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GUIDE

Reinforcing the involvement of professional and managerial staff in European works councils

COMMISSION EUROPÉENNE



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THE PERCEE ADVENTURE IS LAUNCHED!

The CFE-CGC is convinced of the necessity of European construction, for who is located closer to the centre of changes in the world, economic changes and of course, as a trade union organisation, social changes than professional and managerial staff ?

This concern is not new. Working for the development of European institutions and the enlargement of the Community space, the successive leaders of our organisation have always been eager to contribute to the social dialogue, that has also become European, the assets of professional and managerial trade unionism.

That is why the CFE-CGC was a founding member of the CEC, the confederation of European managers, with the CIDA (Italy) and the ULA (Germany), and has always played a particularly active role in it.

That is also why we are proud to have launched the PERCEE (Managerial platform for a European works council network) project nearly two years ago now. With the recasting of the European directive on European works councils, with the work of the CEC European Managers and its federations to be a recognised competent European trade union organisation in order to specifically represent professional and managerial staff in transnational social dialogue, the circumstances demanded more dynamic involvement on the subject of EWCs by European managers. The CFE-CGC put itself forward as project sponsor, supported by enthusiastic partners ready to donate their time.

The PERCEE project attracted the attention of the European Commission, which provided co-funding. The limited survey of group and employees' representatives in EWCs and of European companies without EWCs that we conducted from July 2010, the quality of the participation and discussions at the conference on 14 and 15 October 2010, and the unfailing involvement of the project steering committee members confirmed to us the pertinence of our decision. We warmly thank everyone who responded to our requests and who showed their confidence in us by granting us a few minutes or hours of their valuable time!

The guide you have in your hands is the ultimate phase of the project. It has benefited from the instructive results of the survey, the intense discussions of the conference and the valuable experience of the steering committee members from diverse backgrounds, from Central Management and trade union federations, from industry sectors, from services and from the social economy (cooperatives, employer-employee joint institutions).

This guide is intended to be instructive: it is aimed at all interested persons, with or without experience of EWCs ; it contains both basic information and recommendations; above all it wants to motivate those involved, Central Management and employee representatives alike, to take part in transnational social dialogue, despite the economic and social difficulties, despite the misgivings about working with other representatives from various countries, from another culture, another way of thinking, and sometimes competitors.

Information and consultation of representatives of employees, and in particular of professional and managerial staff, at European level is a fundamental right, but a recently-acquired one. There is still a long way to go. The PERCEE project is intended to contribute to upgrading the road !

Bernard Van Craeynest, President of CFE-CGC

INTRODUCTION

Why a guide to reinforcing the involvement of professional and managerial staff in the EWC?

First, what is an EWC for?

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

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

In order to guarantee that the employees of undertakings or groups of undertakings operating in two or more Member States are properly informed and consulted, it is necessary to set up European Works Councils ...”

Reading the preamble (or recitals) of a piece of legislation is always very useful for understanding the reasons for the introduction of the legislation and its objective.

The above transcription of recitals 10, 12 and 13 of directive 2009/38/EC of 6 May 2009 confirms this principle.

Recognition of the right of employees to information and consultation at European level is a crucial aspect of social Europe.

Directive 2009/38/EC reinforces what the previous directive establishing the European Works Council (EWC), directive 94/45/EC of 22 September 1994, initiated.

The original intention is intact: *“Only dialogue at the level where directions are prepared and effective involvement of employees’ representatives make it possible to anticipate and manage change”*.

The new directive of 6 May 2009 consolidates the means made available to Central Management and employees’ representatives to improve the experience, application and compliance of information and consultation through the EWC.

Having information presented by the Central Management of the group or company itself, without going through intermediate Local Management; being able to ask questions on strategy and the economic and financial situation directly of Central Management; listening to its information or clarifications at meetings; being able to issue opinions to which reasoned responses must be given by Central Management: that is what an EWC provides.

The EWC is a forum for building a transnational community of employees working within the same group. The EWC does not replace national or local institutions. It provides the right to information and consultation beyond a country's borders.

It provides information placed within an overall perspective, extending beyond the local view, an opportunity to step back, to avoid local emotions, while offering the possibility of expressing to Central Management, at overall group level, the consequences on the local level of decisions considered or taken. The EWC is the meeting place of the two levels which feed into each other.

That is why it is important to have an EWC and to have an EWC that properly performs its tasks.

Why focus the guide on professional and managerial staff?

- First we need to agree on what we mean by "professional and managerial staff"

"Professional and managerial staff" is a catch-all term which covers several working populations that have one common characteristic: a significant level of expertise recognised by a qualification or by the level of the post occupied (for example technician, engineer, project manager) and/or person-management responsibilities (for example team leader, manager). These populations are not part of company Management but have a role in passing on Management decisions. This situation places them in an intermediate position between the majority of the employees and the company Management. They are the nervous system of the company: without the head and the limbs, the nervous system cannot perform its role. But the head and the limbs need the nervous system for coordination and to walk, run, write, talk, etc.

In this guide the terms "professional and managerial staff" and "managers" are used synonymously to identify these expert and team-manager working populations. The reason is educational, because of translation into different languages and thus into different cultures. The aim has been to find one or two terms that enable as many as possible to know which employees we are talking about.

- What is particular about these professional and managerial employees?

Professional and managerial staff do not belong to company Management, but cannot be considered in the same way as the rest of the employees because of their team Management and expert functions and their positions as operational relays of central decisions.

These situations result in them encountering specific occupational issues that neither company Management (representing the employer) nor the non-managerial majority of the employees can put forward properly. They must be able to express them as professional and managerial staff, or have them expressed by a professional and managerial staff representative.

Very few countries recognize this right of professional and managerial staff to separate expression of their opinions on their working and employment conditions through trade unions. France is the only country that recognises in its labour law an elected representation of professional and managerial staff (through division of the employees into electoral colleges based on occupation: workers/employees; technicians/supervisors; managers and engineers) and trade union representation of professional and managerial staff, through recognition of category-based trade unions able to undertake union action like non-category-based trade unions.

It is therefore important for this specific nature of professional and managerial staff to be recognised at national level.

However, the need for separate representation of professional and managerial staff is just as real in European-level social dialogue. In fact, it is recognised through two European organisations : the CEC European Managers and Eurocadres. These two European organisations are among the organisations that the Commission is obliged to consult on draft European directives on working conditions and members of the delegations that negotiate European agreements.

Trade union representation of professional and managerial staff is recognised at European level. It takes part in the negotiation of European interprofessional agreements. It has its place in EWCs.

However, it has to be admitted that there are few professional and managerial staff in EWCs and, when they are members, they are often in the French delegation, or are members of the Management or represent all the employees. Very rarely do the professional and managerial members of an EWC represent the professional and managerial staff.

Nevertheless, there is a need for separate representation. With the production of this guide, the PERCEE project aims to develop the representation of professional and managerial staff in EWCs.

How to use this guide

The guide has three parts:

- A part putting forward recommendations for reinforcing the involvement of professional and managerial staff in EWCs, itself divided into three sections : preparing the negotiation of the establishment or modification of an EWC, negotiating the agreement on an EWC and improving the working of an EWC ;
- A part providing a bibliography of the principal documents relating to EWCs, organised in six topics: regulatory framework, surveys and research studies, reference works, positions of trade union and professional participants, database, specialist journals and dedicated websites ;
- A part giving a network of correspondents, European and national institutional contacts ready to answer queries concerning EWCs. The PERCEE project partners naturally form a large part of this network, given their European or international scale, their experience of multicultural dialogue and their involvement in the promotion of an economy placing women and men at the heart of the system.

We would like to take this opportunity to thank the following for their support in the PERCEE project and for the support they will provide to readers of this guide who contact them:

- **CEC** European Managers
- **FECCIA** (European federation of managerial staff in the chemical and allied industries)
- **AECA** (European association of insurance company managers)
- **FECEC** (European federation of managers in the banking sector)
- **FECC** (European federation of managers in the construction industry)
- **ETIC** (European federation of managers in information and communication technologies)
- **FICT** (International federation of managers in the transport industry)
- **FEDEM** (European federation of managers in the steel industry)
- **ICOSI** (Institute of International Social Cooperation)

The contact details of these partners and of other equally competent organisations are given in the network part of the guide.

Of course, this guide is not comprehensive. The scope of information and consultation at European level is broad and the practices very diverse. Questions are bound to be asked that are not necessarily answered here. However, the objective of the guide is to at least give the beginnings of an answer!

That's the presentation finished. You can now start reading ! You are free to skip pages, to jump from one section to another without necessarily reading everything. This guide is for you, and you can use it as you want.

However, there is a certain chronological and thematic sequence to the explanations. To draw all the benefits from them, reading the whole guide is recommended.

PART 1

PREPARING THE ESTABLISHMENT OF AN EWC OR THE AMENDMENT OF AN EXISTING EWC

You think that the group or company you work in has a sufficiently European scale in order to have information and consultation at European level, in a European works council, on the current and future situation of the group or company. How can you confirm this? What exactly is an EWC? How is it set up?

You are in a group or company that has an information and consultation body at European level (an EWC, a forum, a European group works council, etc.). You have learned that a new European directive on EWCs has come into effect. What is its impact in the existing EWC? Do changes have to be made in the existing body ?

This first part is intended to give you benchmarks and tools to find the main answers to these questions.

A- RAISING AWARENESS OF EWCS

To know whether an EWC can be established in the group or company in which you work, or whether the existing EWC must be changed in accordance with the new directive, it is indispensable to identify the composition and the organisation of the group or company and prepare contacts with organisations that take action on employee information and consultation at European level.

1) Know your Community-scale group or company

- ***Know the composition and organisation of your Community-scale group or company***

Directive 94/45/EC of 22 september 1994 on the establishment of an EWC has been recast. From now on, the reference framework is defined by directive 2009/38/EC of 6 may 2009.

However, the scope of the directive is unchanged (article 2.1): the establishment of an EWC concerns “any undertaking [or a group of undertakings] with at least 1000 employees within the Member States and at least 150 employees in each of at least two different Member States”.

In the case of Europe- or world-wide groups, it is important to identify the company that controls the others, to see whether it is in fact located within the territory of a Member State and thus subject to the EWC directive.

Directive 2009/38/EC, like its predecessor, stipulates in its article 3.6 that *“The law applicable in order to determine whether an undertaking is a controlling undertaking shall be the law of the Member State which governs that undertaking. Where the law governing that undertaking is not that of a Member State, the law applicable shall be the law of the Member State within whose territory the representative of the undertaking or, in the absence of such a representative, the Central Management of the group undertaking which employs the greatest number of employees is situated”*.

The importance of knowing the entities of the group or company

It is thus indispensable to know the composition of the company or the group and its administrative organisation, in particular its European registered office. The constituent entities of the group or the constituent establishments of the company, their locations within the territory of the EU and the workforces that work there must be identified.

The location of the registered office determines where the Central Management, and in many cases the human resources department, which is or will be concerned by the existing or future EWC is located.

If this office is located in one of the 27 Member States or in the EEA (the 27 + Norway, Lichtenstein and Iceland), the directive applies to the group or company, and Central Management or its HRD will be the contact for obtaining information on the group or company and for holding discussions on the EWC.

If the registered office is located in Switzerland or the USA, or in any other part of the world, the ‘European’ Central Management or its human resources department responsible for negotiations is determined by the country where the group has decided to appoint its ‘European’ representative. Sometimes, for administrative reasons, the Belgian city of Brussels is chosen to mark a group’s association with Europe, or else a city in Ireland for its use of the English language or its regulations favourable to companies, for instance. In the absence of a ‘European’ representative, the Central Management or its HRD acting as contact at European level is the one where the group has the largest workforce.

The importance of knowing the workforce sizes

Knowledge of the total workforce of the company or group and its breakdown by country and site is important. The data is used to determine whether the workforce criteria for application of the directive are met.

To obtain this information on a group, article 4.4 of directive 2009/38/EC stipulates that *“The Management of every undertaking belonging to the Community-scale group of undertakings and the Central Management [...] shall be responsible for obtaining and transmitting [...] the information required for commencing the negotiations [...] and in particular the information concerning the structure of the undertaking or the group and its workforce”*.

Information on the composition of the group, its organisation and its workforce by country and by site can thus be requested from the Central Management and from the National Management.

This information is used to determine the scope of the EWC and prepare its future composition, weighted according to the workforce sizes in each country.

Although not compulsory, it is also very useful to request a workforce breakdown by business segment (when the group covers several segments) and by employee type and category (factory workers, office workers, managers, engineers, for example).

Belonging to a business segment is an important factor motivating the establishment or amendment of an EWC. Industries such as steel, chemicals or energy are competitive and undergo frequent restructuring, and an EWC fits in with the image of social responsibility that group Management wants to project. In the services, such as banking, insurance, or hotels and catering, the interest in EWCs is more recent and is tending to become more of a priority.

When faced with a request for a workforce breakdown between employee categories, the Management is likely to have difficulty with the issue of equivalence of categories between sites and between countries.

It is true that the definitions of employee categories are linked with different national classifications according to job categories. A very wide range of national occupational situations may be encountered. Nevertheless, when examined closely, these situations often reveal a common reality in terms of designations—factory workers/office workers/engineers/managers; managerial/non-managerial staff—or a common reality in terms of occupation that can be designated by a common professional term.

This information on the breakdown between professional categories is very useful for preparing a balanced representation. It makes it possible to make a start on compiling a common vocabulary of these employee categories and thus raise the awareness of Management and employees' representatives about the situation concerning the different employee categories, which are certainly diverse but correspond nonetheless to common realities.

The difficulties should not be overestimated, and it is possible to pursue this request without holding up the whole discussion process.

The EWC instead of the group works council?

The new directive strongly stresses the linkage between the tasks of the EWC and those of existing national institutions.

One of these links is that between the group works council and the EWC.

The group works council enables employees' representatives to obtain information at national level from the parent company on its subsidiaries. These group works councils are covered by national legislations that often precede the European legislation on the EWC and which inspired the European directives on information and consultation.

It may be tempting to hold back the establishment of an EWC because there is already a group works council. It may also be tempting to establish an EWC and do away with the existing group works council. Central Managements may consider that the co-existence of these two institutions is redundant, that it is time-consuming and costly. As a consequence, the employees' representatives may hesitate before initiating the establishment of an EWC, fearing that they will lose out between a national institution that they know well and a European institution that is more distant and less manageable.

French labour legislation recognises a group works council which has prerogatives at national level similar to the prerogatives of the EWC at European level. Some French companies have closed down their group works council when establishing an EWC, or have established an EWC directly without setting up a group works council, even though the latter is compulsory.

Although the group works council and the EWC are two similar institutions they are complementary.

A group works council at national level enables the representatives who are its members to be already familiarised with an overall view of the group, not limited just to the site where they work, with data concerning the group and not only the company that employs them. The group works council contributes to sharing of information on the group between persons who do not know each other but who are linked by their common work within the group. It enables on the one hand the Central Management to federate a group culture among its employees and on the other hand the personnel representatives to obtain a better understanding of the environment of the group, to be in contact with the overall Management of the group, and thus to better fulfil their mandate of representation to strategic Management.

The group works council can thus be the antechamber of the EWC: it provides training for employees' representatives who might one day be members of an EWC and involves preparation and follow-up at national level of work done by the EWC; it also prepares Central Management for the presentation of cross-sector information. It optimises the operation of the EWC.

The establishment of an EWC must not be detrimental to the group works council, but rather an extension at European level of what is done by the group works council at national level.

This must not be a piling-up of structures leading to cumbersome administration. The interest of these bodies should be understood in terms of complementarity and boosting of dialogue and discussion about the group.

- ***Preparing contacts with information and consultation participants at European level***

Employee information and consultation at European level is based on several organisations:

- Your trade union, if you are a union member;
- The Management of the group or company in which you work;
- Other national trade unions represented in the company or group;
- European trade union federations.

If you are a trade union member and you want to prepare a proposal to establish an EWC or amend an existing EWC, your union should be informed; it will be able to give you a broader view of any action it has developed on EWC issues, technical support on the subject and a network of persons with knowledge of the subject.

In the "Network" part of this guide, you can find some details of European and national contacts. However, the local network in your trade union, your business segment or your territory is a channel that must be mobilised.

Within the CFE-CGC, the steel industry federation and the chemical industry federation have set up a contact for EWCs. Activists who have queries about the operation of their EWC or want information on establishing an EWC can contact this person for information and/or assistance

The Management of the company or group is an essential participant. Transnational social dialogue needs representatives of the employees and representatives of Management.

Depending on how close and continuous the relations you have with the Management of the company or group in which you work are, as trade union representative or as manager, it may be advisable to meet the Management or the HRD informally to discuss the European and worldwide economic and social situation. These informal discussions can be a way of testing the transnational aspect of issues affecting the operation of the company or group.

In any case, such informal meetings are a preliminary to any negotiation. In addition to assessing the maturity of transnational issues, they are an opportunity to determine who is going to take the initiative to request negotiation.

When informal discussions start to cover this topic in greater detail, professional and managerial staff cannot cut themselves off from the other local trade union organisations. The future of their representation in the negotiations and in the EWC depends on this. In order for the professional and managerial staff to be represented at this level, the contact with the Management must not be confidential, even if it is still informal. Local trade union organisations must be associated with such contacts.

When the question of establishing or amending an EWC is formulated, there are three possible scenarios:

- The Management is ready to take this initiative and puts forward a proposal to establish an EWC;
- The Management is not ready to do so, is unreceptive to requests or refuses to follow up on them; the request will have to come from the employees: the signatures of elected members of the works councils of at least two companies located in at least two countries must be obtained. Some European federations organise meetings within their own organisations. It is also possible to collect 100 signatures of employees in at least two companies or establishments located in at least two different member states (article 5.1 of directive 2009/38/EC);
- The Management authorises meetings with European federations, which start preparation of the discussions, without much involvement by the Central Management or its HRD.

In each scenario, the trade union organisations must present a united approach to the Management. Custom demands that the delegations from a country agree on their message so that it can be understood by the delegations from the other countries which might have substantial cultural differences. European negotiation is learned not from books but in the field and through mutual respect. For the contribution of the professional and managerial staff representation to be well perceived in the national delegations, careful attention must be paid to the quality of the national representatives and their understanding of transnational problems.

In parallel with these contacts, it is indispensable to run group make-up simulations in order to identify potential allies.

In practice, the size of subsidiaries often varies greatly between countries. Some countries find it easier than others to form their delegation. All these factors must be incorporated into simulations to ensure the expression of all the countries, taking into account their size and a reasonable number of members in the planned EWC (no limit in the directive but limits defined in some national legislations, for example a maximum of 30 members under French law). The subject can be brought up during negotiation, but it can also be analysed before starting in order to have a better estimation of the resources to put into place. Past cases show that the members of the special negotiating body become members of the EWC because of their experience: it is difficult to refuse to appoint the person who negotiated the EWC within the special negotiating body as a member of the EWC resulting from that negotiation.

In order for professional and managerial staff to be represented in the negotiation and in the EWC, they must be given every advantage!

Directive 2009/38/EC makes provision for prior information of recognised competent European trade union organisations about the commencement of an EWC negotiation or renegotiation; so it is important to identify the European trade union organisations concerned and contact them with a view to possible support or possible participation in the discussions.

You should contact your union to find out whether it is a member of an organisation affiliated to a European organisation.

The CFE-CGC is affiliated to CEC European Managers, a recognised competent European organisation in the meaning of the directive. The federations affiliated to the CFE-CGC may also be affiliated to a European federation specific to their segment (e.g. the CFE-CGC Insurance federation is affiliated to the AECA; the CFE-CGC Financial and Banking federation is affiliated to the FECEC; the CFE-CGC Construction Industry federation is affiliated to the FECC...).

Contact details of these European trade union organisations are given in the Network part of the guide.

2) Put together your toolbox

- ***Collect the indispensable documents***

Initiating the establishment or amendment of an EWC demands a certain level of technical knowledge of the rules to be complied with.

The bibliography included in this guide is intended to help you sort what you need from the mass of documents on the subject. It is organised by topic, according to what you are looking for: regulatory framework, surveys and research documents, trade union position papers, dedicated website, specialist journals, etc.

Among all these documents, some are more important than others.

First, the basic documents concerning EWCs must be to hand: the applicable directives (at least the most recent, directive 2009/38/EC; they are available in practically all the languages), and the legislation transposing the directives in the various EU Member States. A number of commentaries explaining these documents in less-legal language can be found on the European Commission website and on dedicated websites at national level.

Directive 2009/38/EC provides for a transition period for its application to the agreements establishing existing EWCs and concluded under the preceding directive 94/45/EC or before this first directive came into effect. This makes it very important to know what the situation is in the company or group in which you work. Is there already an EWC or an equivalent procedure for information and consultation in the group or company? If yes, was it established by an agreement? If yes, what was the date of this agreement?

Depending on this date, you must check whether directive 2009/38/EC is applicable immediately. You can of course obtain help from persons accustomed to dealing with this type of issue. That is what the network is for!

You need to know the national rules on the EWC applicable in your country and in the country whose legislation applies to the controlling company.

In France the directives on the EWC are transposed into law in articles L. 2341-1 to L.2346-1 of the French Labour Code. A feature of French labour law is its assigning of employees to electoral colleges according to their professional category (factory and office workers, technicians and supervisors, engineers and managers). This representation by professional category facilitates the representation of professional and managerial staff within French EWC delegations.

In summary, the most important documents to always have to hand are:

- The directives on the EWC (there are two of them);
- Any agreement establishing an EWC or equivalent in the group or company in which you work;
- Documents transposing the rules of the two directives at national level (in your country and in the country of the controlling company, if different).

- ***Preparing the arguments for representation of professional and managerial staff in a way providing balanced representation of employee categories in the negotiations and within the EWC***

A major achievement of the CEC European Managers during the drafting of directive 2009/38/EC, its article 6.2b stipulates that the agreement establishing the EWC determines “*the composition of the European Works Council, the number of members, the allocation of seats, taking into account where possible the need for balanced representation of employees with regard to their activities, category and gender*”.

The inclusion of professional and managerial personnel must be clearly set out from the commencement of discussions on the establishment or amendment of an EWC.

What arguments can be put forward for demanding representation of professional and managerial staff?

- Professional and managerial staff are qualified employees with linguistic, technical and managerial knowledge enabling them to deal with European issues with recognised prior competence.
- Professional and managerial staff can make their full expert socio-economic contribution when they are able speak on behalf of the professional and managerial employees that they represent, failing this, their contribution is diluted in the mass representing all employees, the majority of whom are factory or office workers, with the risk of not being heard and not being taken into consideration.
- This separate representation of professional and managerial staff among the employees is recognised at European level by the Gil-Roblès resolution of the European Parliament in 1993.
- The CEC-European Managers (European confederation of professional and managerial staff) to which the CFE-CGC is affiliated is recognised as representative by the European Commission and by the treaty of Lisbon (as stipulated in its article 153). The CEC, or an affiliated federation, is thus a recognised competent organisation authorized to take part in the negotiations in order to provide this separate representation.

- **Obtaining Information and training**

Reading the essential documents on the EWC is the first step in raising your awareness. The second step is interactive information and training. This makes it easier to assimilate the information that you read and to put it into perspective or use it in practical, shared situations. You must not work in isolation!

Training courses on how the EU operates, on EWCs and on the systems of social dialogue in the other countries of the EU are of considerable help in obtaining a good understanding of the institutional and social environment. This can considerably improve relations with the other participants. Contacts are optimised.

Courses on Europe, the EWC or the systems of social dialogue in other countries are often available at national level; information on such courses and background material available on these topics can be requested from the CEC European Managers or its affiliated federations, which can either respond themselves or relay the request to the competent person.

Participation in European conferences is another effective way of tracking current topics on which the European Union is adopting positions that will subsequently have to be put into effect in the Member States.

The CFE-CGC runs two types of short course on Europe for its trade union representatives:

- a two-day course on the way the EU operates and on social dialogue at European level
- a two-day course on the EWC

The CFE-CGC also runs a confederation network of contact persons responsible for European issues in their trade union federations, for exchanging information on the economic and social situation of their segments and sharing social dialogue practices (negotiation of transnational agreements, EWCs, etc.). This group visits the European institutions once a year to improve its understanding of certain European regulations

B- ORGANISATION OF NEGOTIATION OR RENEGOTIATION

You have informed yourself about EWCs, you have raised the awareness of the participants concerned, you have assembled the toolbox. The first steps have been climbed on the stairs leading to the negotiation of an agreement on an EWC.

The time has come to initiate the process of negotiating the establishment of an EWC or the amendment of an existing EWC.

This is a very important phase: a negotiation that gets off to a poor start is like a false start in a race. Usually, you have to start all over again, with the risk of being disqualified or seeing the race cancelled!

1) (Re)negotiation commencement request

- **To establish an EWC**

Regarding the establishment of an EWC, directive 2009/38/EC, like the preceding directive, stipulates in its article 5.1 that *“the Central Management shall initiate negotiations for the establishment of a European Works Council [...] on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States”*.

The commencement of the negotiation is the formal responsibility of the Central Management, whether it initiated the request or not.

The directive does not lay down any particular formal procedure for official commencement.

An official document from the Central Management, relayed by the Local Managements (so that they are also involved), announcing the commencement of the process to the local trade unions or, failing this, to the non-union employee representatives, can send a strong message of commitment to social dialogue. This information of the Local Managements is compulsory at the first meeting of the special negotiating body. Informing them further upstream reinforces the commitment and the involvement of all Managements in the social dialogue.

If the request for negotiation comes from the employees' representatives or from the employees themselves, it must be in writing. It is submitted to the Central Management. As of the date of the request, the Central Management has six months to commence negotiation and an agreement must be negotiated within three years.

These deadlines are not neutral. Article 7 of directive 2009/38/EC stipulates that if the Central Management refuses to commence negotiations within six months, the minimal subsidiary requirements shall apply automatically. The same applies if after three years the negotiations have not resulted in an agreement and if the special negotiating body has not itself decided either not to open negotiations or to terminate the negotiations already opened.

- **To amend an existing EWC**

- *The EWC was established by an agreement*

The procedures for amending an EWC are normally set down in the agreement establishing the EWC.

Failing this, when the agreement expires, if it was for a defined term, the EWC members can draw up a term report and submit it to the Management to request improvements.

In the case of significant changes in the structure of the company or group, and if the agreement has not defined amendment procedures, article 13 of directive 2009/38/EC stipulates that *“the Central Management shall initiate the negotiations [...] on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States”*.

This brings us back to EU law concerning the negotiation of the establishment of an EWC.

- *The EWC was established solely in application of the subsidiary requirements*

If the EWC was established solely in application of the subsidiary requirements, article 1.f of the subsidiary requirements of directive 2009/38/EC stipulates that *“Four years after the European Works Council is established it shall examine whether to open negotiations for the conclusion of the agreement [...] or to continue to apply the subsidiary requirements”*.

In this particular case, the EWC members examine whether negotiations should be opened.

2) Composition of the special negotiating body (SNB) and appointment of its members

The special negotiating body represents the employees in the negotiation or renegotiation on the EWC with the Central Management.

The Central Management convenes a meeting with the SNB with a view to concluding an agreement. It informs the Local Managements of this.

Who are the SNB members? How does one become a member of the SNB?

The rules for composition of the SNB and appointment of its members are the same for negotiation and renegotiation, with two exceptions.

- **Common rules**

The composition of the SNB depends on the geographical locations of the establishments or companies in the Member States.

Directive 2009/38/EC defines a framework for determining the number of seats per country, which national legislation can amend. However, the principle of one seat per country where the company has a site must be complied with.

The number of seats per country is determined by the Management of the controlling company according to the workforce per country and in accordance with the procedures defined by the labour code of the country concerned, whence the value of good knowledge of the make-up of the group or company before commencing negotiations with the SNB !

The appointment procedures are also governed by national rules. Under no circumstances can the negotiators within the SNB decide between themselves the procedures for appointment of employees' representatives by country. These rules fall within the scope of national legislations, according to the principle of subsidiarity.

In a European group or company under French control or a simple French subsidiary or establishment, the French labour code is thus applicable for the appointment of SNB members representing French employees.

Under French law, article L.2344-2 of the French labour code, the representatives of employees of establishments or companies located in France belonging to a Community-scale company or a group for the formation of a special negotiating body in a Member State other than France are appointed by the employee trade unions from their elected representatives on company or establishment works councils or their trade union representatives in the company or group, based on the results of the most recent elections.

Even if a French subsidiary applies the instructions of a parent company located in another Member State, it cannot depart from the rules of the French labour code, which stipulates that the member(s) of the French delegation within the SNB is/are appointed by the trade unions from among the elected representatives or their trade union representatives. They cannot be appointed by another body, even if the national law of the controlling company stipulates this for the establishments or companies in its country.

- ***The two exceptions***

Composition of the SNB in the case of significant changes in the structure of the company or group

In the case of significant changes in the structure of the company or group, and where the agreement has not stipulated any amendment procedures, article 13 of directive 2009/38/EC stipulates that *"At least three members of the existing European Works Council or of each of the existing European Works Councils shall be members of the special negotiating body"*, in addition to the members elected or appointed as described above.

This brings us back to the ordinary law on negotiation of the establishment of an EWC, supplementing the delegations with members of the existing EWC(s).

Negotiation of an agreement on an existing EWC established in application of the subsidiary requirements

Where an EWC established in application of the subsidiary requirements decides to negotiate an agreement, article 1.f of the subsidiary requirements of directive 2009/38/EC stipulates that this agreement is negotiated by the members of the EWC, not by the SNB.

3) Information of the competent European organisations

Article 5.2.c of directive 2009/38/EC stipulates that *“the competent European workers’ and employers’ organisations shall be informed of the composition of the special negotiating body and of the start of the negotiations”*.

The ETUC and the CEC European Managers are competent European organisations, within the meaning of the directive. They must be informed by the participants who take the initiative to set up the SNB: either by the Central Management, or by the employees’ representatives, or by both. The idea is that all the participants should be on the same starting line: Central Management, Local Management, employees’ representatives, and representatives of competent European organisations.

To facilitate dissemination by the Central Management or by the employees’ representatives of information concerning the composition of the SNB and the opening of negotiations, the CEC European Managers has set up an e-mail address dedicated to the EWC: ewc@cec-managers.org. It is therefore essential to communicate this address to your Central Management and to the other employees’ representatives at the appropriate time. This will initiate contact between a representative of the CEC European Managers, the Central Management and the SNB members.

The CEC-European Managers is subsequently responsible for passing on the information to the most concerned among the affiliated organisations and for recording the negotiations opened or completed and the results obtained.

4) Which languages for the negotiation?

Reaching an agreement while maintaining respect between negotiators requires sharing and understanding the relevant elements, and access to them by all the persons participating in the discussion.

An essential factor for success is taking into account the languages of the countries represented in the SNB. Everyone contributes optimally if they do so in their native language.

When there is not yet an EWC, the SNB represents the first major step in familiarisation with such intercultural and transnational dialogue.

The principle should therefore be to take account of the diversity of languages represented by using interpreters during meetings and translators for the written documents.

This does not predetermine the working languages that will be chosen for the operation of the EWC (refer to Part 2). But the SNB, as the founding entity of the transnational social dialogue, cannot be monolingual.

This means appropriate interpretation and translation resources for:

- Discussions in joint session (Central Management and SNB) and discussions without the Central Management; in the latter case, according to article 5.4 of directive 2009/38/EC, the SNB can meet without the Management *“using any necessary means for communication”*;

- Written documents, including the text of the final agreement: translation of the agreement into several languages is indispensable for informing the Local Managements and the employees' representatives on the sites;
- Meeting rooms, which must have enough space to accommodate the participants and the interpreters.

5) Usefulness of training courses

Negotiators trained on the subject they are negotiating are worth double!

Article 10.4 of directive 2009/38/EC stipulates that *"In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body [...] shall be provided with training without loss of wages"*.

Whether there is an EWC (the members of the SNB may be different from the members of the EWC) or not in the group or company, it is difficult to improvise as a specialist on the subject when the negotiator – that you might be – has never had to discuss, in a multicultural environment, the right to information and consultation on the basis of a European directive, transposed into national law – that you may or may not know!

A training course on the regulatory framework of the EWC and/or on multicultural relations is far from superfluous.

Training courses intended for employees' representatives must be given by national and/or European trade union organisations, by national delegation or jointly within the SNB.

6) Optimising meetings without Central Management

Article 5.4 of directive 2009/38/EC stipulates that *"Before and after any meeting with the Central Management, the special negotiating body shall be entitled to meet without representatives of the Central Management being present, using any necessary means for communication"*.

Meetings of the SNB members without the Central Management are necessary in order to coordinate the various positions of the national delegations. They may take place before or after the joint meeting with the Central Management.

It is important to optimise these meetings in order to start building this European culture of dialogue between the representatives of the employees from the different sites of the company or group. These meetings are also an opportunity for confirmation between SNB members of the mandates they have received from the national organisations that they report to.

These are also times at which communication is important. Interpretation must be provided at these meetings.

7) Expert assistance

Article 5.4 of directive 2009/38/EC stipulates that *“For the purpose of the negotiations, the special negotiating body may request assistance from experts of its choice which can include representatives of competent recognised Community-level trade union organisations. Such experts and such trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body”*.

What is meant by the term “expert” must be understood.

The expert reinforcing the competence of the employees’ representatives may be a ‘technical’ expert (lawyer, legal expert, trainer, etc.) or a ‘trade union’ expert (representative from a European trade union organisation). This person is not elected by the employees but has recognised expertise.

A trade union expert may be a coordinator of several EWCs or SNBs in the industry or geographical area; he or she may also be a representative of the trade union federation of the industry or an employee of the group with a specific mandate in the capacity of a trade union expert.

Several experts can be called upon. It is thus not impossible for one trade union expert per competent European trade union organisation to assist the SNB, at its request. Professional and managerial staff can thus be represented separately by the presence of a trade union expert from the CEC European Managers or one of its affiliated federations. A CFE-CGC member from a group in the chemicals industry can request the presence of an expert from the FECCIA (European Federation of Managerial Staff in the Chemical and Allied Industries).

It must nevertheless be noted that directive 2009/38/EC authorises the Member States to limit funding to one expert (article 5.6.). It is necessary to find out whether the national law applying to the negotiation stipulates such a limit (for example, French law limits funding to one expert). Even if there is a legal limit, it is still possible as part of the negotiations to reach an understanding with the Central Management.

The decision to call upon experts can be made at any time, at the request of the SNB members (a vote is advised). The expert will be able to make a greater contribution the earlier he or she is requested before the end of the negotiation.

8) The importance of an agreement

The operation of the EWC is based on a written agreement. The conclusion of a formal agreement manifests the capacity of the participants in the social dialogue of the Community-scale group or company (employees’ representatives/management) to agree on the working framework for the information and consultation of the employees that is most appropriate, and thus in principle the most effective, considering the situation of the group or company.

The special negotiating body is the principal participant in the negotiation process.

It can decide to sign the agreement. It can decide not to open the negotiation, or to terminate negotiations already opened (article 5.5 of directive 2009/38/CE). It decides this by a 2/3 majority of the votes. If negotiations are not opened or completed, no body is set up. A new request to open negotiations cannot be made for two years, unless the SNB has laid down a shorter period.

What happens if there is no agreement?

The directive lays down subsidiary requirements applicable when:

- The Central Management refuses to open negotiations within six months of the request submitted by the employees' representatives;
- The negotiation could not be concluded within three years of the date of the request.

In these cases the legal rules are applied, not negotiated rules.

The subsidiary requirements are set down in Annex 1 of directive 2009/38/EC ; they define the competence of the EWC, the procedures for its composition and the allocation of the seats, the formation of a select committee with rules of procedure, the meeting procedures (one meeting per year, meeting without the Management and meeting with the Management), the information and consultation procedures, including in the case of exceptional situations, the engagement of experts, and the principle of funding by the Central Management of the operating expenses of the EWC.

If the negotiation is not successful, there is a safety net. But it is just a net...

Give yourself the means to reach an agreement

The subsidiary requirements of the directive are a minimum base.

The objective in the negotiation is to obtain an improvement of the most significant items of this minimum base with regard to social dialogue practices in the group or company. Balanced representation of employee categories, which can allow representation of professional and managerial staff in the EWC, must be stipulated by an agreement: the subsidiary requirements do not mention this point.

Moreover, an agreement always commits the parties (both Central Management and employees' representatives) to a greater extent than the simple application of predefined rules. More than a legal commitment, there is also a commitment of consideration and mutual respect.

An agreement on an EWC indicates all of that.

Sometimes such an agreement could not be concluded when the EWC was established. Lack of motivation, discouragement, loss of bearings with regard to the goal are factors in failure. At a minimum level the EWC can operate on the basis of the subsidiary requirements. The Managements of groups or companies as well as the employees' representatives may need to reach a level of maturity regarding the subject, to acquire experience. However, this situation must only be a step to prepare the way to reaching an agreement.

It is necessary to accept having to take time, while remaining firm regarding the objective: ensuring an effective right of the employees, including the professional and managerial staff, to information and consultation which can only be achieved by an agreement.

PART 2

NEGOTIATING THE ESTABLISHMENT OF AN EWC OR THE AMENDMENT OF AN EXISTING EWC

All the preparatory work is completed, the company or group fulfils the criteria for establishing a European works council. You have assembled your toolbox, the first negotiation session has been scheduled. Let's negotiate!

The special negotiating body is ready to get down to its principal task: negotiating the agreement establishing the EWC.

Article 6.2.a to g of directive 2009/38/EC, like the preceding directive 94/45/EC, defines the items that the negotiation must cover:

- The scope of the agreement (the companies of the European group or the establishments of the European company covered by the agreement);
- The composition of the European works council: number of members, allocation of seats, with the objective of meeting the need for balanced representation of employees, including with regard to their category;
- The functions and the procedure for information and consultation of the EWC, including the issue of linkage of this European right with the national bodies;
- The venue, frequency and duration of EWC meetings;
- If a select committee is to be set up within the EWC, the composition, the appointment procedure, the functions and the procedural rules of this committee;
- The financial and material resources to be allocated to the EWC;
- The date of entry into force of the agreement, its duration, the arrangements for amending or terminating the agreement, and the cases in which the agreement can be renegotiated, with the procedure for its renegotiation.

The areas covered by the negotiation are both well-defined and broad. The negotiation may be easy on some items and harder on others.

In order to avoid losing track and to focus on what really reinforces the involvement of the professional and managerial staff, we have highlighted seven items, without prejudging the order in which they will be discussed:

- The scope of the agreement;
- The information and consultation tasks of the EWC;
- The composition of the EWC;
- The bodies set up within the EWC, such as the select committee, the bureau, sub-committees;
- The organisation of the tasks of the EWC;
- The duration of the agreement and the renegotiation procedure;
- The signature of the agreement.

1) The scope of the agreement

The scope of the agreement is very important. It defines the perimeter within which the employees will have the right to information and consultation at European level. It influences the composition of the EWC, which depends on the number of countries covered and workforce size thresholds per country.

Directive 2009/38/EC (article 1.6) stipulates that the EWC covers all the establishments or companies located within the Member States. This means that the scope of the agreement is, by definition, all the establishments or subsidiaries located within the territory of the European Union.

Are establishments located in non-EU member states covered?

Directive 2009/38/EC applies by right to the EU Member States and to the member states of the European Economic Area (EEA), in accordance with annex VIII.

This makes 30 countries: the 27 countries of the EU, plus Norway, Liechtenstein and Iceland.

In addition, many groups or companies have establishments in other European countries, for example Switzerland.

Although directive 2009/38/EC does not apply to these countries, the negotiated agreement may define a broader scope for the information and consultation procedure, covering employees in non-EU countries.

BOUYGUES: the EWC agreement covers Switzerland SANDVIK TOOLING: the EWC agreement covers Norway RANDSTAD: the EWC agreement covers Switzerland and Norway

This choice will impact the composition of the EWC, which reflects the scope of the agreement.

What is the scope of the agreement for a European group itself composed of Community-scale companies or groups?

There are groups that meet the criteria for establishment of an EWC which comprise companies or groups that are themselves Community-scale.

Directive 2009/38/EC (article 1.5) lays down the principle that the EWC is established at the level of the group, unless the agreement under negotiation provides otherwise.

EADS: the group has five EWCs, including one at the parent group level : EADS, Airbus, Astrium, Eurocopter, Cassidian (refer to the appended diagram)

2) The information and consultation tasks of the EWC

The EWC is competent to be informed and consulted on transnational issues.

The conference on 14 and 15 October 2010 showed that the scope of the meaning of the words “information” and “consultation” can vary between countries and cultures of social dialogue, with different practices. In some countries consultation of personnel representatives is practically non-existent, while in others it is so integrated that it is effectively co-management.

Directive 2009/38/EC provides very important clarifications on the concepts of transnationality, information and consultation. It is of fundamental importance to use the definitions given in the directive as a base, because they help to reach agreement on common concepts between employees’ representatives and Management and among the employees’ representatives themselves.

a) *The contributions of the definitions in the new directive on transnational issues, information and consultation*

- Definition of transnational issues

The right to information and consultation within the EWC covers transnational issues.

Directive 2009/38/EC (article 1.4) defines transnational matters as follows:

“Matters shall be considered to be transnational where they concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States”.

Recital 16 of directive 2009/38/EC determines the transnational character of an issue by taking account of both the scope of its potential effects and the level of Management and representation that it involves. In this view, *“matters [...] considered to be transnational [...] include matters which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States”.*

In order for information and consultation at European level to be useful and contribute added value to national legislations defining this right within a local framework, it is important that all economic changes in the group or company resulting in effects that go beyond the context of one country can be included within the scope of information and consultation of the EWC.

Some agreements also define such issues in terms of business segments: issues are considered to be transnational if they concern divisions of the group responsible for particular segments.

EADS: “Matters concerning EADS NV or the EADS group as a whole or at least one group of EADS companies located in at least two different member states are considered to be transnational”

- Definition of information

Article 2.1f of directive 2009/38/EC defines information as *“transmission of data by the employer to the employees’ representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees’ representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings”*.

Recital 22 of directive 2009/38/EC sets out the principles of this definition, stating that, in order to allow employees’ representatives to carry out an appropriate examination, the information should be provided *“without slowing down the decision-making process in undertakings”*.

The directive thus plots a balance between the working of the company and the right to information, with qualitative content, which may lead to consultation. To avoid slowing down its decision-making process, the company is encouraged to involve the EWC sufficiently upstream.

According to the subsidiary requirements (paragraph 1a), the transmitted information relates to the structure, the economic and financial situation, the probable development and the production and sales of the company or group.

According to the same text, information leading to consultation *“shall relate in particular to the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies”*.

These explanations of the scope of information are very useful for common understanding of the content of the right to information and of its scope between employees’ representatives and Management and among employees’ representatives themselves.

These definitions provide negotiators with tools to optimise the definition of the scope of the information provided to the EWC.

VINCI: the EWC agreement stipulates that the EWC meeting *“covers, at transnational level, in particular the strategy of the group, the structure of the group, its economic and financial situation, the probable development of its businesses, production and sales, the situation and probable trend of employment, the development of skills and training, occupational safety, investments, substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs, disposal or closure of undertakings, establishments or important parts thereof, collective redundancies, etc.”*

- Definition of consultation

Article 2.1g of directive 2009/38/EC defines consultation as *“the establishment of dialogue and exchange of views between employees’ representatives and Central Management or any more appropriate level of Management, at such time, in such fashion and with such content as enables employees’ representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related [...] and within a reasonable time, which may be taken into account within the [...] undertaking or [...] group”*.

Recital 23 of directive 2009/38/EC states that *“The definition of “consultation” needs to take account of the goal of allowing for the expression of an opinion which will be useful to the decision-making process, which implies that the consultation must take place at such time, in such fashion and with such content as are appropriate”*.

The subsidiary requirements (paragraph 1a) define the scope of consultation : *“The information and consultation of the European Works Council shall relate in particular to the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies. The consultation shall be conducted in such a way that the employees’ representatives can meet with the Central Management and obtain a response, and the reasons for that response, to any opinion they might express”*.

b) Defining a complete consultation procedure: from expression of an opinion to a reasoned response from the employer

Consultation is a sensitive subject. Consultation is a subject which can lead to dispute, as shown by the PERCEE survey (results of question 54).

Directive 2009/38/EC establishes the right to consultation by outlining a complete procedure: the right of employees’ representatives to issue an opinion accompanied by the right of the employees’ representatives to request a response, stating reasons for the response, from the employer.

The involvement of the Central Management is organised structurally. It will be increasingly difficult to restrict the EWC to a role as a forum, a purely formal platform for discussions.

An opinion can be expressed by one or more national employees’ delegations or in the name of the EWC as a whole (common opinion). When a common opinion is considered, the procedure for its adoption must be defined (absolute, simple or qualified majority of EWC members).

The employer must issue a reasoned response to each opinion expressed.

The procedure given in the agreement must cover all forms of opinion formulated by the EWC members and the reasoned responses from the Management.

The subsidiary requirements summarized above form a sound basis for discussion in order to define a complete consultation procedure step by step.

It may also be useful to draw inspiration from national legislations, which have for a long time organised the information and consultation of employees' representatives (French legislation, for example), and adapt it to the European level, with the other cultures represented at the negotiating table.

c) *Providing for linkage between this procedure and national bodies*

The establishment of an EWC is intended to reinforce the effectiveness of the dialogue at transnational level and provide suitable and complementary linkage between the national and transnational levels of dialogue.

The establishment of an EWC must not lead to reduction of national rights to information and consultation. This principle is guaranteed in article 12 and recital 37 of directive 2009/38/EC.

Complementarity must be sought in order to ensure that information and consultation are effective for the employees.

The EWC may be consulted before or at the same time as the national bodies, without slowing down the national consultation process and without voiding it of its content.

This complementarity must be defined in the agreement. To achieve this, it is useful to know the rules on consultation practices applicable in the different countries represented in the SNB, as well as specifically the rules laid down in the legislation that will govern the agreement.

SOLVAY: before each EWC meeting, the personnel representatives at national level can meet by right to discuss what will be examined at the EWC. The HRD of the Central Management has produced a manual describing the EWC information and consultation procedures in liaison with the national institutions (preparation and reporting of EWC meetings)

EADS: for a transnational issue concerning at least two divisions of the group, the EADS NV EWC and then the division European councils are informed or consulted as a priority. For a transnational issue that concerns only one division, the information or consultation procedure is initiated first at the level of the European council of the division. If the subject is important, the EADS NV EWC is then informed at the next meeting with the Central Management

The national procedures are initiated, in accordance with the national laws in effect, at the end of the first meeting of the EADS NV EWC and/or the meetings of the European councils of the divisions concerned

In exceptional circumstances, the national personnel representative bodies may be informed in parallel with the EADS NV EWC or the European councils of the divisions, without prejudice to the prerogatives of each such body.

ARCELOR: the functions and the competences of the national representative bodies are not in any way affected by the exercise of the competences of the EWC, except where otherwise stipulated by explicit legal provisions

In the case of national application of a transnational decision, proper information and consultation of personnel representatives will lead the parties to aim for simultaneous referral to national and European bodies, for the sake of consistency. In carrying out its tasks the EWC will keep the national bodies informed of the content of its work

SAINT GOBAIN: the Management encourages the establishment of a group council in each country covered by the EWC agreement, even when this is not provided for in the national legislation, in order to ensure good linkage of the scopes of EWC competences with regard to national issues.

L'OREAL: the agreement defines a three-step consultation procedure which varies according to the number of countries concerned:

- For transnational projects leading to local consultations in at least two countries represented within the EWC, the procedure of transnational consultation of the enlarged Liaison Secretariat is implemented

This consultation is dedicated to the transnational aspects of the project under discussion and does not replace the national consultations.

- Up to 3 or 4 countries concerned by local consultations, the consultation procedure is as follows:

Step 1: the Liaison Secretariat is informed of the project either after the national bodies have been informed or at the same time, depending on its nature.

Step 2: an information and consultation meeting with the Liaison Secretariat is organised within the next 20 days. At the request of the Liaison Secretariat, a member of each country concerned by a local consultation participates in this meeting; this forms an enlarged Liaison Secretariat. It means that the enlarged Liaison Secretariat can be given information concerning the transnational aspects of the project.

Step 3: the Liaison Secretariat can issue an opinion in the name of the EWC, making sure that it represents the point of view of the EWC. The opinion is issued within two weeks

- If more than 3 or 4 countries are concerned by local consultations or if the topic, regardless of the number of countries concerned, is of strategic importance having a major impact on all the EWC countries, the Liaison Secretariat information and consultation meeting may, if necessary, be replaced by an extraordinary meeting of the EWC or, if permitted by the established schedule, by part of the plenary or preparatory meeting

d) Exceptional circumstances

Information and consultation at transnational level are stipulated in the context of good general operation of the company or group. They are guaranteed all the more when the company or group is experiencing exceptional situations.

Directive 2009/38/EC considers this case in its recital 43 and in its subsidiary requirements.

Recital 43 states that *“Certain decisions having a significant effect on the interests of employees must be the subject of information and consultation of the employees’ appointed representatives as soon as possible”*.

The subsidiary requirements (item 3) are more detailed: *“Where there are exceptional circumstances or decisions affecting the employees’ interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed. It shall have the right to meet, at its request, the Central Management, or any other more appropriate level of Management within the [...] undertaking or group [...] having its own powers of decision, so as to be informed and consulted.*

This information and consultation meeting shall take place as soon as possible on the basis of a report drawn up by the Central Management or any other appropriate level of Management [...], on which an opinion may be delivered at the end of the meeting or within a reasonable time”.

This means that the agreement must make provision for this case in order to clarify the organisation of information and consultation at such times for the Management and the employees’ representatives. In this context the rules for requesting such exceptional meetings should also be defined: at the request of the Central Management, at the request of the majority (define this) of the employees’ representatives on the EWC (or on its select committee).

EADS: in the case of exceptional circumstances affecting to a considerable extent the interests of employees in at least two companies established in two different Member States, the EWC or the economic committee may request that the general Management hold an extraordinary meeting; similarly, the general Management can request that an extraordinary meeting be organised

e) The issue of confidentiality

The confidentiality of the information is understandable. The Management would never present sensitive projects to the employees’ representatives if it knew that they would be disclosed afterwards. It is therefore important to maintain this confidentiality. In fact, Central Management often uses this argument to refuse to allow third parties to attend EWC meetings (representatives of European federations, for example, who are external to the group or even employees of a competitor).

At the same time, confidentiality must not neutralise the right to information and consultation of the EWC and, following an EWC meeting, at national level when the representatives report to their national colleagues.

It is a question of balance and mutual trust.

Directive 2009/38/EC devotes a long article (article 8) to confidentiality.

The principle is referral to the national legislations in order to stipulate that the participants in the SNB or the EWC (including experts and guests) are not authorised to reveal to third parties the information that has expressly been provided to them in confidence.

The Management can be expected to bring up this subject in the negotiation. However, the agreement does not have to make reference to the principle of confidentiality in order for the national confidentiality rules to apply when necessary. The rules apply by right, agreement or no agreement. Furthermore, the scope of the confidentiality is defined in practice, according to current events regarding the group or company (refer to Part 3: Optimising the working of the EWC).

3) The composition of the EWC

In accordance with article 6 of directive 2009/38/EC, the agreement must stipulate the composition of the EWC, which covers the number of members, the allocation of the seats, taking into account where possible the need for balanced representation of employees with regard to their activities, category and gender, and the term of office.

There is a long list of items, but three items in particular merit our attention: the idea of balanced representation of employee categories, the availability of substitutes, and the representation of European industry-based federations.

a) *Ensuring balanced representation of employee categories*

One of the fundamental contributions of directive 2009/38/EC is the invitation to the negotiators to take account of the need for balanced representation of employees with regard to their activities, category and gender.

As the CEC European Managers and its affiliates fought to obtain the inclusion of this consideration of a representation of the range of employee categories, and so of professional and managerial staff, always a minority in number, it is essential to discuss this item in the collective negotiation.

There is a need for balanced representation of employee categories and, consequently, of professional and managerial staff in the EWC as well as in the SNB (refer to Part 1).

To meet this need and ensure effective representation of professional and managerial staff (with voting rights) in the composition of the EWC, the option of a full member dedicated to the category seems to be the most appropriate, for at least three reasons:

- Balanced representation of employee categories must be achieved through a professional criterion, not a criterion of nationality. The number of members of an EWC is first determined according to the number of countries covered (nationality criterion). Under no circumstances can representation according to a professional criterion be organised to the detriment of the number of seats allocated to each national delegation.
- Balanced representation of employee categories in the EWC cannot be determined through the national employee delegations, as the appointment of EWC members is governed by national rules (directive 2009/38/EC recital 20, subsidiary requirements paragraph 1 c). These rules very rarely provide for the possibility of representation of professional and managerial staff in companies and, where they do make such provision, the criterion of the majority of representatives elected or votes obtained in elections ultimately removes any possibility of separate representation. It is therefore not possible to rely on the national levels.

- Professional and managerial staff, as employees, cannot be represented within the EWC by a member of the Management because, in that situation, the manager represents the Management, the employer, not the employees. Similarly, a manager elected or appointed by all the employees to represent a site or a country does not have a mandate to speak only in the name of the professional and managerial staff; he or she represents all the employees of a site or a country.

To ensure a representation of professional and managerial staff in the EWC that is separate, distinct and identified as such, a dedicated member is necessary. This member does not belong to the national delegations, is not a member of the company Management. He or she represents the professional and managerial staff of the Community-scale group or company within the EWC, with voting rights like the other representatives.

Where does this representative come from and who appoints him or her?

The professional and managerial staff representative within the EWC is a professional or managerial employee of the group. He or she must have legitimacy to represent the professional and managerial staff. The appointed person must be just as legitimate as the other employees' representatives and, like them, must know to whom he or she reports on his or her mandate. If such legitimacy cannot be obtained from the country of the person (if the person cannot be elected by professional and managerial staff at national level because the legislation makes no provision for such a possibility), it will be obtained through appointment by a representative body at European level: the European industry federation representing professional and managerial staff in the industry or, failing this, if there is no such federation, the European confederation that represents professional and managerial staff (CEC European Managers, for example).

This reasoning must of course be transposed to the bodies set up within the EWC, in particular the select committee (see below).

b) *Providing for the availability of substitutes*

Regarding the tasks conferred upon the EWC, the members must be able to participate in the work of the EWC in both calm and agitated situations (including, in particular, exceptional circumstances).

Making provision for mandate holders and their substitutes is one way of ensuring that the employees always have a representative, including when the mandated representative is not or no longer available.

The agreement must stipulate the principle of substitution when the holder is not available.

Their roles can be defined in the agreement, but this is not compulsory. Their roles will find their full scope in practice, either spontaneously or through deliberate expansion (see Part 3 : Optimising the working of the EWC).

On the Management side, strictly speaking there is no distinction between holder and substitute. However, continuity of representation of the Management at its highest level, whatever the circumstances, must also be taken into account.

SOLVAY: the EWC agreement provides for the appointment of substitutes who receive the same information as the holders.

c) ***Allowing representation of European trade union organisations***

Directive 2009/38/EC provides for the possibility of assistance within the SNB from a representative of competent trade union organisations recognized at Community level (see Part 1).

Remember that the recognized competent European trade union organisations are those that are consulted by the Commission according to article 152 (formerly 138) of the Treaty. CEC European Managers is one of these recognised competent trade union organisations.

The subsidiary requirements (item 5) of the directive also stipulate that the EWC or the select committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks.

This type of representation is decided by the negotiators. The presence of representatives of European trade union organisations enables them to follow up the application of the agreement that they have signed and provides a view from outside the group, including on the existence of other information and consultation practices.

Depending on how deep an involvement the negotiators want to give to recognised competent European trade union organisations, their representation can fulfil two roles:

- Assistance to the employees' delegation, which entails attendance only at meetings of the employees' delegations (preparatory meetings, meetings without the Management);
- Follow-up of the agreement that has been signed, which entails attendance at meetings with the Management and without the Management, with a right of expression (but no voting rights).

Representation can be effected by several European trade union organisations. Directive 2009/38/EC stipulates the obligation of information of recognised competent European trade union organisations when negotiations on the establishment or amendment of an EWC are opened. At present these organisations are the ETUC and the CEC. They are both authorised, through their federations if necessary, to be at the negotiating table, to sign the agreement establishing an EWC (see 7) on the signature of the agreement) and to follow it up. They are also authorised to be chosen by the members of the SNB and the EWC to assist them and attend meetings.

In this case, it is logical to allow one representative from each competent European trade union organisation.

VINCI: the EWC agreement provides for the possibility for the secretariat (select committee) to be assisted by a representative appointed by the EFBWW (European Federation of Building and Woodworkers) and a representative appointed by the FECC (European federation of managers in the construction industry).

4) **The bodies set up within the EWC: select committee, bureau, etc.**

a) ***Various bodies set up within the EWC***

Directive 2009/38/EC provides for a possible body to be set up within the EWC: the select committee. However, since the previous directive 94/45, the practice has developed of setting up all

sorts of bodies within the EWC: select committee, bureau, enlarged bureau, sub-committee, commission, ad hoc group and others. They are all derived from the EWC but have different compositions and roles, according to the working of the group or company and the intensity of the transnational social dialogue driven by the Management and/or the employees' representatives (see Part 3).

These variant bodies, which have been developed along with the practices, can obviously be incorporated into an agreement when it is renegotiated or into an initial agreement, if the attitude to such subtleties in the European bodies has matured.

In the case of an initial agreement, a select committee may be all that is needed.

b) The select committee

In order to permit coordination and greater effectiveness of the regular activities of the EWC, together with information and consultation at the earliest opportunity where exceptional circumstances arise, directive 2009/38/EC confirms the possibility of setting up a select committee within the EWC (article 6.2e): *"the agreement [...] shall determine: [...] where necessary, the composition, the appointment procedure, the functions and the procedural rules of the select committee set up within the European Works Council"*.

The subsidiary requirements (item 1d) state that *"To ensure that it can coordinate its activities, the European Works Council shall elect a select committee from among its members, comprising at most five members, which must benefit from conditions enabling it to exercise its activities on a regular basis."*

The existence of this body is thus discussed during the negotiations.

- Its role

The select committee is a body set up within the EWC.

The agreement must define its role and the limits of its scope of action with respect to the fundamental prerogatives of the EWC.

In terms of its tasks of coordination and follow-up of the activity of the EWC, in both regular and exceptional circumstances, the select committee may have a broad range of powers. It may have the right to be informed in the context of exceptional circumstances affecting the interests of the employees; it may be authorised to obtain assistance from experts of its choice and to meet in the absence of the Management.

As authority is invested in the EWC, the select committee should not be empowered to manage everything in the place of the EWC. The agreement must not delegate everything; it must avoid turning the EWC meetings into rubber-stamping exercises or tourist gatherings. The negotiators must be fully aware of these issues.

The select committee can ensure continuity of the action of the EWC between EWC meetings, in particular when there is only one meeting per year (see the part on meetings). In this case it has a role of following up the actions decided at meetings with the Management.

The select committee can also facilitate the operation of the EWC: drawing up the agenda, sending out notifications, scheduling meetings, sending out documents, etc.

The select committee may have a more active role in exceptional circumstances. The directive (subsidiary requirements, item 3) gives it a particular role:

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

It can act as the forward outpost of the EWC for collecting information from the Management or from experts, for processing the information and facilitating understanding by the EWC members during meetings, for preparing questions, or draft opinions to be validated by the employee delegations at meetings without the Management.

The agreement defines the principles, and procedural rules lay down the practical working methods and the scope of the tasks of the select committee (see Part 3: Optimising the working of the EWC).

- Its composition

The select committee is set up within the EWC. Its members are employees’ representatives who are members of the EWC.

The subsidiary requirements (item 1d) stipulate a maximum of five members for the select committee.

This maximum is applicable in the absence of an agreement. When there is an agreement, the negotiators may agree on a higher number if they consider it more suitable.

<p>GDF SUEZ: the select committee has 13 members COVERTEAM: the select committee has 3 members VEOLIA: the select committee has 7 members ARCELOR: the select committee has 16 members</p>

The number of members must be chosen to enable rapid, smooth and effective coordination while reflecting accurately the composition of the EWC. It is logical for the membership of the select committee to express the diversity of countries and professional groups.

Accordingly, the select committee must include separate representation of professional and managerial staff, according to the same reasoning as that developed for the composition of the EWC.

It should be noted that, in exceptional circumstances, the select committee must be enlarged to include the EWC members representing the establishments or companies concerned by the circumstances or particularly important decisions.

5) The organization of the tasks of the EWC

The organisation of the tasks of an EWC necessitates familiarity with all the types of meeting that may take place, decisions on the languages used for oral and written communication, agreement on the frequency of meetings and definition of the material and financial resources available to the EWC members.

a) *Meeting types*

The subsidiary requirements (items 2 to 4) of directive 2009/38/EC stipulate a basic level of meetings with the Central Management and without the Central Management for both the EWC and the select committee.

EWC practice over 15 years has included other types of meeting (see Part 3: Optimising the working of the EWC).

To find your way around and identify the most suitable meetings for the situation of a group negotiating an agreement on an EWC or its amendment, here is a brief summary of the different types of meeting:

- * Meetings **with the Central Management** (or plenary meeting with the Management): at least once per year, in order to be informed and consulted;
- * Meetings **without the Central Management** (or advance meeting, preliminary meeting, plenary meeting without the Management): before any meeting with the Central Management, the European works council or the select committee is entitled to meet without Central Management;
- * Meetings of the **select committee**: based on the operation of the EWC, the select committee can meet with or without the Central Management;
- * Meetings **for exceptional circumstances**;
- * **Follow-up** meetings: resulting from practice, follow-up meetings may be held after a meeting with the Management (following the plenary meeting);
- * Meetings of standing or temporary **ad hoc groups**: also resulting from practice, working groups or committees have been set up on defined topics: occupational health, economic committee, etc.

b) *The issue of working languages*

A right to information and consultation is only conceivable by sharing information that is accessible and understood by all the members of an EWC.

In a multicultural institution, mutual understanding is indispensable for effective coordination, for avoiding misunderstandings and blunders, for a meaningful dialogue.

An essential factor for success is consideration for the languages of the countries represented within the SNB. Everyone contributes optimally if they do so in their native language.

The SNB is the first step in familiarisation with language issues in a transnational negotiation. The EWC is a consolidation step for the work of representing the employees at European level all year round.

The more countries the group includes, the more complicated it is to manage the issue of working languages. Moreover, in terms of response times, informal discussions between members (e-mails, telephone calls) require mastery of at least one common language.

Under these conditions, it is advisable to choose the languages necessary for communication by the members of the EWC. This means more than one reference language (oral and written), but nevertheless a limited number. For example, the choice may be based on the languages most used in the group. EWC members whose native language is not one of the reference languages must have proficiency in the reference languages.

Documents must be translated into the reference languages, at the expense of the Central Management. Written documents translated into the reference languages must be transmitted to the members within the defined time limit so that they can analyse them properly (including time for the translators to produce their translations in satisfactory conditions).

CREDIT AGRICOLE/EUROTUNNEL: there are two reference languages: English and French
 GENERALI: translation and interpretation are provided in Italian, English, French, German, and Spanish
 SOLVAY / VEOLIA: translation and interpretation are provided in all the languages of the EWC members
 EDF: translation and interpretation are provided in French, German, Dutch, Polish, Slovakian, English, and Hungarian
 EADS: four languages are used: French, German, English, and Spanish
 ARCELOR: French, Dutch, German, Spanish, and Italian are used simultaneously

c) *The frequency of EWC meetings*

The agreement must define the frequency of EWC meetings.

The subsidiary requirements (item 2) stipulate one EWC meeting per year with the Management.

The EWC agreement must go beyond the subsidiary requirements and ensure reactivity to the events experienced by the group or company.

A single meeting per year is not sufficient for dealing with the information concerning all aspects of the activities of the group or company, such as the financial results for the previous year or the financial and economic forecasts for the coming year.

To cover this global view of the activity of the company or group, at least two EWC meetings are needed: the first between April and June, when the annual results of the company or group are known and published; the second in October-November for information and possible consultation on the upcoming economic and financial forecasts.

On the Management side, this planning of social dialogue within the EWC sends a strong message on the involvement of the Central Management in a corporate social responsibility approach which incorporates social dialogue as a vector.

GENERALI / VEOLIA: the EWC meets with the Management twice a year
AIR FRANCE KLM: the EWC meets with the Management 2 or 3 times per year
SAFRAN: the EWC meets once a year

To prepare and follow up the work of the annual formal meetings, they must be supplemented by an equivalent number of meetings without the Management (for preparation) and follow-up meetings with just the employees' representatives.

A degree of flexibility must be maintained regarding the frequency of meetings in the event of exceptional circumstances, and the agreement must stipulate that the frequency is left to the judgement of the employees' representatives, in particular the members of the select committee, according to the magnitude of the changes impacting the group and the employees.

d) *The material and financial resources allocated to the EWC*

The agreement must stipulate the financial and material resources to be allocated to the EWC.

The subsidiary requirements (item 6) lay down the principle that the operating expenses of the EWC (and the select committee, if there is one) are borne by the Central Management (unless decided otherwise by the Central Management).

Beyond this principle, which must be restated in the agreement, the discussions between the negotiators must result in rules on availability for employees' representatives, on their right to training and on the use of technical experts.

- Time for exercising the mandate

One of the resources that must be available to the EWC members for carrying out their tasks is time.

The agreement must stipulate the time necessary for the employees' representatives to accomplish their tasks. Their duties require time for meeting preparation (reading of documents, discussions with the other members), for participation in the meeting (travel time, meeting attendance and contribution time) and for reporting at European level (in the case of a follow-up meeting) and at national level (to the local employees in the representative's country).

This visibility regarding availability enables the representatives and their Managements to assess the workload for the mandate and the consequent adjustments to be made in their workload in their posts at local level.

Where there is a select committee, it is recommended that specific time be provided for its members. Their increased involvement within the EWC means that the select committee members are the first to be called upon and to initiate the entire EWC information and consultation process, interfacing with the General Management.

TOTAL: four days per year are allocated for the EWC members
 GENERALI: 11 days per year are allocated for the EWC members
 RANDSTAD: two days per year are allocated for the EWC members

The time required can be increased further for the EWC secretary.

CREDIT AGRICOLE: 60 hours for each bureau member and 100 hours for the secretary
 VINCI: 120 hours for the secretariat members and 168 hours for the secretary
 VALEO: as much time as needed
 SOLVAY: as much time as needed for the select committee members

- The right to training

Article 10.4 of directive 2009/38/EC stipulates that *“In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the [...] European Works Council shall be provided with training without loss of wages”*.

Training is an essential condition for carrying out the task of representative within the EWC. The employees’ representatives must be capable of understanding the information provided and analysing the content of the projects and documents presented by the Management, and thus able to express an informed point of view, take part in the discussions and contribute to the common positions of the employees’ delegation.

The agreement must set down this principle of training without loss of wages and at regular intervals throughout the mandate (annual for example).

The training content and methods do not necessarily need to be described in the agreement, which lays down the general framework. They can be defined when the EWC is established, in the rules of procedure, for example.

- Use of technical experts

For some issues or in some circumstances, training courses are not sufficient to be able to decode the information. A more technical, more detailed, more detached view is needed. The EWC or select committee members meet this need by calling upon technical experts.

The agreement must allow them such expert technical support.

This provision does not concern trade union experts (associated with a European trade union organisation), but rather technical support requested on an ad hoc basis and the expenses of which are borne by the Central Management. Expertise may be provided by a lawyer, an accountant, a technology expert, for example, either on a specific point or regularly.

The subsidiary requirements (item 6) stipulate that the national legislations lay down the budgetary rules regarding the operation of the European works council and may limit funding to cover only one expert.

Of course, the agreement establishing an EWC may stipulate funding of several types of technical expert.

L'OREAL: the agreement stipulates that at preparatory meetings the EWC members may be assisted by the accountant of the French group council and by a representative of each French or European trade union organisation that signs the agreement
In agreement with group Management, if justified by exceptional circumstances, the EWC members may be assisted at the preparatory meetings by an expert other than the accountant of the French group council

6) Duration of the agreement and renegotiation procedure

As in any agreement, the parties to the negotiation are free to define the duration that they consider most appropriate for the proper application and effectiveness of the rules that they define.

Without predefining an exact duration, the ideal duration enables the EWC to settle in, the Management to organise its involvement over time and set up the mechanisms for collection and dissemination of the information to be provided, and the employees' representatives to get to know each other and develop links.

The duration may also be linked with the terms of office of the employees' representatives at national level: the terms of office stipulated by the legislation applicable to the EWC, the longest term of office among all the legislations of the countries represented, an average term of office derived from these legislations.

The subsidiary requirements (paragraph 1f) define a period of four years after which an EWC unfortunately established in the absence of an agreement considers whether to open negotiation on an EWC agreement. This is not a benchmark duration.

VINCI: the duration of the agreement is four years
L'OREAL: the duration of the agreement is four years and a review must be produced four months before the end of the agreement
RANDSTAD: the duration of the agreement is two years

Regarding the procedures for renegotiation of agreements establishing EWCs, directive 2009/38/EC defines the framework within which such negotiation must be conducted:

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

Article 6.2g: the agreement determines *"the arrangements for amending or terminating the agreement and the cases in which the agreement shall be renegotiated and the procedure for its renegotiation, including, where necessary, where the structure of the Community-scale undertaking or Community-scale group of undertakings changes"*.

Article 13: “Where the structure of the Community-scale undertaking or Community-scale group of undertakings changes significantly, and either in the absence of provisions established by the agreements in force or in the event of conflicts between the relevant provisions of two or more applicable agreements, the Central Management shall initiate the negotiations [...] on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.

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

During the negotiations, the existing European Works Council(s) shall continue to operate in accordance with any arrangements adapted by agreement between the members of the European Works Council(s) and the Central Management”.

There is no ambiguity: the discussions during the negotiation must cover the adaptations of the operation of the EWC and of the agreement in the case of modification of the make-up of the group or company.

Looking ahead in this way, with cool heads, makes clear to both the Central Management and the employees’ representatives how to proceed in the case of major events impacting the group or company. This reinforces the continued operation of the EWC, and as a consequence the continuation of information and consultation, in an unstable context, ensuring employee representation adapted to the new make-up of the group after the signature of the agreement.

There is also no ambiguity about the body that renegotiates: the renegotiation take place within an SNB, not within the existing EWC or its select committee.

The agreement must restate these principles, adding the renegotiation time limit and the arrangements for notifying the competent European trade union organisations that must be informed of the renegotiation.

L’OREAL: the agreement is concluded for a duration of four years. It is then renewed for consecutive periods of four years by tacit renewal, unless terminated by the Management or by two-thirds of the signatory trade union organisations, including at least one European organisation, 3 months before the expiry of the current period. Four months before the expiry of the first four-year period, a review meeting is organized between the Management and the representative trade union organisations that signed the agreement
In the case of termination, the members of the EWC and its Liaison Secretariat continue to exercise their functions until the expiry of the agreement

7) The signatories of the agreement

The agreement establishing an EWC is concluded between the Central Management and the SNB. The SNB members thus sign the agreement, preferably giving the following information:

- On the employees’ representatives side, their name, their country and, where applicable, the trade union organisation that they represent;

- On the Central Management side, the name and capacity of the employer's representative and, optionally, the name and capacity of the representatives of the Management of each country (this makes the Local Managements aware and commits them).

The signatures of the recognised European trade union organisations can be added to those of the SNB members in so far as they were informed of the opening of the negotiation and have been invited to the agreement signing session.

VINCI: the agreement establishing the EWC it signed by the FECC, representing the European construction industry professional and managerial staff, affiliated to the CEC European Managers, and by the EFBWW, representing European employees in the construction and woodworking industries, affiliated to the ETUC

L'OREAL: the EWC agreement is signed by the FECCIA, representing professional and managerial staff in the chemical industry, affiliated to the CEC European Managers, and by the EMCEF, representing employees in the chemical industry, affiliated to the ETUC

PART 3

OPTIMISING THE WORKING OF THE EWC: THE WORK OF THE EWC MEMBERS

In your group or company there is an EWC: there are always ways of optimising its operation. This third part shares a number of practices to give you an understanding of how EWCs work in various segments.

The effectiveness of the information and consultation of the EWC depends on various factors:

- the capacities of the EWC members;
- the organisation of the work of the EWC;
- the content of the information and consultation meeting;
- the follow-up of the work of the EWC.

1) The capacities of the EWC members

The EWC members are the protagonists in the right to information and consultation of the EWC. It is they who make transnational social dialogue work on a day-to-day basis.

The EWC is composed of employees' representatives and representatives of the Management.

a) *The capacities of the employees' representatives*

To fulfil their mandate in a satisfactory manner, the employees' representatives must be legitimated, trained, available, and backed by substitutes and possibly by representatives of European industry federations.

- Legitimacy

The rules for appointment of employees' representatives are defined by national legislations and practices. The employees' representative(s) from each country is (are) appointed in accordance with their national legislation.

Whatever national arrangements are in place, it is important that these representatives be legitimate and representative of the work community who delegate them. This is the basis for the credibility of their involvement with respect to the Management, with respect to the other EWC members and with respect to the employees that they represent and to whom they report.

An employees' representative cannot be considered to represent employees or professional and managerial staff legitimately if:

- In the absence of election of a representative by the employees in a country, the Management appoints one of its members to represent those employees;

- Professional and managerial staff are considered to be represented within the EWC by the professional and managerial staff who are members of the delegation representing the central or Local Management.

Legitimacy is provided by clear and visible expression of the employees in a country (election, trade union appointment) or, if election or appointment by the employees cannot be guaranteed, by appointment of a group employee by a European industry federation.

VINCI: the agreement states explicitly that no member can be appointed by the Management. Furthermore, the agreement stipulates that the EWC members are appointed by the European federations EFBWW (affiliated to the ETUC) and FECC (affiliated to the CEC European Managers)
SOLVAY: the agreement states that the members are elected or appointed by the qualified bodies representing the personnel in accordance with the legal provisions or the customs specific to each country

- Protection in the exercise of the functions

Directive 2009/38/EC provides a guideline for this legitimacy by a principle of protection of the employees' representatives against discrimination as a consequence of the lawful exercise of their activities, at the same level as the protection provided for employees' representatives at national level.

Article 10.3 and recital 34 of directive 2009/38/EC lay down the basic principle according to which *"...members of European Works Councils [...] shall, in the exercise of their functions, enjoy protection and guarantees similar to those provided for employees' representatives by the national legislation and/or practice in force in their country of employment. This shall apply [...] to attendance at meetings [...] and the payment of wages for the period of absence necessary for the performance of their duties"* (article 10.3);

"They must not be subject to any discrimination as a result of the lawful exercise of their activities and must enjoy adequate protection as regards dismissal and other sanctions" (recital 34).

Depending on national legislations, during meetings related to the operation of the EWC the employees' representatives must be paid as if they were working on their sites and must not be penalised or dismissed because, in the context of the transnational social dialogue, they might express a point of view that is inconvenient for the Local or Central Management.

- Availability

The employees' representatives have a mandate to fulfil which requires time to accomplish (preparation of meetings, travel, attendance at meetings, reporting on meetings at European and national levels, training). The quality of the social dialogue depends on devoting sufficient time at all these different points in the mandate.

The agreement establishing the EWC may stipulate a number of hours or days made available to the members; this total time may sometimes be increased for select committee members and/or for the secretary.

L'OREAL: the EWC members have 2 days/year for their tasks, excluding time spent at meetings. The members of the liaison secretariat (select committee) have 20 days/year + 3 days for each consultation concerning transnational projects

AIR FRANCE KLM: the EWC members have a minimum of 3 days/year for their tasks, excluding time spent at meetings. The time may be increased as needed. Bureau members receive as much additional time as necessary

While stipulated in the agreements, the availability of the representatives must also be effective in practice. In the case of difficulties concerning availability, for example at national level, when the Local Management does not facilitate the absence of employees' representatives, in particular the absence of the professional and managerial staff representative, it is important to inform the Central Management, which is the guarantor of proper operation of the EWC, in order to find a solution.

- Freedom of movement

It is important that EWC members have freedom of movement on site.

This freedom must be applicable in any context, not just in exceptional circumstances.

The EWC members may want to travel to obtain better knowledge of the sites and the local social dialogue practices in the group.

EWC members can also travel in order to communicate on the work and actions of the EWC.

- Training

Article 10.4 of directive 2009/38/EC stipulates that *"In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall be provided with training without loss of wages"*.

It is uncommon to find an employees' representative who from the start has all the skills required to fulfil a mandate within an EWC. Not even the professional and managerial representative, with known technical and managerial training, open to other cultures and often multilingual, can improvise sufficient skills covering all the tasks of the EWC.

Training is therefore an essential topic and is practically obligatory.

Various courses can be taken, depending on the desired objective:

- To overcome communication difficulties, language courses, which must be mandatory if the Central Management eliminates or reduces interpreters and translator;
- For familiarisation with the different employee representation systems, inter-professional or industry-based cultural training;
- For better understanding of economic data or European EWC rules, economic and legal training courses.

VALEO: the EWC members take courses on EWC operation and comparative European social legislation
 TOTAL: the EWC members attend trade union and economics training courses
 VINCI: the agreement stipulates 8 days of legal, economic and social training, spread over the duration of the mandate

To facilitate the exercise of a mandate within an EWC, it is recommended that a training sequence be organized for the employees' representatives:

- At the beginning of the mandate, training on:
 - EWC tasks and operation
 - employee representation in the countries represented within the EWC
- Throughout the mandate, regular access to:
 - language training, according to the chosen reference languages and the representative's language skills. EWC members can take these language training courses together, mixing the nationalities, and through this reinforcing team development.

SANDVIK TOOLING: courses in English, the only working language of the EWC, are given for 4 consecutive days every 2 years in Cambridge to groups of 3 or 4 members from different countries
 L'OREAL: courses in French are provided for EWC members who want them
 SOLVAY: courses in English or French are provided for all appointed and substitute members. One half-day of economic, social and cultural training is provided following each annual plenary meeting of the EWC

- economic and legal training courses throughout the mandate, linked with the economic and legal environment of the group or company.

The principle of attending training without loss of wages is laid down in the directive. The cost of training courses and payment of wages may be borne by the Central Management or the Local Management. It is always useful to restate these principles in the agreement establishing the EWC.

- The position of substitutes

Where the agreement makes provision for substitutes, they must be ready to participate when the appointed representative is unable to do so, be familiar with the dossiers, trained, and known to the other EWC members. The effectiveness of the right to information and consultation depends on this.

To achieve this, it is important that the substitutes receive the same training as the representatives (same training programme, possibly at the same time) and all the documents sent to the EWC members (through the representative or by the Management), and that they take part in the meetings of the employees' delegations.

SANDVIK TOOLING: only the appointed representatives participate in EWC meetings. However, the substitutes from the country where the EWC meeting is held are invited to the meeting, as well as all the appointed representatives

- The position of European trade union organisation representatives

In practice, participation of European trade union organisations in EWC meetings is frequent but of variable composition.

It depends on what is stipulated in the agreement.

If the agreement is signed by confederation or industry-specific European trade union organisations, it is logical for them, as signatories, to be associated with the operation of the EWC in order to track the working of the institution and provide an external view encompassing the business segment and other transnational dialogue practices for the employees' representatives and, for that matter, for the Management as well.

However, when such trade union organisation representatives are provided for within the EWC, they have the status of observers and may be invited only to certain meetings (meetings without the Management, select committee meetings).

GSK: only employers' and employees' representatives can attend EWC meetings
 GDF SUEZ: representatives of the European industry trade union organisation attend EWC meetings
 ARKEMA: representatives of industry trade union organisations attend all types of meeting: meetings with the Management, meetings without the Management, informal meetings between a workers' delegation from one country with the Management

b) *The capacities of the employer representatives*

The representation of the employer, through the Central Management, is the other component of the EWC.

The Central Management has an important responsibility in the proper conduct of information and consultation. With the leaders of the employees' representatives, it prepares the meeting schedule and the meeting agendas, provides the required information, attends the EWC meetings, replies to queries, and issues a reasoned response to the EWC opinion.

The manner in which the Central Management participates sets the tone of the transnational social dialogue that the company or group wants to develop and animate.

The quality of this dialogue is greater the more the Central Management is directly and continuously involved, the more the operational Managements are called upon and available to participate according to the agenda, and the more appropriate the size of the employer's delegation at meetings.

- Continuous participation by the Central Management

Sustained coordination of meetings by the highest Management level is essential for ensuring that they are effective. The EWC is the only place where the employees' representatives can meet the Central Management of the Community-scale group or company. And vice versa! For the Central Management, it is also the place where it can hear the views of the employees expressed directly, without the Local Managements as intermediaries.

Continuous representation of the Central Management in EWC meetings shows the commitment at the highest Management level of the company to upward and downward social dialogue.

VINCI: regarding the composition of the EWC, the agreement stipulates that, for the group Management, *“the chairperson of VINCI or his or her representative attends the meetings, assisted by 2 persons of his or her choice in an advisory capacity”*

SOLVAY: the agreement stipulates that the chairperson of the Executive Committee chairs the meeting, assisted by the HR manager, the Europe social relations manager and the general secretary of the group

- The involvement of operational managers according to the agenda

In order to provide information relevant to the agenda and meeting the expectations of the employees’ representatives, the employer’s delegation in EWC meetings must include the business segment or subsidiary representatives most capable of presenting documents in session, answering questions and providing additional information.

The employer’s delegation is adjusted according to the agenda of the EWC or select committee meeting. Some topics are of more concern to the HRD or the finance department, for example. It should be noted that, in the case of meetings for exceptional circumstances, the EWC or the select committee can request a meeting with the most appropriate level of Management (item 3 of the subsidiary requirements).

Representatives of Local Managements can thus have a place in the meetings. This participation may be useful for raising the awareness of the Local Managements with regard to social dialogue and facilitate the application of decisions debated within the EWC, and possibly improve compliance at local level with the undertakings given by the Central Management.

- The number of representatives at meetings

Observation of practices has provided indicators on the number of representatives.

The number of representatives is often related to the Central Management’s view concerning the social dialogue. It may consider that the dialogue must have parity in number and thus that the employer’s delegation must have the same number of members as the employees’ delegation.

WHIRLPOOL EUROPE: the EWC has 16 employees’ representatives and 16 employers’ representatives

GSK: there are the same number of employees’ representatives and employers’ representatives

SOLVAY: the EWC has 24 members from 13 EU countries and 4 members from the Central Management

L’OREAL: the EWC has 30 employees’ representatives and the Central Management is represented by the CEO, the Vice-president responsible for the Human Relations Directorate-General, the Director-General for Social Relations, and any other person of his or her choice from the l’Oréal group

2) The organisation of the work of the EWC

- A suitable meeting venue

The venue of the meeting must be defined in the agreement. It must be suitable for the configuration of the meeting in order to optimise meeting effectiveness.

The venue must be easily accessible by all the delegations.

The venue must be reasonable: a meeting must not be a tourist programme, banquets and five-star hotels should be avoided. The Management might choose a particular meeting venue, immersing the employees' representatives in a luxurious environment with unlimited access to alcoholic drinks, which would be detrimental to meeting effectiveness.

Without going to such extremes, it is perfectly possible for EWC members to reconcile work and comfort. Discussions between EWC members do not take place only during the meetings. Breaks and meals are opportunities for informal discussions, for example on the local practices of each member. Multicultural Europe is alive and well thanks to such more relaxed moments. The meeting venue must contribute to this conviviality while remaining within a professional framework.

The essential requirement is that the meetings take place in suitable, well-equipped facilities that facilitate the discussions and do not compromise the effectiveness of the talks.

ARKEMA, INERGY AUTOMATIVE SYSTEMS: the EWC meetings take place in the same country GROUPAMA, SANDVIK TOOLING, SOLVAY: the EWC meetings take place in different countries EUROTUNNEL: the EWC meetings take place alternately in France and in England

Organising EWC meetings in a different country each time is useful when the meeting provides an opportunity to experience a national professional reality of the group. The meeting becomes an opportunity for the EWC members to meet group employees and their local representatives.

Other groups vary the venues according to meeting type: EWC meeting or meeting of the select committee or equivalent.

VINCI: the EWC meets in a different country each year. The secretariat (select committee) in principle always meets in the same country EADS: EWC meetings with the Management take place in France or Germany; internal meetings between employees' representatives take place in Great Britain and in Spain
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- A meeting length that takes account of the agenda

The subsidiary requirements do not stipulate any minimum basis on this topic.

It is obviously accepted that meetings must not be too long or too short. A suitable length must be defined and a good balance allowing effective, complete work must be found.

The length of the meeting usually depends on the agenda, so it is difficult to define a fixed duration in the agreement. However, a minimum length can be stipulated.

SANDVIK TOOLING: arrival on Monday; meeting without the Management on Tuesday; meeting with the Management on Wednesday; follow-up meeting without the Management on Thursday; departure on Friday

- Adequate time limits for notification and document transmittal

The quality of the discussions at meetings of the EWC or of its more select bodies depends on knowledge of the agenda sufficiently in advance of the meeting date and on sufficient time to read and analyse the transmitted documents. The EWC members must have the time to prepare meetings. They need to know in advance how much time they will spend on this preparation and how it will affect their work load with respect to their local Management and their colleagues. Failing this, too short a notice may make it difficult to attend meetings.

In addition, when translations are necessary, the translators must have enough time to do their work properly.

Reasonable notice is thus essential both for the meeting schedule and for document transmittal.

CREDIT AGRICOLE: the notice for the plenary meeting of the EWC is 10 calendar days
SANDVIK TOOLIN : the notice for notification of the plenary meeting is 3 months

These notices become very flexible in the case of extraordinary meetings in a context of urgency.

- The usefulness of introducing rules of procedure (RoP)

The EWC members can decide to introduce rules of procedure supplementing the agreement. Rules of procedure enable the EWC members to run the EWC on a day-to-day basis, to give it some 'breathing space' within a more relaxed framework than the agreement, and adjusting to the events that they deal with.

Rules of procedure are intended to define the rules for day-to-day running of the EWC, of its various committees or bureaus (meeting venues, lengths of meetings with or without the Management, document transmittal dates, voting procedure, etc.). It can stipulate the production of standard documents for preparing meetings and informing employees (intranet site, brochure, etc.). The rules of procedure can also make provision for setting up ad hoc working groups.

SANDVIK TOOLING: the rules of procedure stipulate standard country reports to facilitate the presentation of the situation and the composition of the group
ARCELOR: the rules of procedure define the voting procedure within the EWC to elect the select committee, the chair and the secretary, and to adopt the resolutions resulting from the deliberations of the EWC and the select committee

The role of the rules of procedure is not to compensate the rules of an inadequate agreement nor to stipulate provisions that are normally defined by the agreement. The RoP are there to help organise the day-to-day practice of the EWC in its tasks.

3) The content of the EWC information and consultation meeting

a) *Preparation of the content of the EWC meeting*

- Drawing up the agenda

How the agenda is drawn up often depends on the type of culture prevailing in your company with regard to professional relations.

The content of the agenda may be defined jointly by the Central Management and the leader of the employees' representatives (secretary or chair) or several employees' representatives of the EWC (select committee, bureau). It may be drawn up unilaterally by the employees' representatives.

The results of the PERCEE survey confirm that in the large majority of cases the agenda is drawn up jointly between the employees' representatives and the employer.

TOTAL, GENERALI, VINCI, SOLVAY: the agenda is drawn up jointly between the group chair and the appointed employees' representative

In some cases the practice is for the employees' representative to have sole responsibility for the agenda.

HUNTSMANN, WHIRLPOOL EUROPE: the agenda is the responsibility of the appointed employees' representative

In all cases, the agenda must enable the EWC to be informed and consulted on what is happening in the group or company in the transnational context. It must allow discussion and expression of opinions on the economic, financial and social situation of the company or group.

- Linkage with national institutions

The group or company may allow the local representatives, with their representatives within the EWC, to prepare a consultation before the EWC meeting. These meetings between the EWC representatives of a country and the local representatives of the same country provide input for the preparatory work of the EWC members and thus for the potential items on the agenda of the EWC meeting.

There is no intention to include national problems on the EWC agenda. The linkage between the EWC and the national institutions means that purely national issues can be filtered out, while verifying whether apparently purely national issues in fact also arise in other countries, which would make them transnational issues.

SOLVAY: the agreement stipulates preparatory and follow-up meetings (one day each) at national level with the Local Management on the occasion of the EWC meetings. These meetings are organised in each country by the EWC members with the representatives of the country concerned
SAINT GOBAIN: the Central Management initiates the setting-up of national group committees

- Use of an expert

As the information sent by the Central Management in the context of the agenda may be voluminous and technical in various areas (legal, accounting, etc.) or, on the contrary, very brief, it may be necessary for the members of the EWC and/or the select committee to call upon a legal, accounting or economic expert:

- * Either to decode a very large volume of transmitted information, sorting the important data from the secondary;
- * Or to identify the missing information and be in a position to submit a detailed request to the Central Management for the elements necessary for proper understanding of the situation of the company or group.

The use of an expert can be decided by the EWC members at any time; the expert provides assistance on all or some of the items on the agenda, according to his or her terms of reference.

- The meeting of the employees' delegation without the Management

The EWC and/or the select committee has the right to meet without the Central Management, for example before EWC meetings with the Management.

These preliminary meetings (before a meeting with the Management) allow the employees' representatives to discuss the agenda and the transmitted documents and to talk to trade union or technical experts, coordinate positions between employees' representatives before the talks with the Management, finalize a common opinion, etc.

Preliminary meetings on the Central Management side give it an opportunity to also prepare itself for the joint meeting, coordinate contributions between the various senior managers, prepare responses to the expected questions and draft reasoned responses to any EWC opinions.

- Mobilisation of operational Managements by the Central Management

In the same manner as the employees' representatives within the EWC with the national personnel representation institutions, the members of the Central Management organise themselves to consult and mobilise their operational Managements in order to prepare the documents to send out, coordinate the planned presentations and prepare commentaries on the work of the experts mandated by the EWC for use as reasoned responses to opinions already expressed or to be given in session.

b) Discussion at the EWC meeting

- The chair of the meeting

No compulsory procedure is stipulated regarding the chair of the plenary meeting. Nevertheless, item 4 of the subsidiary requirements in directive 2009/38/EC states that *"The Member States may lay down rules on the chairing of information and consultation meetings"*.

The chairing of the meeting, like the drawing-up of the agenda, often depends on the culture of social dialogue prevailing in the group or company.

Some agreements stipulate that the meeting is chaired by the personnel representatives, or by the employers' representatives, or in turn by each, or jointly.

In groups with predominantly French culture, EWC meetings are chaired by the representatives of the Central Management
 GSK: EWC meetings are chaired jointly by the representatives of the Management and of the personnel

- Time for discussion

EWC meetings are a venue for communication of information from the Management to the employees' representatives, but also from the representatives to the employer.

The meeting proceedings must allow these two directions of communication. The EWC meeting with the Management is not a monologue by the members of the Central Management. However, it must also not be a monologue by a national employees' delegation which, by holding the floor for too long without a mandate from the other EWC members to speak in their name, would deprive the other employees' delegations of the opportunity to ask questions or put forward their remarks and opinions.

The rules of procedure may consider mentioning the principle of observing a reasonable speaking time for everyone, guaranteed by the session chair. This principle can also be restated at the beginning of the EWC meeting with the Management.

- Formalisation of an EWC opinion

Directive 2009/38/EC has nothing to say on procedures for formalising an opinion in the EWC. The negotiators and the EWC members must organize opinion formalisation in practice.

Opinions may be issued at an EWC meeting by each national delegation or by a spokesperson, member of the EWC, expressing an opinion on behalf of some or all of the national delegations. Each national delegation is thus free to express an opinion, but also to give its mandate for a common opinion expressed by another person.

It is strongly advised that the expressed opinions be in writing. This provides a written trace of what has been stated, facilitates the meeting minutes and consequently the proper understanding of the positions, thanks to the translations produced subsequently.

4) Following up the work of the EWC

a) *Within the EWC*

- Meetings without the Management after an EWC meeting with the Management

Following a meeting with the Management, the EWC or the select committee can hold meetings without the Management, among the employees' representatives only. These are referred to as follow-up meetings.

At the end of the EWC meeting, the EWC members have information about the documents and the positions of the participants. It can be useful to take stock of the meeting and discuss the follow-up of the issues raised.

Any follow-up meetings are generally held immediately after the EWC meetings with the Management.

- The reasoned response by the employer

Opinions can be expressed by each employees' delegation or by one or more delegations on behalf of the EWC as a whole. The Central Management is required to give reasoned responses to all the opinions.

The response should be given in writing, in order to correspond to the written form of the opinion, and should be sent or presented to all the EWC members.

The reasoned response is not subject to any time limit, but must be given no later than the next meeting of the EWC or of one of its constituent bodies if such provision has been made.

- The setting-up of ad hoc working groups

On the basis of the topics discussed at EWC meetings, the employees' representatives and the Central Management may decide to set up dedicated working groups on topics on behalf of the EWC for in-depth examination (temporary) or specialist committees on a recurring topic within the competence of the EWC in order to prepare the work of the EWC meetings.

SOLVAY: the EWC members have set up a sustainable development working group which has produced four charters: subcontracting, joint-venture social policy, health and safety, sustainable development, and CSR

TOTAL: an EWC committee on sustainable development has been set up

EADS: an economics committee has been set up within the EWC

GDF SUEZ: various committees have been set up within the EWC: employment/training/mobility/diversity; health/safety; social guarantees and social reporting

The agreement may lay down the principle of the possibility of organising such committees within the EWC if so decided by the EWC members. The practical procedures can be defined in the rules of procedure.

b) *With the national entities*

- The issue of confidentiality

Article 8 of directive 2009/38/EC stipulates provisions regarding the confidentiality of the information submitted to the EWC members (refer to Part 2).

The Management can stipulate the confidential nature of information presented to the EWC in order to restrict the dissemination of such information.

This can be very awkward, for the projects or directions presented at EWC meetings often have local effects. The confidentiality imposed on the EWC representatives is in conflict with the very essence of their functions: representing and informing the employees of the group.

In practice, how can the issue of confidentiality be handled?

In the case of information that has direct consequences on the sites of the group, the obligation of confidentiality is less strict:

- the better organised the linkage between European level and national level regarding information and consultation;
- if the Management representatives as well as those of the employees are subject to it, which results in the obligation being very limited in time, otherwise the presented directions would not be applied.

However, with regard to medium-term projects, how can the employees' representatives be associated with the enrichment of the content of such projects while forbidding them to report on them to the employees they represent as long as the projects are not better defined and operational ?

The issue of the temporal aspect of confidentiality emerged clearly at the conference on 14 and 15 October 2010: from what time is it necessary to talk about a change or restructuring project, while taking account of the issues of consultation prior to the decision and of confidentiality ?

The obligation of confidentiality with respect to external contacts is closely linked with the manner in which the Management communicates outside the company (specialist press, etc.).

- Dissemination of information on the work of the EWC by the Management to the subsidiaries

The employees' representatives do not have a monopoly on the dissemination of the work of the EWC. The Central Management has the same obligation as the employees' representatives in the EWC to inform the local entities, each through its representatives.

The dissemination of information by the Central Management is facilitated by the involvement of the Local Managements in the preparation of the EWC meetings (using the national group councils, for example) at their national levels and by their participation in EWC meetings according to the agenda.

The dissemination of information to the Local Managements is also facilitated where Local Managements are the (sometimes exclusive) relays of meeting minutes to the local employees' representatives.

TOTAL, BOUYGUES, CREDIT AGRICOLE, L'OREAL, SOLVAY: the EWC meeting minutes are disseminated to the Local Managements, which are responsible for their translation and their transmittal to the local employees' representatives

- Dissemination of information on the work of the EWC by the employees' representatives to the employees

Directive 2009/38/EC provides elements for framing communication to the employees in recital 33 and article 10.2:

Recital 33: *"In order to perform their representative role fully and to ensure that the European Works Council is useful, employees' representatives must report to the employees whom they represent and must be able to receive the training they require"*.

Article 10.2: *"the members of the European Works Council shall inform the representatives of the employees of the establishments or of the undertakings of a [...] group [...] or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure"*.

Meetings reporting on the work of the EWC can also be held at national level by the EWC members during meetings of the national institutions.

L'OREAL: a summary report on the plenary meeting, called a "flash report", is first produced by the Liaison Secretariat within fifteen days after the meeting and distributed as quickly as possible in agreement with the Management. Each meeting of the Management with the Liaison Secretariat may be the subject of a report drawn up by the Management and the secretary and distributed to all the personnel of the EWC member countries according to local practices applicable for communications of the same type. These documents are transmitted to the IEDS/EWC member countries, which have them translated. The country Managements then distribute the report to all the personnel according to local practices applicable for communications of the same type

SOLVAY: at national level, meetings between EWC members and the local institutions of their countries are organised to report on the work of the EWC

VALEO, GDF SUEZ: the minutes are distributed to the Local Managements and to the local employees' representatives

5) Dealing with operation problems

The working of the group or the local entities and the situation of the Central Management and employees' representatives are inevitably going to change over the term of the mandate. Such changes may cause problems in the operation of the EWC and/or tensions in information and consultation at transnational level.

The manner in which such problems or tensions are dealt with depends on the quality of the social dialogue within the EWC.

The settlement of conflicts involves the EWC members in the first place.

If the agreement or the minimum rules on information and consultation at transnational level are not or no longer obeyed, the signatories of the agreement, as guarantors of its proper application, must be informed.

It is essential to inform them of the occurrence of a dispute regarding the application of or compliance with the agreement or the EWC rules of procedure. The signatories (Central Management, Local Managements in some cases, the SNB members, the European trade union organisations) are best placed to deal with problems of understanding and/or application of the agreement that they have signed.

When the EWC is established without an agreement, the employees' representatives must refer the problem to the Central Management. If the dispute persists, the European trade union organisations may be able to provide mediation with a view to finding a solution.

If the dispute is not settled despite all these steps, referral to the competent court must be considered.

This means that the stipulation in the agreement of the law applicable to the agreement is a vital factor. It is reference to this stipulated law which is necessary in order to determine the procedures for bringing a dispute before the court.

If the dispute concerns the interpretation of national rules on the appointment of representatives (for example, if a representative should be elected and is not), the competent jurisdiction should be contacted in order to interpret the national rule and monitor its proper application (the jurisdiction of the country of the law that is deemed to have been incorrectly applied).

CONCLUSION: FORWARD FOR THE REPRESENTATION OF PROFESSIONAL AND MANAGERIAL STAFF!

Directive 2009/38/EC updates the Community legislation on transnational information and consultation of employees with the aim of ensuring the effectiveness of the rights to information and consultation and increasing the number of EWCs while allowing continuing application of existing agreements.

The new elements that it introduces are going to be implemented through transposition into national legislations and through negotiation of new agreements or renegotiation of existing agreements on EWCs.

There is, and will continue to be, an increasing number of companies or groups reaching the size and configuration for establishing an EWC. Some are ready to take this step. The PERCEE conference on 14 and 15 October 2010 allotted time for accounts by the Managements of groups such as Chèques Déjeuner, which was just starting the process of making contacts for setting up an EWC.

Directive 2009/38/EC revives the transnational right to information and consultation.

Its updates also include provision for fair representation of categories of employees. Where the rules led systematically to representation of the categories with the majority of the employees, the new directive introduces the notion of balance and thus of access to the SNB and the EWC by non- or under-represented categories of employees: the professional and managerial staff.

The conviction, the determination and the perseverance of the CEC European Managers and its affiliated members has enabled this outcome. It is up to all of us to make good use of it. It is a real victory in certain countries, companies or groups; in others it consolidates uncertain situations. In any case, it is progress !

The whole of the work community will benefit. When professional and managerial staff are present alongside the other categories of employees in the transnational social dialogue in sufficient numbers and with continuity, the dialogue gains quality and maturity.

The EWADB database, like other surveys on the transnational agreements, shows that a number of EWCs are experimenting with practices that go beyond their primary tasks, setting up ad hoc working groups, covering new topics (sustainable development, employment/training), drafting charters and concluding agreements. Closer examination reveals that the membership of the EWCs taking the lead in new practices includes separate representation of professional and managerial staff. The work of the FECCIA at the 2009 conference on transnational agreements in European chemicals groups is an illustration of this.

Directive 2009/38/EC will undergo an assessment of the implementation of its provisions by the Commission no later than 5 June 2016. With this prospect for 2016, there are five years to defend the colours of professional and managerial staff representation !

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La direction générale «Emploi, affaires sociales et égalité des chances» de la Commission européenne œuvre à la création d'emplois plus nombreux et de meilleure qualité, à l'ouverture de la société à tous les citoyens et à l'égalité des chances pour tous.		COMMISSION EUROPEENE	http://ec.europa.eu/social/main.jsp?langId=fr&catId=656	INTERNET
Statut de la Société européenne	oct-01	EUROPA	http://europa.eu/legislation_summaries/employment_and_social_policy/social_dialogue/l26016_fr.htm	INTERNET
Rectificatif au règlement (CE) n°2157/2001 du Conseil du 8 octobre 2001 relatif au statut de la société européenne (SE) (JO L 294 du 10.11.2001)	oct-01	EURLEX	http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=fr&type_doc=Regulation&an_doc=2001&nu_doc=2157	INTERNET
Directive 2001/86/CE du Conseil du 8 octobre 2001 complétant le statut de la Société européenne pour ce qui concerne l'implication des travailleurs	oct-01	EURLEX	http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=fr&type_doc=Directive&an_doc=2001&nu_doc=86	INTERNET
Société Européenne	août-06	LEGILUX	http://www.legilux.public.lu/leg/a/archives/2006/0152/2006A2684A.html	INTERNET
Statut/Société européenne - implication des travailleurs	août-06	LEGILUX	http://www.legilux.public.lu/leg/a/archives/2006/0152/2006A2706A.html	INTERNET
La société européenne arrive (enfin) en France !		NETPME	http://www.netpme.fr/creation-entreprise/590-societe-europeenne-arrive-enfin-en-france.html	INTERNET
Créer une société européenne (SE)	août-07	Ministère de La Justice et des Libertés – France	http://www.justice.gouv.fr/actualite-du-ministere-10030/creer-une-societe-europeenne-12945.html	INTERNET
Société Européenne	juin-05	NOUVEAU CHEF D'ENTREPRISE	http://www.apce.com/pid2791/societe-europeenne.html?espace=3	INTERNET
Connaître les caractéristiques d'une société européenne (SE)		GUICHET PUBLIC - Luxembourg	http://www.guichet.public.lu/fr/entreprises/creation/forme-juridique/societe-capitiaux/caracteristiques-se/index.html	INTERNET

TITEL	YEAR	AUTOR	LINK	ORIGIN
REGULATIONS FRAMEWORK				
Société européenne		CNRS	http://www.dgdr.cnrs.fr/daj/parteneriat/parteneriat/structpersomorale/se.htm	
Société européenne		LEXINTER	http://www.lexinter.net/Legislation/societe_europeenne.htm	
La Société Européenne	juin-05	Patrick Saerens		LIVRE
La Société Européenne (droit des sociétés, social, fiscal, droit comparé)	2005	Editions Francis Lefebvre		LIVRE
La Société Européenne (Societas Europea)	2004	Jean-Pierre Bertrel		LIVRE
GUIDES				
Comités d'entreprise européens : désignation des représentants		LEXTENSO	http://www.lextenso.fr/weblextenso/chronique/afficher?id=domain-7/chronique_1241532876907/	INTERNET
Formation : Mettre en place et faire vivre un comité d'entreprise européen		CEGOS	http://www.cegos.fr/formation-animer-comite-entreprise-europeen/p-20107340-2010.htm	INTERNET
Key Aspects of German Employment and Labour Law	juil-05	Jens Kirchner, Pascal R. Kremp, Michael Magotsch		LIVRE
Mémorandum Comités d'entreprise européens	juin-05	ETUI - Jeremy Waddington	http://www.etui.org/research/activities/Workers-representation/Reports-and-working-papers/Memorandum-Comites-d-entreprise-europeens	INTERNET
Publications de l'ETUI		ETUI	http://www.etui.org/fr/Publications	INTERNET
Le défi du changement : Méthodes d'action pour les CEE	avr-07	SDA	http://www.sda-asbl.org/TestiPdf/Report-EWCcasestudiesFR.pdf	INTERNET
Atelier sur les CEE : Améliorer les qualifications et les compétences pour les membres du CEE	mai-08	SDA	http://www.sda-asbl.org/testiPdf/couverture.pdf	INTERNET
Société européenne		WIKIPEDIA	http://fr.wikipedia.org/wiki/Soci%C3%A9t%C3%A9_europ%C3%A9enne	INTERNET
Société européenne		APCE	http://www.apce.com/pid2791/societe-europeenne.html?espace=3	
Société européenne		HEC PARIS	http://www.hec.fr/Institut-de-l-Europe/Publications/Societe-Europeenne	
Rapport de conférence sur le rôle de l'encadrement au sein des CEE et autres instances d'information et de consultation des salariés	juin-08	CEC	http://www.cec-managers.org/fileadmin/user_upload/PDF/Press_Room/Publications/Francais/2006_2010/CECrapportdeconferenceToulouseFR.pdf	INTERNET

TITEL	YEAR	AUTOR	LINK	ORIGIN
GUIDES				
Guide de bonnes pratiques		FECCIA	http://www.feccia.org/archives/guide_accords-transnationaux_fr.pdf	INTERNET
Guide de mise en place de la nouvelle directive	2009	EUROPA	http://ec.europa.eu/social/BlobServlet?docId=3978&langId=fr	INTERNET
Projet de recommandations concernant les négociations pendant la période de transposition		SDA	http://www.sda-asbl.org/testiPdf/EIF%20common%20recommendations%20FR%20no%20ETF.pdf http://www.euro-ce.org/pdf/recommandations.pdf	INTERNET
Recommandations concernant les négociations pendant la période de transposition (du 5 juin 2009 au 5 juin 2011)		SDA	http://www.sda-asbl.org/TestiPdf/EIF_common_recommendations_trilingual.pdf	INTERNET
The New European Works Council Directive ('Recast')		ETUC	http://www.sda-asbl.org/TestiPDF/CES-D%C3%A9pliant%20The%20New%20Recast%20Directive%20def.pdf	INTERNET
Recommandations concernant les négociations pendant la période de transposition (du 5 juin 2009 au 5 juin 2011)		EMF SDA	http://www.emf-fem.org/Press/Publications/The-New-EWC-Directive http://www.sda-asbl.org/TestiPdf/EIF_common_recommendations_trilingual.pdf	INTERNET
EMF guidelines on legal actions concerning EWCs (anglais, français, allemand)		EMF	http://www.emf-fem.org/Areas-of-work/Company-Policy/EWC-SE/EWC-legal-issues/EMF-guidelines-on-legal-actions-concerning-EWCs	INTERNET
EMF guidelines in EWC negotiations (français, anglais, allemand)		EMF	http://www.emf-fem.org/Areas-of-work/Company-Policy/EWC-SE/The-New-EWC-Directive/EMF-guidelines-in-EWC-negotiations	INTERNET
TRADE UNIONS' POSITION				
REPRESENTATIVITE DES PARTENAIRES SOCIAUX ET COMITE D'ENTREPRISE EUROPEEN	sept.-08	E.Jahan - Air France	http://www.ceep-france.org/IMG/pdf/Representativite_des_partenaires_sociaux.pdf	INTERNET
Les comités d'entreprise européens (CEE)	mai-08	CES	http://www.etuc.org/a/495	INTERNET
La participation des travailleurs à la directive sur la Société européenne - Cadre pour les directives sur les fusions transfrontalières et le transfert du siège social	mars-04	CES	http://www.etuc.org/a/844	INTERNET
Le CE Européen Michelin		CFE-CGC	http://www.cfecgcmichelin.org/-Le-CE-Europeen-Michelin-.html	INTERNET
Comité d'entreprise européen		CFTC	http://www.cftcmetallurgie.com/fr/comite-d-entreprise-europeen-,92.html	INTERNET
Les comités d'entreprise européens, comment ça marche ?		CGT	http://www.cgt.fr/spip.php?article37597	INTERNET
Comités d'entreprise européens		FECCIA	http://www.feccia.org/index_cee.htm	INTERNET

TITEL	YEAR	AUTOR	LINK	ORIGIN
TRADE UNIONS' POSITION				
European works council	sept-97	François Vincent	http://www.feccia.org/index_ewc.htm	INTERNET
European works council			http://www.unicreditgroup.eu/en/Governance/European_Works_Council.htm	INTERNET
Les sociétés européennes accusées de bafouer le droit de leurs salariés américains	avr-10	RFI	http://www.rfi.fr/europe/20100902-societes-europeennes-accusees-bafouer-le-droit-leurs-salaries-americains	INTERNET
-SEMINAR PROCEEDINGS AND SURVEYS				
Les actes de la conférence des 29-30 septembre 2009 sur les accords transnationaux		FECCIA	http://www.feccia.org/archives/actes_colloque_accords-transnationaux_fr.pdf	INTERNET
La Société Européenne (contributions du colloque international qui s'est déroulé au Sénat et à la Sorbonne	oct-02	Klaus J. Hopt, Michel Menjucq, E. Wymeersch		LIVRE
La Société Européenne (journée d'étude)	déc-04	Jacques Makherbe Michel Coipel		LIVRE
Mission "L'Europe dans la Mondialisation"	nov-07	Ministère des affaires sociales – France	http://www.euromonde2015.eu/spip.php?article10	INTERNET
Travail et Emploi – Multinationales françaises et relations d'emploi dans les pays d'Europe centrale et de l'est	2010	DARES	http://www.travail-emploi-sante.gouv.fr/etudes-recherche-statistiques-de,76/etudes-et-recherche,77/publications-dares,98/revue-travail-et-emploi,103/no-123-revue-travail-et-emploi,13363.html	INTERNET
Les actes du colloque des 14 et 15 octobre 2010 PERCEE		CFE-CGC	www.cfecgc.org	INTERNET
REFERENCE BOOKS				
Comité d'entreprise européen		OBOULO	http://www.oboulo.com/comite+entreprise+europeen	INTERNET
Comité d'entreprise européen - Définition		GUIDE DU TRAVAIL	http://www.guide-du-travail.com/lexique/c/comite-d-entreprise-europeen,,284.html	INTERNET
Le CE européen, un outil au service de l'Europe sociale	oct.-07	Christophe Rieuzé	http://christopherieuze.rsfblog.org/archive/2007/10/03/le-ce-europeen-un-outil-au-service-de-l-europe-sociale.html	INTERNET
Définition de Comité d'entreprise européen		TISSOT EDITION	http://www.editions-tissot.fr/droit-travail/dictionnaire-droit-travail.aspx?definition=Comit%C3%A9+d%27entreprise+europ%C3%A9en	INTERNET

Comité d'entreprise européen		ASSEMBLEE NATIONALE	http://www.assemblee-nationale.fr/13/dossiers/comite_entreprise_europeen.asp	INTERNET
Expertise-conseil du Comité d'entreprise européen		SECAFI	http://www.secafi.com/fr/domaines-interventions/expertise-conseil-comite2.html	INTERNET
TITEL	YEAR	AUTOR	LINK	ORIGIN
REFERENCE BOOKS				
Le Comité d'Entreprise Européen, outil du dialogue social ?	oct-06	LAFARGE	http://www.institut-entreprise.fr/fileadmin/Docs_PDF/travaux_reflexions/Dialogue_social/Lafarge_edc.pdf	INTERNET
Le Comité d'Entreprise Européen	1997	Bernard Teyssié		LIVRE
Le Comité d'Entreprise Européen; une instance en devenir	1997	Jean-Paul Jacquier		LIVRE
Le Comité d'Entreprise Européen; instrument du dialogue social	1999	Eric Borrell		LIVRE
DATA BASES				
ETUI database integrating previous ETUI and SDA databases			http://www.ewcdb.eu/	INTERNET
WEB SITES AND REVIEWS				
European works council	nov-09		http://www.cipd.co.uk/subjects/empreltns/wkcncnls/eurwcon.htm	INTERNET
Réseau et abonnement à une lettre d'information		EURO CE	http://www.euro-workscouncil.net/fr/111.php	INTERNET
Reconstruire les fondements du social		ASTREES	http://www.astrees.org/	INTERNET
Association Europe et Société		EUROPE ET SOCIETE	http://www.europeetsociete.com/	INTERNET
Fondation européenne pour l'amélioration des conditions de vie et de travail		EUROPA	http://europa.eu/legislation_summaries/employment_and_social_policy/employment_rights_and_work_organisation/c11111_fr.htm	INTERNET
Department for Business Enterprise & Regulatory Reform	sept-08		http://www.bis.gov.uk/files/file47617.pdf	INTERNET
Liaisons Sociales Europe			http://www.wk-rh.fr/consultation/sommaire.php?acronyme=lse	INTERNET

NETWORK

- Contact details of the European trade union organisations
- Members of the PERCEE Steering Committee
- European Referents CFE-CGC by sector

Contact details of the European trade union organisations

Sector	organization	web site	Contact details
Interprofessionnal level and Sector without dedicated federation	CEC European Managers	www.cec-managers.org	office@cec-managers.org ewc@cec-managers.org dedicated E-mail for EWC
Insurance company	AECA	www.cgc-assurance.com	asso.euro.cadres@cgc-assurance.com
Technologies of information and communication	ETIC	www.etic-managers.eu	contact@etic-managers.eu
Commercial managers	ECMF	www.ecmf-europa.eu	info@ecmf-europa.eu
Construction industry	FECC		paolkhan@libero.it (President)
Chemical industry	FECCIA	www.feccia.org	info.feccia@feccia.org
Banking	FECEC	www.fecec.eu	snb@fr.oleane.com (France)
Energy	FECER	www.fecer.eu	francois.perniola@edf.fr (President)
Metalworking industry	FEDEM		norb.mueller@web.de (President)
Transport industry	FICT	www.fict-transport-international.com	fict@live.fr

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EUROPEAN REFERENTS / CFE -CGC

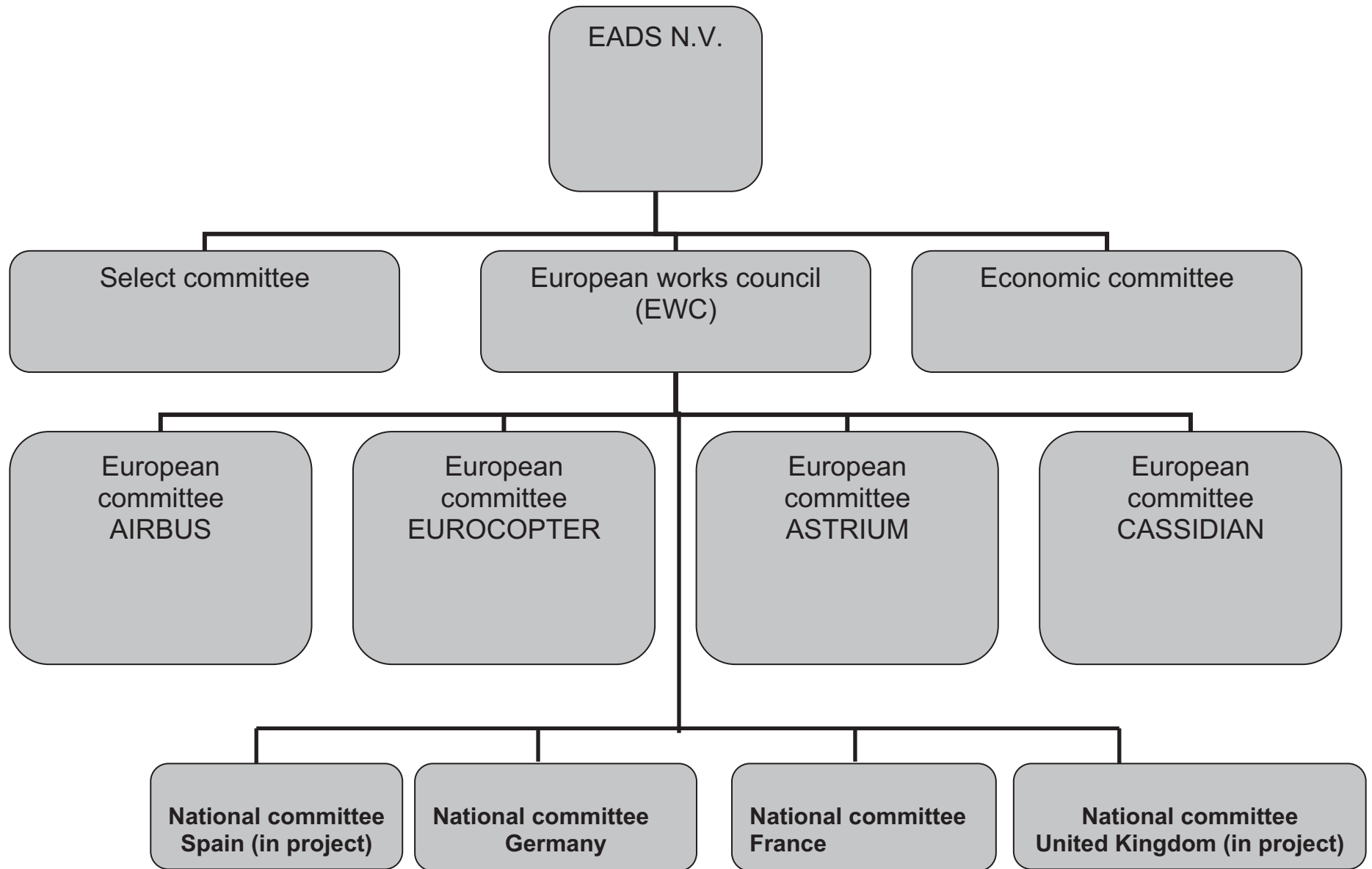
BY SECTOR

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Insurance company	Mohamed	TESKRAT	mteskrat@generali.fr
Banking	Yves	GUERIF	yvesnquerif@nicolas-querif.com
Textile Industry	Frédéric	BESACIER	fredbesacier@aol.com
Chemical industry	Antonio	PARANHOS NETO	antonio.paranhos-neto@arkema.com
Pharmaceutic industry)	Denis	SUIRE	denis.x.suire@gsk.com
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Energy	François	PERNIOLA	francois.perniola@edf.fr
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Health	Paul	CHAUVOT	paul.chauvot@gmail.com
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Technologies of information	Giovanni	SERRAVALLE	giovanni.serravalle@econocom.fr
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Air transport	Véronique	GHIEMMETTI	vero.ghielmetti@wanadoo.fr
Transport industry	Michel	YARD	michel.yard@laposte.net

APPENDIX

- Structure EWC of EADS
- Glossary of Abbreviations

Structure EWC of EADS



GLOSSAIRE DES ABREVIATIONS / GLOSSARY OF ABBREVIATIONS

AECA : Association Européenne des Cadres de l'Assurance / European Association of Insurance Company Managers

CEC : Confédération Européenne des Cadres / European Managers

CEE : Comité d'Entreprise Européen / European Works Council (EWC)

CES : Confédération Européenne des Syndicats / European Trade Union Confederation (ETUC)

CFE-CGC : Confédération Française de l'Encadrement – Confédération Générale des Cadres

CIDA : Confederazione Italiana dei Dirigenti e delle Alte Professionalità / Confédération italienne des Cadres Dirigeants / Italian Managers' Confederation

DRH : Direction des Ressources Humaines / Human Resources Department (HRD)

ECEG : European Chemical Employers Group / Groupe Européen des Employeurs de la Chimie

EEE : Espace Economique Européen / European Economic Area

EMCEF : European Mine, Chemical And Energy Workers' Federation / Fédération Européenne des Syndicats des Mines, de la Chimie et de l'Energie

ETIC : European Federation for Managers in Technologies of Information and Communication / Fédération Européenne des Cadres des Technologies de l'Information et de la Communication

EWADB : European Works Council Data Base / Base de données sur les comités d'entreprise européens

FECCIA : Fédération Européenne des Cadres de la Chimie et des Industries Annexes / European Federation of Managers in the Chemical Industry

FECC : Fédération Européenne des Cadres de la Construction / European Federation of Managers in the Construction Industry

FECEC : Fédération Européenne des Cadres des Etablissements Bancaires / European Federation of Managers in the Banking Sector

FEDEM : Fédération Européenne de l'Encadrement de la Métallurgie / European Federation of Managers in the Steel Industry

FETBB : Fédération Européenne des Travailleurs du Bâtiment et du Bois / European Federation of Building and Woodworkers (EFBWW)

FICT : Fédération Internationale des Cadres du Transport / European Managers in the Transport Industry

GSN : Groupe Spécial de Négociation / Special Negotiation Body

ICOSI : Institut de Coopération Sociale Internationale / Institut of International Social Cooperation

PERCEE : Plate-forme de l'Encadrement pour un Réseau de Comités d'Entreprises Européens/ french acronym for Management platform for a network of European works councils

RSE : Responsabilité Sociétale des Entreprises / Corporate Social Responsibility (CSR)

VAA : Verband angestellter Akademiker und leitender Angestellter der chemischen Industrie / Association of Chemical Industry Managers / Association des Cadres de la Chimie (Allemagne)

UE : Union Européenne / European Union

ULA : Deutscher Führungskräfteverband / German Managers' Confederation / Confédération allemande des Cadres



COMMISSION EUROPÉENNE



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