

Update
2011

New rules for European works councils

Insight into Directive 2009/38/EC



Social Europe



European Commission

What are European works councils for?

European works councils (EWCs) are bodies representing the European employees of a company. Through them, workers are informed and consulted at transnational level by management on the progress of the business and any significant decision that could affect them.

The right to establish EWCs was introduced by Directive 94/45/EC for undertakings or groups of undertakings employing at least 1 000 employees in the European Union and the other countries of the European Economic Area (Iceland, Liechtenstein and Norway) with at least 150 employees in each of two Member States. Some 970 EWCs represent over 15 million employees, favouring social dialogue and anticipation of change in transnational companies.

More, and more effective, EWCs

The legal framework for EWCs dates back to 1994 and needed to be adapted to the evolution of the legislative, economic and social context and to be clarified. After consulting the European social partners and carrying out an impact assessment, the Commission submitted in 2008 a proposal to recast the directive. This new directive was adopted in 2009 by the European Parliament and the Council, with some amendments mainly suggested by the European social partners.

Building on the results of the existing legal framework, recast Directive 2009/38/EC aims, in particular, at ensuring the effectiveness of employees' transnational information and consultation rights, at favouring the creation of new EWCs and at ensuring legal certainty in their setting up and operation.

Establishing European works councils

New rules of Directive 2009/38/EC

Providing necessary information: Central and local managements are responsible for providing the information allowing negotiations to be opened to set up a new EWC.

Setting up a special negotiating body (SNB): The SNB, which represents the employees in the negotiations aiming at concluding an agreement on an EWC, is composed of one representative per 10 % portion of the employees in a Member State. It has the right to meet alone before and after any meeting with the central management.

Role of social partners: The competent European trade union and employers' organisations are to be informed of the start of negotiations, to enable them to monitor the establishment of new EWCs and promote best practice (see contact points). Trade unions are also among the experts on whom the SNB may call for assistance in the negotiations.

Content of agreement: The agreement on the EWC should take into account the need for a balanced representation of employees in the EWC and provide arrangements for adapting it.

Fall-back rules: Subsidiary requirements applying in the absence of an agreement draw a distinction between fields where information is required and those for consultation, and provide the possibility of obtaining a response, and the reasons for that response, to any opinions expressed. In order to enable the select committee to perform a more important function, its maximum number of members is set at five and the conditions enabling it to exercise its activities on a regular basis must be met.

Operation of European works councils

New framework of Directive 2009/38/EC

General principle: The arrangements for informing and consulting employees shall be defined and implemented in such a way as to ensure their effectiveness and to enable the company to take decisions effectively.

Transnational competence of EWCs: Issues fall within the competence of the EWC when they are transnational. 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. Elements that can be considered in the determination of whether a matter is “transnational” are the number of Member States concerned, the level of management involved or the importance of the issues for the European workforce given the scope of their potential effects.

Link with national bodies: Information and consultation of the EWC shall be linked to those of the national employee representation bodies. Arrangements for meeting that aim are to be defined by agreement. Failing that, consultations at both European and national levels have to be ensured in case of restructuring.

Role and capacity of employee representatives

Collective representation: The members of the EWC shall have the means required to apply the rights arising from the directive to represent collectively the interests of the employees. They shall inform employees of the content and outcome of the information and consultation procedure carried out within the EWC.

Training: Employees’ representatives shall be provided with training without loss of wages.

Concepts of information and consultation

'Information' means the 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 a time, in such a 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.

'Consultation' means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such a time, in such a fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings.

Adaptation clause

Where the structure of the undertaking or group of undertakings changes significantly, for example due to a merger, the EWC(s) needs to be adapted. This adaptation is carried out pursuant to the provisions of the applicable agreement(s) or, by default and where employees so request, in accordance with the negotiation procedure for a new agreement in which the members of the existing EWCs are to be associated. These EWCs will continue to operate, possibly with adaptations, until a new agreement is reached. This clause (Article 13 of Directive 2009/38/EC) applies to all situations.

Timetable

Directive 2009/38/EC is to be transposed by Member States before 6 June 2011. On that date, the existing Directive 94/45/EC (as amended by Directive 97/74/EC and 2006/109/EC) is repealed and replaced with Directive 2009/38/EC.

National implementing measures for the repealed directives are, however, maintained after 6 June 2011, to cover the cases where the new obligations introduced by Directive 2009/38/EC do not apply.

Agreements on European works councils signed or reviewed between June 2009 and June 2011

A window of opportunity of two years is provided for by Directive 2009/38/EC: companies where agreements to establish new EWCs are concluded between 5 June 2009 and 5 June 2011 or where existing agreements are revised during this period are not bound by new obligations introduced by Directive 2009/38/EC.

New framework as from June 2011

As from 6 June 2011, EWCs are to be established and operate within the framework of recast Directive 2009/38/EC through its implementing provisions in the Member States.

Negotiation at company level

A request of 100 employees from two countries or an initiative of the employer triggers the process of creating a new EWC. The composition and functioning of each EWC is adapted to the specific situation of the company by an agreement between management and workers' representatives of the different countries involved. Subsidiary requirements are to apply only in the absence of this agreement.

The priority given to the negotiated formula within the companies for their establishment and operation has been central to the success of EWCs from their early days. This mechanism remains unchanged.

Continuity

There is no general obligation to renegotiate the agreements establishing EWCs in the new directive. In addition, since the first directive, an incentive has been given to the early establishment of EWCs, in advance of the legal requirements. Those companies which had agreements in place providing for transnational information and consultation of their entire workforce when the directive first took effect in 1996 are not subject to the obligations arising from the new directive. The same applies in relation to the extension of the directive to the UK in 1999. The continuity of such agreements is ensured by Directive 2009/38/EC.

More information

The text of Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European works council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purpose of informing and consulting employees (OJ L 122, 16.5.2009, p. 28) and more information can be found on the labour law website of the European Commission (http://ec.europa.eu/labour_law).

Promotion and funding

The European Union makes efforts to support awareness raising and promotion of best practices in connection with the social partners, notably by funding projects of transnational cooperation, through a specific budget line (04.03.03.03 — Information, Consultation and Participation of representatives of undertakings), to which a sum of EUR 7.5 million has been allocated for 2011.

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