member. In other cases the EWC or one of its bodies must at least be consulted.

»The members of the EWC can be dismissed during their term of office or in the two years thereafter only where national legislation permits such dismissal and subject to the approval of the EWC.«

(Petroleum production, 110600/23/1996)

»The members of the EWC must not be impeded in their activities.

They must not suffer any disadvantage or enjoy any advantage because of their activities in the EWC. This shall also apply to their career development.

The members of the EWC may only be dismissed during their term of office and in the 6 months following that term if national legislation allows it and the EWC has given its approval.«

(Electrical products, 110600/30/1996)

These two agreements show that the period of protection for former EWC members stipulated in agreements often varies.

2.5.4 Translation and interpreting work

Overcoming language barriers is without doubt one of the most important challenges in a unified Europe. As many of the employee representative do not (yet) have a sufficient command of foreign languages, possible translation and interpreting work are among the most important items to be regulated in a European agreement. Only six of the agreements examined make no reference to this issue. Seven agreements agreed on a common working language which, in all but one case, is the language of the country where the group has its headquarters. The study reveals that enterprises from the services sector pay comparatively less attention to regulations on translations

and interpreting than do traditional industrial enterprises. EWCs at IT enterprises or airline companies dispense altogether with detailed regulations or only allow translations in exceptional cases. Further differences can be seen depending on where the parent company is located. Some agreements negotiated under Swedish law contain only general rules on foreign languages. This can perhaps be explained by the good foreign language skills in northern Europe. In such cases English is usually selected as the working language:

»The working language of [...] is English, and therefore the meetings will be held in the English language. Interpretation facilities will be provided so that every member may ask questions in their own language, and also receive translations as far as possible of the English presentations and points discussed. Simultaneous interpretation of one non-English language into another non-English language is not foreseen. If possible, all participants should have a basic knowledge of English. The agenda and other written documentation as well as the minutes will only be provided in English.«

(Chemical Industry, 110600/27/1996) (own translation)

The majority of agreements examined contain further details on overcoming communication barriers. Normally an official language is agreed upon in which management is to hold presentations, and original documents and protocols are to be written. Nearly all the agreements make reference to the translation of documents or to interpreting during meetings. In the latter case a distinction is made between simultaneous interpreting using a language cabin, headphones and microphones, and traditional consecutive interpreting. The majority of agreements provide for simultaneous interpreting, often limiting, however, the number of target languages.

»The official language of the meetings, notifications, documentation and minutes shall be French. However, simultaneous interpreting into Spanish, German and Italian shall be provided during the meetings. The documentation shall likewise be translated into these languages.«

(Construction Industry, 110600/94/1996)

In order to prevent conflicts of interests or too close a relationship between central management and the interpreters – sometimes directors' secretaries have even been used as interpreters – some EWCs have the right to select an interpreter of their own choice.

»The working language is German. Where members do not have adequate knowledge of German, they have the right to select an interpreter of their choice.«

(Publishing and printing industry, 110600/41/1998)

Occasionally, within the framework of translation and interpreting work, the EWC delegates are given the opportunity to improve their own language skills, for example, by attending language courses. The texts do not always reveal whether such courses are intended, within a relatively short period, to provide delegates with the language skills necessary to understand complex details in a foreign language and participate actively in discussions.

»**Working languages at the meetings**

The working languages at the meetings shall be German and English. Where members of the EWC do not have adequate knowledge of one of these languages to be able to make themselves understood, the (...) shall cover the cost of an intensive language course of up to three weeks. Interpreters shall be provided where necessary.«

(Metalworking production and processing, 110600/52/1995)

2.5.5 Working resources

It goes without saying that EWC members require appropriate equipment and resources in order to carry out their duties. Currently, such issues are only regulated by national legislation as well as in the collective agreements of local employee representations. These highlight wide-ranging differences throughout Europe. There is currently no European regulation covering this matter within the framework of the Directive and its national transpositional legislation. As a result, numerous agreements attempt to regulate this issue. Such agreements state that EWC members should have access

to instruments to improve communications – both amongst each other and with regard to the workforce. Amongst the most important of such tools is modern telecommunication equipment.

»in order to fulfill his tasks every member (of the EWC) must have access to an international telephone and fax connection, as well as a PC with Internet connection and a personal email account. The use of these media must be able to be kept confidential.«

(Postal services, 110600/102/2000) (own translation)

As the above example indicates, use of a personal computer with internet access and an email account have meanwhile become standard EWC tools. Central management and the EWC have often re-negotiated older agreements which did not initially provide for supporting equipment, and this has led to the provision of computer networks.

EWCs with their own secretariat or offices are less common. Routine activities are apparently carried out at the group's headquarters without there having been any formal agreement made on this. Only 14 of the agreements examined mentioned a EWC secretariat. However, it remains unclear whether or not the secretariat is tied to the local structure of the workplace representatives in terms of administration, personnel and organisation, or whether the secretariat is run by central management. On rare occasions, background information indicates that the organisation of the EWC secretariat is run by the EWC itself.

»The organisation of the secretarial support of the EWC will be carried out by the existing »Works Council Secretariat«; the costs of this support are for the account of (company).«

(Food and beverages, 110600/10/1997)

In other agreements logistical support is limited to making offices available to the members of the steering committee (coordinators).

»shall procure the provision of such appropriate office facilities which are reasonably necessary to enable the Employee Representatives Co-ordinators and their deputies to carry out their functions in relation to EEC Meetings.«

(Tobacco production, 110600/05/1996)

Just as important to the delegates as the availability of technical support and offices, is the right of access to the locations they represent. This includes both visits to the plants and the right to meet with members of the local works councils. Such regulations are of particular importance in countries where works councils are spread out over large geographical areas and there is no country-wide coordination. Only a regulated right of access to all those companies which they represent makes it possible for the EWC delegates to perform their mandate at a national level and beyond the location of their own respective subsidiaries. For the first time, European works councils enable workplace representatives in many countries to begin national level communication processes with locations in their own country. This bridges the common gap between local works councils and European works councils. Access rights are significant in enterprises where only a few representatives are responsible for a large number of national locations.

Such rights of access to companies are more often than not still the exception for EWCs – only nine of the agreements analysed specifically contain such rights. Opinions differ as to whether local management must approve a company visit or whether the workforce representatives need only to inform them.

»Members of the EWC are allowed to visit the companies [...] in the EU, in order to meet workplace and trade union representatives there. This will be announced to management beforehand.«

(Service Industry, 110600/25/Date n.a.)

This agreement fails to fully clarify whether the right of access of the EWC members is confined to the companies in the country represented or extends to locations abroad. The following text, however, precisely defines the access rights of EWC members as well as steering committee representatives.

»To fulfil their tasks, members of the [EWC] shall have the right to visit entities of [company] in the country they represent, after having informed the local management beforehand.

In countries with multiple locations of [company] undertakings, Forum members shall make use of existing bodies, to ensure local

input before [EWC] meetings and the provision of information after the meetings. Should such bodies not exist at a national level, members shall be given the possibility to communicate with locations other than their own by phone, e-mail or personal visits, after having informed the local management beforehand.

If necessary, the [EWC] members shall have the right to visit locations of [company] in any country that is covered by the agreement and lies within their region. Members of the Select Committee shall have the right to visit [company] operations in all countries from all regions governed by the agreement, if need be.«

(Postal services, 110600/102/2000)

According to this agreement EWC members are allowed to visit locations in the country they represent as well as locations in the region affected. Members of the steering committee enjoy unlimited rights of access to all company locations within the jurisdiction of the agreement.

2.5.6 **Training**

The tasks performed by EWC representatives and the demands on them differ considerably from those of national and local works councils. The members elected to the European works council are, as a rule, not fully prepared for the tasks they are about to be confronted with. Once this problem was recognised by many companies, workplace representatives and trade unions increased their efforts to have basic training provided. The European Union also recognised the need for qualified training and set up a budget, approved by the European Parliament, specifically for this purpose. This budget is used, to a considerable degree, to train European works councils.

When the EU Directive was adopted in 1994, the necessity of further training was not sufficiently recognised. Legal provisions on training are therefore missing from the Directive, the subsidiary regulations in its annex and in the transposition laws. Surprisingly enough, however, more than a third of the agreements examined provide for delegates' training. Nevertheless, some statements on training remain very general.

»The European Works Council members shall be entitled to take part in training and further education measures, insofar as such measures give them knowledge and skills that are necessary for the work of the European Works Council. The nature and extent of such measures shall be defined elsewhere.«

(Mechanical engineering, 110600/26/1996)

The agreements typically make reference to the fact that there must be a relationship between the contents of the training course and the work carried out by the European works council. Some agreements even propose possible training areas.

»Qualifications

The members of the EWC shall be entitled to obtain skills inasmuch as training and further training measures are necessary to them in the context of their activities. This shall apply in particular to the following skills: foreign languages, labour law, economics, commercial and social law for the countries concerned in the present agreement. Utilisation of qualification measures shall require a decision by the EWC and agreement with the central management.«

(Electrical products, 110600/30/1996)

The following are amongst the most common areas of training:

- Employment relationships and national systems of workplace representation
- Foreign languages
- Financial statement analysis and economic issues
- European labour law
- Inter-cultural communication
- The role and tasks of the European works council
- European social policy
- Workplace and health safety

Most of the passages on training are rather short and only a few make reference to the duration and extent of training. However, reference is often made to the fact that time-off for EWC training is not to be included in national time allocations should such time quotas exist. Should a time frame for training be mentioned, this usually varies from one day to one week each year.

»QUALIFICATION MEASURES

The technical knowledge and proficiency required for the performance of the tasks involved within the European Works Council shall be acquired within the framework of the national legislative provisions. Where the latter do not exist, the member shall be released for a maximum of two days a year at the expense of the national undertaking for suitable qualification measures.«

(Construction industry, 110600/45/1996)

One has to read between the lines in most of the regulations to assess if the right to training is confined to the individual member's country of origin or – as in the following text – applies to a training measure for the whole of the EWC.

»Further training

The members of the EWC (representatives and their substitutes) are entitled to receive two days training per year on legal, economic and social and political topics, which are to enable them to deepen their knowledge of the (company) and provide them with information about different systems of workplace representation in the EU countries covered by the directive«

(Construction industry, 110600/54/2002) (own translation)

Here, the right to training is limited to the period when establishing the EWC. This is not unusual. In most agreements language training is limited to one course. Language courses are often allowed in the hope that they will limit the costs involved for hiring interpreters:

»All parties involved in the Forum meetings shall use their best efforts to minimise the amount of languages used at Forum meetings as much as possible. Where deemed necessary, facilities to learn the English language shall be made available to Employees' Representatives. The Committee shall, on the basis of the level of knowledge of foreign languages within the group of Employees' Representatives, taking into account the obligation to use best efforts as set out hereabove, decide on a case-by-case basis which translation facilities are required for each Forum meeting.«

(Telecommunications, 110600/116/2003)

Few of the agreements examined go into any detail on individual and group training. Nonetheless, the following passage highlights the extent to which rules differ.

»Individual further-training programmes shall be agreed upon with Central Management in relation to their content, scope and costs prior to their being scheduled.

The costs for such individual further-training programmes shall be borne by Central Management.«

(Automobile industry: car accessories, 110600/62/2000)

2.5.7 Working groups

As previously mentioned, the majority of European works councils only meet once a year at the annual meeting. Steering and coordinating committees meet more frequently. In order to be able to deal with certain issues in more detail, many EWCs have the right, in accordance with the company agreement, to form working groups.

»During the first three years following conclusion of this Agreement, the European Works Council shall also meet in (...) on one further occasion per year outside the provisions set out in Article 7, Par. 2. Seminars and further-training sessions to improve the qualifications of EWC members shall be conducted within the context of such meetings.

The type and extent of such seminars and further-training sessions shall be specified jointly by Central Management and the EWC. The costs incurred in this respect shall be borne by Central Management. It is herewith agreed that all endeavours shall be undertaken to keep such costs at a reasonable and appropriate level.

The EWC may establish Working Groups related to specific activities of (...) or with regard to specific issues, provided the EWC receives the prior consent of the Management thereto, which consent will not unreasonably be withheld.«

(Food and beverages, 110600/10/1997)

»If necessary, the EWCF shall have the right to establish working groups to prepare and deepen issues relevant to the work of the EWCF meeting. Preferably, the working groups shall fulfil their tasks via e-mail, phone, fax, etc. If, beyond this, there is a need for working group meetings, the Chair of the EWCF shall decide on calling a meeting of the respective working group.«

(Postal services, 110600/102/2003)

The examples differ with regard to the autonomy the workplace representatives have in convening a working group. In the first text, even if benevolently, central management must examine whether it is necessary or not to convene a working group meeting, whilst in the second example it is the sole right of the workplace representatives to decide on this and to issue invitations to such meetings.

In some cases works council committees established at a national level are also established at a European level. For example the following agreement refers to an economic committee as is typical in German law:

»These committees are entitled to meet with the responsible member of the Executive Committee of [...] and/or the management of the respective companies twice a calendar year, unless otherwise agreed. These committees will be informed about and discuss the matters set down under Article 6 to such an extent as the matters are of exclusive concern to the sub-group.«

(Automobile industry: other vehicles, 110600/83/2000)

In addition to working groups concentrating on specific issues, and the above model of an economic committee, in certain cases management has approved the establishment of sub-committees for specific company sectors. Groups with a diversified production portfolio in which each sector has a high degree of freedom to make its own business decisions use such working groups in order to intensify information and consultation processes. Although many workplace representatives have called for the regulation of such working groups in agreements, only two examples could be found in the agreements examined.

Codetermination rights

European works councils are bodies of information and consultation. Neither the EU Directive nor the national transposition laws require the EWCs to exert influence on company decisions, as is the case, for example, in those countries where workforce representatives have codetermination rights. The spread of the EU Directive led to European employer associations strongly resisting an increase in workplace representatives' rights. Indeed, at that time even trade unions voiced doubt as to whether workplace representatives should play an active role in company decision-making. It was feared that sharing the responsibility for company policy might result in conflict of interests for the workplace representatives.

With this in mind, the quality of EWC agreements cannot be judged in terms of national codetermination rights. In all the agreements examined there is only one area where participatory rights go beyond the right to information and consultation: provisions on the protection of EWC members. In two agreements in the study the dismissal of a member had to first be approved by the EWC or its steering committee. In the 120 agreements examined there were no other issues which required the approval of the EWC.

At this time it is impossible to say whether or not the right to information and consultation will be extended at some time in the future to include rights similar to those in the German system of codetermination. One can, however, observe that the more extensive definition of *information* and *consultation* in the recent directives on European public limited companies are exerting an influence on current EWC negotiations. The principle of information and consultation mentioned in the directive, with the emphasis on »the objective of agreement«, has been included in the catalogue of demands by numerous workplace representatives during current EWC negotiations and might smooth the way for greater EWC participation.

4. Unresolved problems

It is not the task of this study to examine if, and to what extent, the agreements analysed have been implemented. At the same time the fact that few of the agreements contain solutions should conflicts arise between the workplace representatives and central management is nonetheless surprising. Nearly all the agreements define a specific language in which the agreements is valid; usually the language spoken at company headquarters. The place of jurisdiction is also frequently stated. However, the exact steps to be taken should a conflict arise between the negotiating parties are often missing. As a result, since adoption of the EWC Directive there have been few instances of judicial mediation, even in cases involving serious conflicts. The lack of sufficient regulations may be responsible for this. In the first ten-years following the adoption of the Directive in 1994, there were only eight cases¹ in which a court judgement was passed in connection with European works councils. The problems surrounding judicial verifiability of an agreement are demonstrated by the legal dispute involving the information and consultation practice at the company *P&O*. At *P&O*, the European works council, which is a joint-body established on the French model, the employee representatives went to court to correct what they felt was the company's inadequate information and consultation policy. However, because the employer, who at the same time was the EWC chairperson, refused – understandably enough – to sign the document of complaint the dispute was not admitted in court. The majority of agreements still fail to contain regulations which clearly give the EWCs a legal personality. The following examples attempt to close this gap.

1 Compare the position of the European Economic and Social Committee dated 24.09.2003.

»The European Works Council shall elect from its members one chairperson and one vice chairperson. The chairperson will represent the European Works Council in law.«

(Food and beverages, 110600/106/2001)

The Select Committee shall monitor the adherence to the agreement and shall act as intermediary in the event of a conflict. The Select Committee shall resolve disagreements about the content, the interpretation or the application of the agreement.

»Should it not be possible to settle a dispute in this manner, each of the two sub-groups of the (Company) (employee representatives' select committee and managerial representatives' select committee) shall have the right to request the matter to be settled in court. The necessary costs involved shall be borne by (the company).«

(Postal services, 110600/102/2003)

Of all the agreements examined, only two, from which these extracts are taken, clearly specify who should act as the EWC's legal representative, and only the latter agreement clarifies the important question of who bears the costs. As long as legislation fails to regulate these points it will be left to the negotiating partners to make sure legal clarity is achieved through careful formulation of the agreements.

A further development, which was not foreseen when the Directive was adopted, is the dramatic increase in mergers and acquisitions. The wave of mergers in the 1990s, which reached their temporary peak in 2000, fundamentally changed the structure of numerous companies covered by EWC agreements. According to research carried out by the European Trade Union Institute (ETUI), between 1999 and 2002 about 30 per cent of all European works councils were confronted by a merger or acquisition. Many EWCs had to discontinue their work because the parent company had been acquired by another company. As a result, these EWCs lost their independence. In other cases the European works councils of two companies were merged into one. European workplace representatives were confronted not only with the task of critically monitoring, within the information and consultation process, the companies'

decision to merge with or acquire a company. As an institution, the EWCs themselves were called on to adapt to these ongoing changes. However, hardly any of the agreements contain a clause protecting the continued existence of the EWC, which even in the case of a take-over would allow the EWCs to continue with their work until a new agreement, taking account of the changed circumstances, had been signed. We were only able to identify a single case of such a regulation:

»If (Company) should be taken over by another company this agreement remains valid for at least one year after the take over has been signed. Thereafter, (...) the parties will enter into negotiations in good faith to renegotiate the Agreement in the light of the change of control.«

(Intersectoral, 110600/120/2005)

The final and most central question regarding the future of European works councils lies in extending the information and consultation procedure. Other studies have revealed the discontent felt amongst many EWC members with regard to the comprehensiveness, quality and timing of information received from management. In the agreements examined there is evidence that workplace representatives only become involved when decisions have already been made, as is the case in the following example:

»In the event that the company announces significant changes of a trans-national nature affecting its employees, such as mergers, relocations, collective redundancies or restructuring, the spokesperson or deputy spokesperson for the (...) EWC shall be informed on the same day.«

(Air transport, 110600/114/1996)

This situation will only change when provisions for regulating information and consultation processes are stated more precisely in the agreements. It therefore remains to be seen whether or not the significantly more extensive information and consultation procedures for codetermination in the European Company will provide the impetus to revise the regulations for EWCs.

5. Concluding assessment

This study does not aim to draw a representative conclusion. However, some observations can be mentioned, even though German agreements are disproportionately represented in the study. Indeed the study contains far more agreements negotiated in Germany based on the EU Directive and the national transposition law than their actual numbers, as a total of all negotiated agreements, in fact justify.

Proven negotiating principle

The EU Directive provides a procedure for establishing EWCs through negotiations, and not by means of inflexible legal rules. This procedure seems to have worked well, so far.

This is clearly shown by the fact that, at least in Germany, there is no example of negotiations aimed at establishing a EWC failing. Should negotiations break down, or should central management refuse to begin negotiations, the European works council by law is established. This regulation has been implemented in only one case¹ so far.

A further indication of the procedure's functionality is the enormous diversity of solutions found. The individuality of each of the agreements points to the fact that the negotiating partners wrestled intensively with each other to find tailored solutions designed to fit the individual requirements of the respective enterprise.

¹ An application to open negotiation by the workplace representatives from Sweden Finland, Norway and Denmark was rejected by the Deutschen Bahn AG (the Germany national rail company) in April 2004. The trade union Transnet, the German group's works council and central management agreed instead on establishing a EWC by law.

Considerable differences in scale and structure

The scale and structure of the agreements differ quite considerably. Agreements negotiated before adoption of the EU Directive into national law on 22. September 1996 (Article 13 agreements) remain qualitatively behind those negotiated on the basis of more recent legislation (Article 6 of the Directive). The more recent agreements have clearly been able to benefit from the experience of EWC practice to date. The qualitative advances are also an expression of trade union coordinating efforts. First and foremost, the work of the European Industrial Federations (EIF) must be mentioned here. The EIFs, by developing recommended procedures, some of which were binding for their coordinating member organisations, tried to establish (qualitative) minimum standards for new agreements. As an initial framework the EIFs selected for all sectors involved the subsidiary provisions for a EWC by law contained in the annex to the Directive. In the Industrial Federation's proposals these minimum standards are enhanced by additional minimum objectives, some of which are sector specific, and which are obligatory for the persons conducting the negotiations. Even though by no means all the agreements examined meet these standards, recent agreements in particular do demonstrate the willingness to take on board issues not dealt with in the EU Directive, such as training, access to companies, workplace resources.

Threat to employee representatives' autonomy

These innovative approaches contrast with agreements which fall far short of meeting the Directive's subsidiary provisions. These agreements lack essential elements which characterise sovereign employee representation vis-à-vis central management. In both their ability to perform their duties and the structure of workplace representation the effected bodies – about 20 per cent of all cases in the material examined – are dependent on the goodwill of the employer to an extent unheard of in national works councils and workplace representation. This applies in particular to agreements in which employer representatives are given a prominent role as EWC members (chairperson, convening meetings, setting agendas, writing protocols of meetings and making public announcements, etc). The participation of employer representatives, as is the case in about 50 per cent of the agreements examined and as provided for in particular in

the French model, may to all intent and purpose be a sensible option for a EWC and worthy of consideration – as long as it is not linked to workplace representatives losing nearly all means of exerting their influence.

Negotiation skills and willingness to compromise are a precondition

In more recent agreements in particular, regulations have been added which, with regard to delegates' working resources, time-off contingencies or rights of access, go beyond the EU directive. In line with information revealed in this study, this trend will probably increase in the future. Members of the Special Negotiating Bodies and EWCs have provided valuable pioneer work in what one might term an »unregulated« area. As long as such areas are not covered by EU-wide legislation it will be left to the negotiating skills of the social partners and their willingness to compromise, for pragmatic and efficient solutions to be found. The results achieved in the agreements themselves may make it possible for the political decision-makers to reflect such developments within generally binding regulations. As long as such norms are lacking, EWCs in companies where central management rejects a substantial development of European workplace interests will have to rely on rather elementary working resources. The frustration felt in some of the EWCs as a result of lack of recognition by central management threatens, in the medium-term, to lead to a »two-tier system« of European works councils.

Information and consultation processes only defined in general terms

The majority of agreements looked at see the EWCs' central task, that of information and consultation, in rather general terms. Describing this process as a »dialogue« or »exchange of views« fails to clearly indicate whether or not information and consultation must indeed take place **before** the decision in question is taken by central management and if, or how, the EWC's views are to be taken into consideration. The fact that the EU Directive and national transposition laws contained such out-of-date regulations on this has been criticised by expert studies and statements made by European works councils and trade unions. This study has come to the conclusion that workplace representatives will only be able to achieve more precise regulations on information and consultation processes if the EWC Directive is revised and a more favourable legal framework is created.

6. Information on shaping an agreement

Based on the study's findings, this chapter provides suggestions, in a compact form, on issues which should be taken into consideration when negotiating and shaping EWC agreements.

6.1 Checklist

The analysis of agreements and directives for the establishment of EWCs presented here has uncovered a great deal of key data and possible themes to be considered when setting up a EWC in a company. These are compiled in the following checklist. This is not an all inclusive list of proposals for structuring agreements to be put immediately into practice, but rather a catalogue of proposals to encourage the actors to reflect on certain issues and allow them to filter out the central points suitable for adaptation to the requirements of their respective company. The following checklist is modelled on the checklist of the European Industrial Federation for chemical, mining and energy workers, EMCEF, which deals with all the basic questions surrounding an EWC agreement without, however, anticipating the shape of the final agreement.

- **Countries included**

Participation of non-EU countries: European Economic Area, Switzerland, Turkey, etc.

- **Companies and sectors included**

Agreements for the company as a whole or for individual sectors, dealing with joint ventures and subsidiaries, complete list of all the companies and branches within the scope of the agreement.

-
- **Distribution of seats**
Total number of seats and their distribution amongst the participating countries, participation of locations without EWC representation of their own, a clause taking changes in workforce numbers into consideration.
 - **Eligibility**
Minimum period one must have been an employee of the company, other requirements.
 - **Election procedure**
Centralised rules or election governed by national laws and traditions
 - **Number of annual meetings**
Workplace representatives given the opportunity to prepare and hold follow-up meeting, duration of conferences and individual meetings
 - **Extraordinary meetings**
Defining possible reasons and procedures for convening extraordinary meetings
 - **Participation of management at the meeting**
Number of company representatives, chairmanship of meeting
 - **Information and consultation topics**
Day-to-day issues, other possible issues, processes including time and possible results of central management's decision-making processes.
 - **Internal communication of workplace representatives**
Establishment of a continuous communications structure outside meetings, steering committee, secretariat, preparation of papers and documents
 - **Delegates' work resources**
A right to a telephone, fax, PC with internet access and a personal email account, access to all locations represented
 - **Agenda**
Responsibilities, period within which topics are set; procedure for controversial issues
 - **Invitations to meetings**
Participation of trade union representatives and other external persons
 - **Experts**
Selection and qualifications of experts, expenses, right to participation at meetings

- **Obligation to inform and confidentiality**
The right and possibilities of EWC members to transmit and disseminate information, paths of communication between EWC and workforce, exceptional cases justifying confidentiality
- **Translation and interpreting**
The number of languages to be interpreted, translation of written documents, minutes of meetings, agendas, enclosures etc.
- **Venues**
- **Qualifications and right to further training**
Possible training topics, time allowed, training for the whole of the EWC or individual members
- **Employment protection for workplace representatives**
Prohibition of discrimination, role of the EWC in the event of an individual member being made redundant
- **Expenses**
Volume of costs borne; EWC's budget, expenses borne by either company headquarters or subsidiaries
- **Duration of agreement**
Modalities for extending and cancelling agreements; continued existence of EWC following mergers or takeovers
- **Solving conflicts**
Internal arbitration; the right to have conflicts decided in court, cost issues
- **Jurisdiction and language in which text of agreement is binding**

6.2 **How can workplace representatives exert influence?**

In this chapter we would like to provide suggestions to help company workforce representatives to position themselves. Preparing and negotiating an EWC agreement is a complex matter and, due to the special features involved, not comparable to company negotiations at a national level. The fact that it is a very time-consuming process becomes clear when one considers the time scale of three years given to the negotiating partners to conclude a European-wide agreement. Only if no agreement has been reached within this time-frame is a European works council to be established in accordance

with the legally binding subsidiary provisions contained in the annex of the EU Directive. The complexity of the process is a result of the requirement to establish a Special Negotiating Body made up of representatives from all the countries where the company is located within the European Economic Area. In about two thirds of those agreements examined which were concluded before the 22 September 1996 – and which as a result enjoy certain privileges in accordance with Article 13 of the Directive – negotiations were carried out by the local works councils or the coordinating trade union body located at company headquarters. While this process proved less complex and time consuming it prevented, amongst other things, the early integration of workplace representatives from various countries and often led to an imbalance, for example in the distribution of seats amongst the respective countries. The negotiating privilege now enjoyed by the Special Negotiating Body, however, places emphasis right from the very beginning on European-wide solutions which must be supported by the majority of the country representatives. In the early stages of constituting a Special Negotiating Body it is important to pay just as much attention to the expectations and interests of the employee representatives from the different countries involved as to reaching agreement with central management on appropriate compromises.

Experience has shown that all attempts at asserting national positions and forcing through draft agreements before a dialogue has taken place in the Special Negotiating Body carry the hidden danger of a loss of trust. For later negotiations and EWC work, however, mutual trust between the employee representatives is necessary. Negotiations on a European scale therefore require, in addition to a sound knowledge of the legal situation and the national traditions, an insight into company workplace representation in Europe and a high degree of sensitivity for the expectations of all those involved. Due to the complexity of negotiations the EU Directive gives the Special Negotiating Body the right to seek the advice of experts of its own choice.

Establishing an initial list of possible key issues (see chapter 6.1) to be contained in an EWC agreement and seeking to reach a consensus within the Special Negotiating Body is a more constructive method to prepare for later EWC tasks than draft agreements drawn up beforehand. A good way of outlining such key issues is the use of

a checklist containing the central demands of an agreement. In a second stage one would have to negotiate key questions with central management in a joint-body editorial group in order to draft an agreement. This in turn would have to be agreed to by the Special Negotiating Body. This interactive method allows early participation and results in all country representatives strongly identifying with the agreement.

6.3 **Essential legal considerations**

In this chapter the most important legal provisions for negotiating an EWC agreement will be briefly dealt with and their importance assessed.

European works council agreements are based on »Directive 94/95/EG of the Council dated 22 September 1994 concerning the establishment of a European works council or a procedure to inform and consult with the employees in enterprises and business groups which operate community-wide«. This was supplemented by the Council Directive 97/74/EG dated 15 December 1997, following the adoption of the Social Protocol of the Maastricht Agreement by Great Britain and after the information and consultation procedure was extended to cover UK employees.

Two different procedural paths can be taken to establish a European works council based on the above Directives

- a) »Article 6 Agreement«: Agreements adopted after the 22 September 1996. Their common feature is the necessity to establish a Special Negotiating Body (SNB) to which, in accordance with a definite distribution system, all countries within the European Economic Area can send delegates. The number of seats distributed to a given country is dependent on the size of its workforce. The Special Negotiating Body has the mandate to negotiate with central management. Once convened, however, it can also decide not to start negotiations.
- b) »Article 13 Agreements«: These are agreements negotiated before 22 September 1996. In Article 13 the Directive guarantees that agreements negotiated voluntarily before adoption of the national transposition law retain their validity. Their continued existence

is protected regardless of whether the respective agreement was negotiated by a European body or national or local employee representatives.

The above Directives were to be incorporated into the national judicial systems of the member states of the European Economic Area within two years. Transposition laws of Directive 94/95/EG were also to be adopted by those countries which joined the European Union on 01.05.2004. These requirements were adhered to after a short delay. In Spring 2005 Estonia was the last accession country to implement the EU Directive.

It was left to each member state to decide whether the Directive should become binding by act of law or whether the social partners were to be allowed to negotiate binding agreements. The latter method, negotiated by employer and trade union associations, was applied in Italy, Belgium and Norway. Exactly which national transposition law was used to establish an EWC was dependent on the country in which the enterprise had its headquarters. A supreme court decision has meanwhile confirmed that enterprises which have their headquarters outside the jurisdiction of the EU Directive must designate a branch within the European Economic Area to perform central management functions and may not refuse to begin negotiations. The rule is that collective rights for the whole negotiation process are always subject to the national transposition law in force in the country where the company has its headquarters, whilst individual provisions for each SNB member (election procedure, time-off, protection provisions etc.) are subject to the legislation of the country from which the delegates are sent. National provisions differ considerably, especially with regard to the procedure for electing members. German SNB representatives normally have to be nominated by a constitutional body (the Central Works Council), while delegates from Sweden are nominated by trade unions. In Great Britain procedures vary greatly depending on trade union presence and recognition in the companies concerned. According to the national provisions all employees should select delegate(s) at a preliminary election. The election is monitored by a commission from outside the company if no trade union or workforce representatives are recognised by management in all the subsidiaries the enterprise controls.

Central management, as the representative of the company, is only obliged to open negotiations if, in at least two countries respectively, 100 employees or their representatives apply for the setting up of a Special Negotiating Body and the company exceeds the required threshold of 1000 employees in total and 150 employees in at least two countries within the jurisdiction of the EU Directive. Once the application has been presented, central management is obliged to begin negotiations with the Special Negotiating Body within six months.

Should central management not comply with its obligations or should no agreement be reached after a period of three years of negotiations, then the subsidiary provisions of the EU Directive come into force. When drawing up these provisions the member states made use of any available room for interpretation, which is why one needs to analyse the respective national transposition laws very closely. Should the subsidiary provisions come into effect, a European works council will be established by act of law. This EWC will then have the minimum rights to information and consultation and access to basic working resources as stated in the subsidiary provisions.

In EWC agreements to date the subsidiary provisions provide important guidelines for both the workplace representatives and central management. Even though it is seldom the case that subsidiary provisions are adopted by legal means, the Special Negotiating Body has only managed to go beyond such »minimum regulations« when very favourable conditions exist.

The improvements in employee rights regulated in the subsidiary provisions therefore play a significant role in demands by the European Trade Union Association to revise the EWC Directive. In April 2004 the European Commission opened the way for European social partners to consult about a revision of the Directive.

State of agreements

According to a study by the ETUI (compare Kerkhofs 2002), 737 companies had European works councils in 2004. Until 2004, 868 EWC agreements had been negotiated but over 100 had lost their validity as a result of mergers and takeovers. Before the adoption of the Directive on 22 September 1994, negotiations were long drawn out affairs with only a few agreements concluded each year. Following the adoption of the Directive by the EU Council of Ministers the number of agreements rose swiftly and reached a peak in 1996 with some 327 agreements. The reason for this was that the Directive was adopted by the national judicial systems on 22 September 1996. Agreements concluded before that date maintained their existence in accordance with Article 13 of the Directive and did not need to be renegotiated in accordance with the Special Negotiating Body procedures. As a result the number of agreements »rocketed« to several hundred in the last few days of September 1996. In the years that followed they levelled-off to about 40 each year. The ETUI has calculated that at the current pace of new agreements it would take until 2029 before European works councils are established in all the 2139 enterprises which fall within the jurisdiction of the EU Directive.

This study examined 120 agreements. The break-down by year reflects the development described above. Most of the agreements examined in the study were thus negotiated in 1996.

Table 1: Year agreement was adopted

1991	2
1992	1
1993	1
1994	3
1995	16
1996	50
1997	8
1998	10
1999	4
2000	7
2001	2
2002	4
2003	4
2004	1
2005	1
Unknown	6
Total	120

The EWC Directive does not specify a title to describe the body. Instead of an EWC, a procedure for information and consultation can be negotiated. It is left to the negotiating partners to decide upon a title for this body. As is demonstrated by the following table, only just over half the bodies in this study call themselves *European works councils*. Terms such as *Forum* and *Committee* are very common. These terms were probably chosen in order to avoid confusion with national workplace representative bodies.

Table 2: Title of information and consultation bodies

Works Council	61
European Works Council	60
Euro Works Council	1
Forum	32
Europa Forum	15
European Forum	5
(Company name) Forum	5
European Workers Forum	2
European Employee Forum	1
Euro Forum	1
Forum for a European Dialogue	1
Communication Forum	1
Business Group Forum	1
Committee	12
European Committee	5
Europa Committee	2
European Information and Conciliation Committee	2
European Consultation Committee	1
European Committee	1
Committee for a European Dialogue	1
Council	5
European Workers Council	4
European Council	1
Dialogue	3
European Social Dialogue	1
European Dialogue Body	1
Body for a Bilateral Social Dialogue	1
European Representation of Employees	2
European Communications Group	1
European Group-Employee Committee	1
European Conference of Employee Representatives	1
European Employee Body	1
Without name	1

In the first edition of this study, published in 2004, only agreements in German were examined. For this English edition we have examined a further 17 international agreements. By far the largest group of enterprises (58) examined have their headquarters in Germany.

Over half of all the Germany parent companies with EWCs were examined (100 in all).

The selection of companies should not create the impression that German workplace representation is in any way more active or successful in establishing EWCs than workplace representations in other countries. Whilst Germany can claim to have a majority of enterprises at which EWCs have been established (398), only about 25% of German enterprises have an EWC. This is the lowest rate of any large EU country and even falls behind non-EU countries such as Norway, Switzerland or the USA.

Table 3: Company Headquarters

Germany	58
The Netherlands	12
France	9
Great Britain	8
Austria	7
USA	7
Belgium	5
Sweden	4
Norway	3
Switzerland	3
Italy	2
Ireland	1
Luxembourg	1

Questions specific to an individual sector do not play a prominent role in the agreements. Should the respective company not be internationally well known through its products, the reader can only detect which branch is involved after having carried out considerable research. The wording of the texts only indirectly indicate the business area in question. No significant qualitative differences could be detected between the agreements of different sectors.

The following table links agreements to specific business sectors. Those enterprises which span various sectors are listed under the sector which represents their main business activity.

Table 4: Distribution of Agreements According to Sector of Activity

Construction Industry	25
Chemical Industry	13
Retail trade (except vehicles)	2
Electrical products	4
Food and beverages	7
Automobile industry: cars	6
Automobile industry: other vehicles	1
Automobile industry: car accessories	3
Hotels and restaurants	1
Glass and ceramics	2
Information technology	3
Automobile industry: retail trade	1
Finance	2
Air transport	2
Mechanical engineering	9
Control and instrumentation technology	2
Metalworking production and processing	5
Metalworking industry	4
Petroleum production	2
Furniture manufacturers	1
Communications, entertainment and automobile electronics	1
Paper industry	3
Postal services	1
Defence industry	1
Other transport services	2
Tobacco production	2
Telecommunications	2
Textile industry	1
Service industry	4
Publishing and printing industry	3
Insurance industry	2
Intersectoral	3
Total	120

Glossary

Consultation	Consultation means the right of employees to present their points of view, positions, suggestions and demands to central management. In the Directive consultation is defined as, »an exchange of views and establishment of a dialogue« between employee representatives and central management.
Employee body	European works councils in which management representatives are excluded from membership. With regard to European works councils with management participation, the term employee body denotes the group of employees representatives which usually meet before a meeting.
Article 6 Agreement	Article 6 of the EWC Directive contains all issues which must be regulated in an agreement. It also stipulates that the contents must be agreed in writing by the Special Negotiating Body and central management. Article 6 applies to all agreements concluded after 22 September 1996.
Article 13 Agreement	Article 13 of the Directive protects all those agreements concluded before the adoption of the EWC Directive on 22 September 1996. Such agreements remain valid independently of their contents and the negotiation procedure selected.
Special Negotiating Body	In accordance with Article 5 of the EWC Directive a Special Negotiating Body (SNB) is to be established as soon as 100 employees or their representatives from at least two respective European countries within the jurisdiction of the Directive request the opening of negotiations, or

central management itself begins such negotiations. The Special Negotiating Body is made up of delegates who, based on the national transposition law in force in their country, are elected or nominated. Once an EWC agreement with central management has been negotiated the SNB is dissolved.

EWC Directive

European Directive for the establishment of European works councils. It was adopted by the Council of Ministers on 22 September 1994 and two years later, on 22 September 1996, it came into force in the majority of European countries, with the exception of Switzerland, by means of national transposition laws.

French Model

This is the same as »Joint Bodies«. The vast majority of agreements to establish a European works council have chosen the French model. Under this model both employees and employers are represented in the EWC. As a rule, the chairperson in the EWC is the employer. The speaker of the employee representatives is given the office of secretary.

**Joint Bodies
Steering
Committee**

Another term for the French model.

The steering committee is, as a rule, the coordinating body of a European works council and is made up of representatives from various countries. Numerous other terms are used to describe this body: Presidency, Select Committee, Bureau, Steering Committee, etc. Depending on the model selected, the steering committee is a joint body or made up of employee representatives only.

Thresholds

The establishment of a European works council is conditional on two prerequisites: the first threshold stipulates that the enterprise in question must employ at least 1,000 employees within the jurisdiction of the Directive. A second threshold requires that in two member states respectively at least 150 persons must be em-

- employed in the enterprise. Only when both thresholds are achieved are the employees entitled to begin negotiations.
- Subsidiary Provisions** These are regulations in the annex of the EU Directive which only come into effect if negotiations are not successful or if central management refuses to begin negotiations. The subsidiary provisions are, therefore, not a set of »minimum provisions«. Negotiations can also end in unfavourable agreements for the employees should both parties agree to these provisions.
- Transnationality** In order to differentiate between the work of the European works council and that of the national works councils, the EWC only has the right to become active when dealing with consultation issues affecting at least two countries within the jurisdiction of the Directive and which, as such, have a transnational character. The room for interpreting this term is frequently the cause of heated debates between central management and employee representatives.
- Central Management** Central management acts as the partner of the workforce during negotiations for the establishment of a European works council. Central management bears the responsibility to implement all obligations on behalf of the enterprise which result from the Directive and transposition laws. Central management is normally located at the headquarters of the enterprise. Should the enterprise's headquarters be located outside the jurisdiction of the Directive, the enterprise must select a subsidiary within the jurisdiction of the Directive as its headquarters.

Internet addresses

European Trade Union Federation www.etuc.org/

The European trade unions' umbrella organisation sets out strategic positions on EU policy and current developments in the fields of directives and social dialogue.

European Union http://europa.eu.int/comm/employment_social/labour_law/directives_en.htm

One can find all the important European labour legislation here in several languages. This includes the EU Directive and national transition laws.

European Trade Union Institute www.ewcdb.org

The European Works Councils database 2004 identifies 2169 multinational companies falling within the scope of the EWC directive and it supplies details of EWC agreements already concluded, together with the English text of more than 800 of these agreements.

Social Development Agency www.sda-asbl.org

This EWC Agreements Database contains the analysis of EWC agreements from copies of signed originals in five languages – English, French, German, Spanish and Italian. The database currently covers over 700 agreements and is constantly updated.

ETUDE www.conf.etude.org/conferences/ewc-ebr-cee/

The ETUDE network provides a communication platform for EWC experts and offers information on latest developments.

EWC Service www.ebr-ewc.net

Detailed information on European Works Councils with download sections for EWC agreements in various languages.

Bibliography

- Buschak, Willy (2000):** Review of the European Works Council Directive, in: E. Gabaglio/R. Hoffmann (eds.): European Trade union yearbook. Brussels: European Trade Union Institute
- Carley, Mark/Marginson, Paul (2000):** Negotiating EWC's under the Directive: A comparative analysis of Article 6 and Article 13 agreements, European Foundation for the improvement of living and working conditions. Luxembourg: Office for official publications of the European Commission.
- European Trade Union Confederation:** Information, Consultation and Participation. EWC European Works Councils, Brussels (no date)
- Gohde, Hellmut (1995):** Training European Works Councils, in: Transfer 1: 258–272
- Kerkhofs, Peter (2002):** European Works Councils: Facts and figures, Brussels: ETUI
- Kerkhofs, Peter/Pas, Irmgard (2001):** European Works Councils full text database, CD-Rom, Brussels: ETUI
- Lecher, Wolfgang/Platzer, Hans-Werner/Rüb, Stefan/Weiner, Klaus-Peter (2001):** European Works Councils. Developments, types, and networking. Aldershot: Gower.
- Marginson, Paul/Gilman, Mark/Jacobi, Otto/Krieger, Hubert (1998):** Negotiating European Works Councils. An Analysis of Agreements under Article 13. European Foundation for the Improvement of Living and Working Conditions. Luxembourg: Office for Official Publications of the European Communities.
- Stirling, John/Tully, Barbara (2004):** Power, Process and Practice: Communications in European Works Councils, in: European Journal of Industrial Relations, Vol. 10, No. 1, p. 73–89
- Waddington, Jeremy/Kerkhofs, Peter (2003):** European Works Councils: What is the current state of play?, in: Transfer, 2003, p. 322–339

Whittall, Michael (2000): The BMW European Works Council: A case for European industrial relations optimism?, in: *European Journal for Industrial Relations*, 2000 (6), p. 61–83

The Hans-Böckler-Stiftung's archive of company agreements

The Hans-Böckler-Stiftung has the only significant archive in Germany containing company agreements negotiated between central management and workforce representatives. Our archive currently (September 2005) holds some 7900 agreements on selective company areas. We therefore have a wide selection of material which can both provide an indication of trends in policy shaping in companies and also provide information on industrial relations in German companies.

We regularly examine company agreements in selective sectors. Key questions of the analysis are: How are the key points in a specific company sector regulated? In which way have procedures and instruments of codetermination changed? What impulses do the agreements provide for every-day practice? Are there unresolved problems? Original quotes convey a hands-on impression of the regulations and provide ideas for ones own procedures and formulations.

In addition to these studies numerous text extracts from the agreements are presented on CD ROM and the website of the Hans-Böckler-Stiftung. People involved can therefore obtain suggestions on concrete alternatives for shaping the agreement.

We are very careful to preserve strict anonymity when examining and citing from agreements. The codes at the end of each quote indicate where the agreement can be found in our archive and when the agreement was negotiated.

We can therefore internally guarantee the original source without indicating the company or providing details on it. The only people who have access to the agreements are our archive staff and those conducting research.

The archive website can be reached at www.betriebsvereinbarung.de.

Questions and comments can be sent to us under.

Dr. Manuela Maschke	+49-2 11-77 78-2 24 Manuela-Maschke@boeckler.de
Jutta Poesche	+49-2 11-77 78-2 88 Jutta-Poesche@boeckler.de
Henriette Pohler	+49-2 11-77 78-1 67 Henriette-Pohler@boeckler.de

Index

- access rights 63
- annex of EWC directive 39, 74, 79, 90
- application 19
- Belgium 12, 18, 43, 81
- budget 42, 48, 54, 55, 64, 78
- central management 11, 12, 13, 15, 16, 17, 18, 21, 28, 30, 31, 32, 33, 34, 35, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 52, 54, 55, 61, 62, 65, 67, 68, 70, 73, 74, 75, 77, 79, 80, 81, 82, 88, 89, 90, 95
- Central Works Council 81
- chairperson 28, 29, 30, 43, 44, 47, 53, 55, 59, 70, 71, 74, 89
- codetermination 12, 17, 69, 72, 95
- codetermination rights 33, 69
- Comité d'Entreprise 36
- consultation 5, 11, 13, 14, 15, 16, 20, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 53, 69, 70, 71, 75, 77, 82, 84, 85, 88, 90, 93
- consultation rights 16, 31, 33
- Denmark 18, 73
- dialogue 5, 13, 16, 17, 28, 31, 32, 37, 75, 79, 85, 88, 91
- dismissal 51, 58, 59, 69
- duration (of meetings) 41, 42, 77
- election procedures 24, 27
- employee-only bodies 17, 42
- EU Council of Ministers 11, 83
- EU enlargement 5, 13, 19
- EWC Directive 5, 27, 41, 42, 46, 56, 58, 70, 75, 82, 84, 88, 89, 91
- experts 32, 46, 47, 48, 49, 53, 77, 79, 91
- France 17, 18, 22, 29, 43, 54, 55, 86
- French model 18, 30, 70, 75, 89
- frequency (of meetings) 41
- Full-Time-Employees 23
- Germany 6, 18, 29, 44, 73, 85, 86, 95
- Great Britain 80, 81, 86
- Iceland 19
- information 5, 11, 13, 14, 16, 20, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 50, 51, 52, 62, 64, 66, 68, 69, 70, 71, 72, 75, 76, 77, 78, 80, 82, 84, 85, 91, 92, 93, 95
- Ireland 18

- Japan 18
joint body 17, 18, 89
- Liechtenstein 19
Luxembourg 9, 18, 86, 93
- Maastricht Social Protocol 19
managerial representatives
71
mergers 13, 51, 71, 72, 78, 83
- Norway 19, 81, 86
- observer status 20
- parent company 12, 17, 23, 60,
71
participation 5, 13, 15, 16, 17, 19,
20, 21, 32, 38, 44, 47, 69, 74, 76,
77, 80, 88, 93
pilot agreement 11
protocols 13, 23, 60, 74
- Renault 33
- secretariat 43, 53, 62, 77
Special Negotiating Bodies 9,
12, 21, 26, 30, 46, 75, 79, 80, 82,
83, 88, 89
statement 42, 48, 54, 64, 65,
75
steering committee 13, 28, 31,
44, 46, 47, 53, 59, 62, 63, 64, 69,
77, 89
subsidiary provisions 17, 74, 79,
82, 90
subsidiary requirements 27, 37
Switzerland 18, 19, 76, 86, 89
- tasks 15, 18, 28, 29, 31, 32, 43, 47,
48, 54, 55, 56, 64, 65, 79
thresholds 21, 22, 89, 90
timely (information) 34, 42
trade union 11, 17, 18, 21, 22, 25,
26, 47, 49, 63, 74, 77, 79, 81
trade union officials 47
trade unions 11, 22, 24, 26, 47,
48, 64, 69, 75, 81
transnational 5, 11, 12, 16, 29,
30, 38, 39, 45, 90
transnationality 39, 40, 90
transposition laws 6, 12, 27, 32,
46, 50, 56, 58, 64, 69, 75, 81, 82,
89, 90, 91
- upper limit 21
USA 18, 86
- voluntary agreements 11, 27
voting right 20, 24
- Works Constitution Act 33