

# 30 years on, where do European Works Councils stand?

Although not so well known to the general public, European Works Councils (EWCs) deserve some attention as they can be important tools for workers and trade unions for at least two reasons. Firstly, they are the only genuine European bodies allowing for information and consultation of workers in multinational companies at transnational level. Secondly, they can also help anticipate transnational restructuring measures and counter management strategies designed to pit workers, sites and countries against each other, leading to social dumping. At a complex time, when the workers face unprecedented challenges such as globalisation, technological and climate change, labour fragmentation and corporate consolidation, EWCs can and should serve as a critical instrument for promoting social dialogue and democracy at work. But 30 years after the adoption of the first EWC directive, what conclusions can be drawn?

## What are EWCs and how do they work?

As there is often some misunderstanding and frustration around EWCs, it is very important to first clarify what they are and what they are not. An EWC is an internal body of a multinational company which is entitled to transnational information and consultation. There are no codetermination rights as foreseen for German and Austrian works councils, nor negotiation rights as available to Hungarian works councils. Although there are some exceptions, EWC usually does not negotiate anything besides the EWC agreement.

In fact, once the process has been launched, either by management (which occurs very rarely) or by a formal letter from workers (at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States), a Special Negotiation Body (SNB) will first have to be set up, with a membership reflective of the number of employees in the countries where the company operates. Together with management, the SNB will be responsible for negotiating, within three years, the agreement that will determine the functioning of the future EWC (e.g. the composition of the EWC, the information and consultation procedure, the venue, frequency and duration of meetings, the financial and material resources, etc.).

The EU directive and the national transposition laws set the bare minimum rules, known as “subsidiary requirements”. It is up to the negotiators to fix the rules. They are free to go as far as they like in terms of rights and rules, which means that there are over 1000 interpretations of what EWC should

be and how it should work. Should they not succeed to reach an agreement, the EWC will fall under the subsidiary requirements. In any case, the European Trade Unions Federations (ETUFs) strongly advise against signing any agreement that would fall below the subsidiary requirements.

The topics on which the EWC must be informed and consulted vary according to each agreement but, according to the EU Directive, information must cover at least the following points:

- the structure of the company;
- its economic and financial situation;
- and the probable development and production and sales.

The information and consultation shall relate in particular to:

- the situation and probable trend of employment;
- the investments;
- the substantial organisational changes;
- the introduction of new working methods or production processes;
- the transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof and
- collective redundancies.

It is worth expanding the list to other relevant transnational issues such as health and safety, working time, equality, corporate sustainability matters.

In addition to the information received from management, it is very important that EWC members take advantage of this unique opportunity to share information with each other and between meetings. Information is power and employers tend to not like sharing it. Nonetheless, through regular and transparent communication, some EWC members may be able to put the jigsaw together and find themselves in a stronger position.

Theoretically, information should be provided at a time, in a manner and with a content that enables the employees’ representatives to carry out an appropriate examination. Consultation should also take place in a way that allows the EWC to express an opinion, based on the information provided, which will be useful to the decision-making process. Employees’ representatives should therefore have the opportunity to meet with central management and obtain a justified response to any opinion they may have expressed.

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## When to create an EWC?

To answer this question, you need a bit of mathematics and geography but above all a good understanding of the company's structure. Multinational companies with at least 1000 employees across the European Economic Area (27 EU Member States + Norway, Iceland and Liechtenstein) and a minimum of 150 employees in at least two states, are required by European legislation to set up an EWC or a procedure for informing and consulting employees.

The EWC can provide a direct link with the level at which the real decisions are taken, which in many cases is no longer the national level

EWCs were originally created as a response to the economic and political integration of the European Union and the increasing business globalisation. Workers in different countries felt a growing need to exchange more information to better understand their workplace and to have a direct link with the level at which the real decisions are taken, which in many cases is no longer the national level. The first voluntary EWCs were set up in France in the 1980s to extend internationally national works councils. In 1994, the first EWC directive was adopted, formalising the concept of a transnational structure of worker representation. The directive was subsequently revised in 2009 by a recast directive .

As of October 2024, there were 1018 active EWCs . However, it is estimated that 3000 multinationals in Europe meet the criteria for an EWC. In other words, there is potential for three times as many EWCs! What's more, it is interesting to note that some EWCs have a global reach. Even companies whose headquarters are outside the EU but which have establishments and a given number of employees within the EU, will have to comply with the directive. The legislation therefore applies even to American and Japanese multinationals.

The transport and logistics sectors, for example, are not among the sectors with the most EWCs. Yet, a number of large multinational companies (such as Air France-KLM, Amazon) already have an EWC. Moreover, the number of EWCs has increased considerably within the sector. This is unsurprising given the cross-border nature of many large companies.

## Involvement of ETF

EWCs can be complex to navigate, especially for new people that are not very familiar with the "rules of the game" and when management throws a spanner in the works of the EWC. However, it is vital that SNB and EWC members have the best possible understanding of their rights so they can claim them and play their role effectively. This is why legislation has foreseen the right of EWC members to be properly equipped, trained and accompanied by experts.

The role of the European Transport Workers' Federation (ETF), like that of the other European Trade Union Federations, is to support and guide EWCs. Firstly, by ensuring a strong trade union

presence to make sure that workers are well represented and that the EWC does not become a management puppet. We do this by mapping the company operations, social relations, the degree of unionisation in key countries and the position of trade unions in the company. This will allow us to assess the situation. Indeed, creating an EWC is not an objective in itself but should rather be done when it proves to be useful. When the time comes, we alert our affiliates about the upcoming election / nomination process of SNB / EWC members . We also help filling the mandates if seats remain empty. Secondly, at the request of our affiliates, we can assist the SNB and advise during the negotiation of the EWC agreement. Thirdly, we help organising trainings and recommend experts to assist the SNB and / or EWC.

Studies show that the presence of a trade union coordinator significantly improves the effectiveness of an EWC: they are better organised internally, meet more often, receive more training, communicate more and show higher levels of trust between representatives from different countries . Moreover, his / her presence is essential in giving EWCs a trade union perspective, which is crucial for us. ETF therefore recommends to always have the role of a trade union coordinator recognised in the EWC agreement.

## What future can we hope for?

While the theory looks good on paper, it is unfortunately hard to turn it into practice for many EWCs. Although the 2009 recast directive brought some improvements, many significant loopholes remain, preventing EWCs from exercising their rights effectively. For example, we often witness employers blocking the creation or operation of an EWC, only informing representatives after final decisions have been taken or misusing confidentiality clauses to avoid disclosing important information. For their part, EWC members are generally unable to influence the company's strategic decisions, particularly in the event of restructuring, although this was at the very heart of the legislation. All these problems and many more were also identified by the European Commission in its evaluation of the recast directive.

The European Trade Union Confederation (ETUC) and its affiliated ETUFs have therefore been advocating for years for another revision of the EWC directive. Our main demands are as follows:

- Strengthen the subsidiary requirements to improve the practical functioning of the EWC (e.g. at least 2 meetings per year, an enlarged list of topics);
- Improve and clarify the rules for negotiations with the SNB;
- Ensure the effective enforcement of rights arising from the directive by means of effective and

dissuasive sanctions (which is very often necessary in the case of multinationals);

- Recognise the role of “representatives of competent recognised Community-level trade union organisations” in the subsidiary requirements to allow trade union experts to participate in all meetings and have access to all sites;
- Guarantee access to justice by clarifying the legal status of EWC and, SNBs as legal actors and by defining the legal means to be used against the company to defend the rights conferred by the EWC directive;
- Ensure a more efficient coordination between the local, national and European levels to guarantee that the EWC can communicate with the national level whenever necessary, especially before and after meetings, and deliver its opinion before consultation is completed at the respective level;
- Consolidate the concept of “transnational character of a matter” which is broader and clearer in the recitals but not in the main body of the directive, leading to different interpretations between EWC and management;
- Prevent abuse of confidentiality clauses by clarifying more precisely on what grounds, under what circumstances and for how long a company may withhold information, and on what grounds the right of EWC members to share information with stakeholders (particularly employee representatives) may be restricted .

Early 2023, the European Parliament adopted a very welcome own-initiative resolution calling on the Commission to strengthen the role and capacity of EWCs. One year later, the Commission responded with a legislative proposal. At the time of writing this article, the trilogue negotiations between the EU

Commission, the Parliament and the Council have not yet begun, mostly because of the European elections in May 2024 which put the institutions on hold for a few months. Considering recent attacks of employers and the far-right on adopted legislations we need to be cautious. Yet, we hope that a new directive that meets the challenges will soon be adopted. 30 years after the adoption of the first EWC directive it is high time to finally make this tool effective and guarantee workers’ rights!

- 1 Council Directive 94/45/EC on the establishment of a European Works Council (EWC) or a procedure in Community-scale undertakings or Community-scale groups of undertakings for the purposes of informing and consulting employees.
- 2 As directives, both pieces of legislation had to be transposed into national legislation. Depending on the national system, transposition can be done either by the Parliament, the government, regional authorities or the social partners. Belgium and Norway are the only countries where transposition has been made by the social partners.
- 3 ETUI, European Works Councils Database, EWCDDB, [www.ewcdb.eu](http://www.ewcdb.eu).
- 4 The election or appointment of members of the SNB and EWC depends of national legislation and/or practice. In Austria, Belgium, Germany, Hungary, the Netherlands and Luxembourg the works councils appoint the persons. In Cyprus, Denmark, Finland, France, Greece, Italy, Lithuania, Poland, Portugal, Romania, Spain and Sweden it is up to the trade unions to nominate. In Czech Republic, Slovakia and Latvia the employee representatives (whether union or non-union) decide. Finally, in Bulgaria, Croatia, Estonia, Ireland, Malta, Slovenia and Norway election is made through the workforce (either at a general meeting or by secret ballot).
- 5 ETUI, Can anybody hear us? An overview of the 2018 Survey of EWC and SEWC representatives.
- 6 For more information see “ETUC position paper - For a modern European Works Council (EWC) Directive in the Digital Era”, adopted at ETUC Executive Committee on 15-16 March 2017 in Malta.

A proposal to strengthen the role and capacity of the EWCs is in process, and unions are hopeful that a new directive that meets the challenges will soon be adopted

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- 14 [https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/responsible-business-conduct/OECD-Living-Incomes-and-Living-Wages-Handbook-Brochure.pdf/\\_jcr\\_content/renditions/original./OECD-Living-Incomes-and-Living-Wages-Handbook-Brochure.pdf](https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/responsible-business-conduct/OECD-Living-Incomes-and-Living-Wages-Handbook-Brochure.pdf/_jcr_content/renditions/original./OECD-Living-Incomes-and-Living-Wages-Handbook-Brochure.pdf)
- 15 <https://www.iuf.org/>
- 16 See the ILO repository: <https://cbsd.ilo.org/category/transnational-agreements/transnational-company-agreements>.
- 17 <https://www.industriall-union.org/global-framework-agreements>
- 18 <https://uniglobalunion.org/workers-rights/global-agreements/>
- 19 Loi 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre : <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/>

- 20 Entwurf eines Gesetzes über die unternehmerischen Sorgfaltspflichten in Lieferketten, June 9, 2021, <https://dserver.bundestag.de/btd/19/305/1930505.pdf>
- 21 [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL\\_202401760](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL_202401760)
- 22 <https://www.etuc.org/en/pressrelease/due-diligence-major-boost-workers-rights-company-supply-chains>
- 23 <https://tuac.org/news/tuac-puts-case-for-workers-rights-and-bargaining-power-in-development-co-operation/>
- 24 Directive 2024/1760 on corporate sustainability due diligence, recital 92.
- 25 Article 3123-7-1 of the French Public procurement Code.