

Ausgabe Englisch



Guide for the Foundation and Establishment of a **European Works Council**



This publication is funded
by the European Union

GP  **djp**
GEWERKSCHAFT DER PRIVATANGESTELLTEN
DRUCK - JOURNALISMUS - PAPIER

Imprint:

Editor: GPA-djp, Büro Internationales und ÖGB
Verantwortlich für den Inhalt: Mag. Wolfgang Greif, GPA-djp
Layout: GPA-djp Marketing, Ulrike Pesendorfer
Fotos: GPA-djp, fotolia.com
DVR: 0046655, ÖGB ZVR-Nr.: 576439352
Februar 2009

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INTRODUCTION

Origination of the EC Directive on the Establishment of a European Works Council

1. New Company Strategies Require new Structures of Interest Representation

Since the late 1980s, the creation of the European Single Market has initiated a radical restructuring process of the economy. This has become evident in an increase in company mergers, transnational mergers and takeovers of proportions so far unknown on the European continent.

- Companies adapted to the changed economic conditions on the Single Market and restructured their manufacturing strategies and locations. Group policy decision levels increasingly shifted towards transnational group headquarters.
- Basic decisions on the economic development of more and more locations are hence taken in a different country than the one, where the employees' rights to participate apply.
- An increasing number of works councils is faced with insufficient access to the decision-making levels of a group. Local management as direct contact is losing its decision-making authority.
- Cheap transport and new communication technologies help groups to utilise differences in labour cost worldwide and to transfer production facilities from national locations to locations throughout Europe and the world.
- Increasing relocations of production facilities to other countries may lead to a virtual invalidation of employees' rights, as the increasing activities abroad are not within the geographical scope of the labour constitution law.

As the economy becomes increasingly international new structures of employee' interest representation are required. Similarly a »Europeanisation of labour relations« with new corporate strategies is faced with the following necessities:

- Interest-representing bodies need to re-orientate and direct their own policies towards Europe or even focus on the global strategy of companies.
- Moreover, they need to prevent the internationalisation of companies from having a negative impact on labour conditions, as well as from dismantling the welfare state and loss of jobs.
- Productivity comparisons used by companies to justify longer working hours, amongst others, are hard to refute without sufficient information.
- Thus, information is a fundamental prerequisite for effective interest policies. This information can protect employees of subsidiaries at home and abroad from being set against each other.

Creating or extending a broad basis for information for employee representations is best suited to protect employees' national rights to participate from being invalidated by the increasing internationalisation of business activities. Adoption of the European Works Council Directive is a rudimentary effort on the part of the European legislator to bear witness to these developments.

Following years of tug-of-war and vehement demands by the European trade union movement the European Union, in 1994, adopted a directive on the protection of employees' interests in Community-scale companies bearing the title: »Council Directive on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.«

2. Adoption of the Community Directive on the Establishment of a European Works Council (EWC)

On September 22, 1994, the EC Council of Ministers adopted the »Council Directive on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees«.

- With the exception of UK, the EU Member States thereby committed themselves to providing for Labour Constitution Acts in their national legislations, in order to enable the establishment of employees' representation bodies in line with the Community Directive in all groups of undertakings employing more than 1.000 employees in the European Union and EEA including a minimum of 150 of whom in two or more Member States.
- Thus, implementation of the Community Directive at the national level would imply that within three years agreements on information and consultation of employees' representation bodies are concluded by means of negotiations in approx. 1,500 Community-scale groups, in those cases where a written request on the establishment of a EWC was submitted.
- Otherwise, minimum provisions on the establishment of a European Works Council will become effective »by act of law« in accordance with the Community Directive for all groups of undertakings within the scope of the Directive which have not concluded a »voluntary agreement« between the management and a European Works Council prior to entry into force of the national EWC implementation.
- With the amendments to the EU Treaty decided in Amsterdam in 1997, according to which the directives adopted within the framework of the social protocol on social policy shall now also apply to Great Britain, Great Britain will gradually lose its special position in the European Works Councils. The way is now paved for a standard European regulation.
- The two big enlargement rounds in 2004 and 2007, following which a total of 12 new Member States joined the European Union, have expanded the geographical scope of the EWC Directive significantly. As of their respective accession date, all the new Member States had to have established relevant EWC acts of law in their legislations. The Directive is now valid in 30 countries within the European Economic Area (27 Community Members plus Norway, Iceland and Liechtenstein). The number of groups in a position to establish a EWC has increased to approx. 2.400.

3. The European Works Council: A procedure for transnational information and consultation of employees

The EWC Community Directive was a first step in the right direction. While not all the issues demanded by trade unions have been included in the wording of the Directive, it still contains binding legal foundations for the establishment of Community-wide interest representation bodies in multi-national groups of undertakings.

- Now that the EWC Directive is in place European Works Councils have to be established and concrete information and consultation rights for employees have to be laid down for more than 2,400 Community-scale undertakings.
- The management's basic obligation to provide information is stipulated in the EWC Directive. Topics on which information has to be provided and consultation procedures be organised include:
 - > progress of business and perspectives of the group of undertakings,
 - > structure of the undertaking, its economic and financial situation as well as prospective development of business, production and sales,
 - > situation and foreseeable developments in employment,
 - > investments and substantial changes concerning organisation,
 - > introduction of new working methods and manufacturing processes,
 - > relocations of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof,

> collective redundancies.

- Information and consultation (hearing) are cornerstones for the work of the European Works Council. Employee participation as demanded by the trade unions since the 1970ies, is not regulated by the EWC Directive. It remains on the European trade union movement's list of items to be achieved.
- Information within the meaning of the EWC Directive refers to the management's obligation to report on an undertaking's current situation and make forecasts for future development. Management has to inform the European Works Council on these issues within a framework and procedure to be negotiated.
- Information naturally also means enabling and engineering the exchange of information between employee representation bodies in different locations and countries.
- In terms of the Directive consultation means that the management shall grant the European Works Council the right to be heard. The Directive requires an »exchange of opinions« and the »establishment« of dialogue between employees' representatives and management.
- Contrary to some national works councils and trade union representative bodies in establishments, the European Works Council does not enjoy far-reaching rights. Undertakings to date do not require the EWC's agreement on their decisions.

An agreement to be concluded by employees' representatives and the management, i.e. by a so-called »Special Negotiating Body« (SNB), shall lay down how a future European Works Council is to be structured and how information and consultation procedures, i.e. concrete transnational employee participation in the undertakings policy, will be established in the group of undertakings.

- In accordance with the stipulations of the EU Directive respective national EWC regulations primarily have to lay down procedural rules for the establishment of a EWC.
- In the event that the management fails to conclude an agreement within three years, the Community Directive provides for minimum requirements for the establishment of a European Works Council »by act of law«.

CHAPTER 1

Questions and Answers on the European Works Council

1. National Implementation of the Community Directive on the Establishment of a European Works Council (EWC)

What is the main aim of the Community Directive on the Establishment of a EWC?

- The Community Directive 94/45/EC provides for cross-border information and consultation rights for employees and their interest representation bodies of undertakings and groups of undertakings having establishments in several European countries.
- The Council Directive 94/45/EC of 22 September 1994 »on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees« requires Member States to implement the stipulations therein in national law by 22 September, 1996.
- To download the full wording of the Directive from the website of the European Commission under the category: labour law, European Works Council, go to: http://ec.europa.eu/employment_social/labour_law/documentation_de.htm.

What does »implementation in national law« mean?

- Directives adopted by the Commission oblige Member States to implement stipulations contained therein in their respective national legal systems. Thus, they are not implemented directly in the legal systems of the Member States but adapted to the national particularities and transposed into national law. This procedure was also applied to the EWC Directive.
- According to Directive 94/45 the Member States had a maximum of two years to pass binding rules for undertakings within their sovereign territory. Notwithstanding common practice, the Community requires a binding agreement only on the part of national social partners to implement the EWC Directive where such a procedure is consistent with national practice.
- General conditions for the establishment of European Works Councils differ in detail in different countries, i.e. in those cases where the European legislator has granted Member States leeway for the necessary adaptation to national peculiarities. The basic rules established by the Directive, however, must be reflected in all national regulations.

What do national legislations on European Works Councils contain?

- In accordance with the standards set out by the Community Directive, respective national EWC regulations primarily have to provide procedural rules for the establishment of a EWC.
- Where negotiations between central management and employees' representatives are not completed by a certain deadline, material stipulations for compulsory establishment of a »European Works Council by act of law« apply.
- These subsidiary rules on a statutory EWC have to comply with the stipulations laid down in the appendix to the Community Directive in all national EWC laws.

Legislation of which country applies to the establishment of a EWC?

- In principle, the procedural rules of the country on the territory of which the central management of a group is located shall apply to the establishment of a EWC.

- Labour law regulations of the country from which the respective representatives originate are applied to appoint employees' representatives to the Special Negotiating Body (SNB) for the establishment of a EWC, as well as to appoint members to the EWC. The same applies to the legal status (in particular to special leave-of-absence and protection rules) of the employees' representatives.

Was the Community Directive transposed into Austrian law?

- In October 1996, the Directive on the EWC establishment was transposed into Austrian labour law by means of a comprehensive amendment to the Labour Constitution Act (Part V, European statutory framework of the rights of employees at their place of work, Art. 171-207 Labour Constitution Act).
- The complete wording is attached to this publication.

How was the Community Directive transposed into the legislation of other Member States?

- In all the 30 Member States of the European Union and the EEA (EU Member States plus Norway, Iceland, Liechtenstein) which the EWC Directive concerns, it was transposed into national law as follows:
- Denmark, Sweden, Finland, Ireland, Germany, Spain, France, Greece, Luxemburg, Portugal, the Netherlands and Austria passed separate EWC acts before September 1996;
- In Norway, Belgium and Italy the Directive was implemented through collective treaties established by the national social partners and corresponding supporting laws were passed.
- Great Britain which accepted the European Social Protocol at a later date, transposed the EWC Directive into national law by means of a regulation in January 2000.
- The new Member States which accessed the European Union with the two enlargement rounds in 2004 and 2007 transposed the stipulations of the Community Directive into national labour law at their respective dates of accession, at the same time as implementing the entire European social law.

How to get the respective legal documents from the other countries?

- Establishment and work of European Works Councils are usually based on the law of the country the headquarters of a group of undertakings are located in, which means that knowledge of relevant laws and collective treaties is important.
- The European Commission has translated the wordings of national implementations into all Community languages. These national EWC texts can be downloaded from the internet on the following website: www.euro-betriebsrat.de/ebr/931.php

2. Scope of the EWC Directive

To which countries does the EWC Directive apply?

- The EWC directive applies to all 30 Member States of the European Economic Area (EEA), i.e. all 27 Member States of the European Union (EU) plus Norway, Iceland and Liechtenstein. All of these countries must pass national EWC laws in line with the Directive 94/45.

Which undertakings and groups of undertakings are affected by the EWC Directive?

- Whether or not a group comes under the EWC Directive depends on the size of the undertaking as well as the cross-border character of its business activities in the countries within the scope of the Directive.

- The size of the workforce is considered a key parameter for establishing a EWC or not. The Community Directive applies to all undertakings in EU/EEA Member States which have, in the past two years, employed an average of more than 1,000 employees, a minimum of 150 of whom each in two different countries.
- The same applies to groups of undertakings with a total of at least 1,000 employees, including at least two undertakings in different countries with 150 employees each.

What does a group of undertakings refer to within the meaning of the Community Directive?

- In terms of the EWC a more comprehensive term of group applies than in other stipulations of Austrian law. Each group of undertakings consisting of a controlling undertaking and a controlled undertaking is therefore deemed a group.
- Controlling undertaking means an undertaking which can exercise a dominant influence over another undertaking by virtue of ownership, financial participation or the rules which govern it.
- A controlling relationship is presumed, where an undertaking
 - > can directly or indirectly appoint more than 50 percent of the members of that undertaking's administrative, management or supervisory body.
 - > or controls a majority of the votes attached to that undertaking's issued share capital;
 - > or holds a majority of another undertaking's subscribed capital.
- The relationship is deemed to be controlling provided there is no proof to the contrary.

Do the headquarters of the respective group of undertakings have to be located in the European Union in order to establish a EWC?

- No, a EWC has to be established even where the central management of the undertaking or group of undertakings is based outside the European Union or the EEA countries (e.g. in the USA, Japan, Switzerland or Russia) yet still fulfils the prerequisites (more than 1,000 employees in the European Union/EEA and 150 employees in each of at least two Member States).
- In these cases the undertaking or establishment appointed European headquarters or, in the absence of explicit »European headquarters« of a group, the management of the establishment/undertaking with the highest number of employees within the EUR/EEA is deemed the central management.
- The national law applicable to the establishment of a EWC depends on this regulation.

Can locations outside the European Union/EEA also be part of a EWC?

- Based on a unanimous decision taken by central management and the Special Negotiating Body, the mandate of the EWC (according to the stipulations of the Labour Constitution Act) may be extended to locations beyond the scope of the Community Directive which are either granted full rights or observer status.
- The same applies to acceptance to the Special Negotiating Body.
- In Austria this is significant for locations in Switzerland but also for those countries currently negotiating for accession to the EU.

Based on which rules is the number of employees determined?

- To determine the number of employees the average workforce of the past two years, including part-time employees, has to be used.
- The two years start with the date of the valid request to establish a Special Negotiating Body.
- The term of employee as defined in respective national labour legislations shall apply. For Austrian undertakings the term »employee« as defined in the Labour Constitution Act for the election of employees' representatives applies. Homeworkers and family members not eligible for the employee representation body shall not be considered when determining the number of employees of an Austrian establishment.
- The central or local management, upon request, shall inform employees' representatives about whether these key parameters are met within the entire undertaking or group of undertakings.

Are purely financial participations in Austria also within the scope of the European statutory framework of the rights of employees at their place of work?

- According to the European statutory framework of the rights of employees at their place of work of the Labour Constitution Act (Art. 176 no.6) purely financial participations of credit institutions, other financial institutions as well as insurance and venture capital companies cannot be controlling undertakings within the terms of the EWC Directive.

What will happen to existing agreements with undertakings?

- Subject to certain conditions in accordance with Article 13 of the Community Directive, EWC agreements, concluded between management and employees' representatives prior to entering into force of the national EWC laws may continue to be in force once national EWC laws have entered into force, even if the minimum standards of the Directive have not been complied with.
- The stipulations of the Directive do not apply to these so-called »Article 13 agreements« unless they are terminated or expire and a new agreement consistent with the Community Directive is concluded.
- Upon expiry of the agreement the parties to the agreement may decide jointly to renew it. Otherwise the stipulations of the Community Directive or the respective national EWC laws apply.
- As a condition for existing agreements to be protected they must apply to all employees in an undertaking (or a group of undertakings) and must provide for information and consultation across national borders.

3. Initiation of EWC-Agreement Negotiations**How to initiate EWC negotiations?**

- Usually the employee side makes a request to negotiate establishment of a EWC; in some cases central management of a group of undertakings takes the initiative.
- In the event that employees' representatives become active, they have to prepare "requests to take up negotiations on the establishment of a European Works Council" addressed to the management in at least two Member States. These two or more requests have to be made by 100 employees each or their interest representation bodies and submitted directly to central management or local managements.
- Each request received by a local management has to be forwarded to central management without delay. Submission of the second request marks the start for the procedure to establish a EWC in the group and a deadline is set.

- Central management must ask employees' representatives in the individual countries to send delegates to the "Special Negotiating Body" in accordance with the applicable EWC laws so that negotiations on an agreement to regulate establishment of a EWC can be taken up without delay.

Is there a fixed time-frame for negotiations on the establishment of a EWC?

- Following submission of the request by the employees or their representatives
 - > the management is given six months to start negotiations
 - > and another three years to reach an agreement with employees' representatives on the establishment of a EWC.
- Upon expiry of these deadlines a "EWC by act of law" has to be established according to the so-called »subsidiary requirements" of the Annex of the applicable national EWC act.
- These stipulations oblige the undertaking to establish a "EWC by act of law" and to grant it certain minimum rights.

What happens if an undertaking refuses to negotiate a EWC?

- The Community Directive makes it difficult for managements to unnecessarily delay the start of negotiations or to block them entirely.
- The undertaking may delay the start of negotiations for no more than six months as of the submission of a valid request. Otherwise the EWC Directive provides for the immediate establishment of a »EWC by act of law« based on the »subsidiary requirements« upon expiry of this deadline.

What happens if negotiations do not arrive at an agreement between employees and management?

- If no agreement on the establishment of a EWC has been signed three years after the employees' submission of the request, the EWC Directive provides for the application of the »subsidiary requirements« (EWC by act of law), which are laid down in the respective national EWC laws.

What exactly do »subsidiary requirements« mean?

- The »subsidiary requirements« are an important part of the EWC Directive. These requirements are not subsidiary, because they are part of the Directive's appendix. »Subsidiary« rather means that they shall apply only if no agreement is reached by negotiations or the undertaking refuses to take up negotiations.
- Subsidiary requirements are statutory standards for the establishment of a EWC. They define important specifications for the composition, organisation and structure of the EWC as well as for cost-bearing, provision of material requirements, etc. Moreover, they list all the issues which the group's management must inform and consult the EWC on.
- From the employees' representatives' perspective they guarantee, inter alia, certain minimum rights to information and consultation in the undertaking, in those cases where the central management is not willing to negotiate or where negotiations fail.

Are there fixed contents for negotiations on the establishment of a EWC?

- The Community Directive does not specify the content of the individual articles of the EWC agreement to be negotiated.
- The negotiating parties decide on the final form of the EWC, its composition and organisation, as well as on the extent of information and consultation procedures: So each undertaking may freely decide whether the EWC will meet five times or once a year, whether it will consist of five or 50 persons.

- The »subsidiary requirements« laid down in the appendix to the Directive, however, may be used by the employees as a guideline for minimum rights in the EWC negotiations, as the standards contained therein have to be established at any rate upon expiry of the provided negotiating period. As a rule the agreements concluded in line with the specific situation and practice of the undertaking are better.

What is the significance of the »subsidiary requirements« during the EWC negotiations?

- These requirements serve as a pledge during the EWC negotiations, in order to agree upon the widest possible scope of action for the EWC and to specify stipulations for individual undertakings.
- Where superior conditions cannot be negotiated, the subsidiary requirements oblige an undertaking to nevertheless establish a EWC with minimum standards.
- That is why the so-called »subsidiary requirements« are deemed the basis for negotiating the establishment of a EWC, which is to be improved according to the means available and the necessary practice of the undertaking, taking care not to undermine the latter.

4. Tasks of the »Special Negotiating Body« (SNB)

What are the tasks of the SNB?

- The task of the Special Negotiating Body (SNB) is to conclude a written agreement with central management on the establishment of a EWC, its structure and composition as well as to decide on a procedure for the information and consultation of employees.

Who is the SNB composed of?

- According to the Labour Constitution Act the SNB for groups of undertakings with registered headquarters in Austria consists of one representative from each Member State, the undertaking has employees in.
- The remaining members are determined on the basis of the ratio of the number of employees in one Member State and the number employees in the entire undertaking. The Austrian Labour Constitution Act stipulates that one additional member shall be sent to the SNB for at least 25 percent of the employees, two members for 50 percent and three additional delegates for 75 percent.
- For groups of enterprises with central headquarters in other Member States of the EU/EEA the ratios may differ. They are laid down in individual national EWC laws. Basically, however, the Community Directive stipulates that at least one representative per Member State which the group is represented in, shall be allowed.

What regulations are there regarding appointment of SNB members?

- Upon valid submission of a request to establish a EWC central management must ask the employees' representatives in all locations to appoint members to the SNB.
- The members appointed in accordance with the respective national EWC laws shall be communicated to central management and the local managements without delay. Following this central management shall invite members to constitute the SNB and to participate in first negotiations.

How are Austrian representatives delegated to an SNB?

- Austrian representatives in SNBs are appointed from among the members of the works council by decision of the highest-ranking body representing employees in the establishment or undertaking (group representatives, central works council, works committee, works council).
- In Austria, only members of a works council can be appointed delegates to the SNB, irrespective of whether central management is based in Austria or the EWC is to be established in another country. According to Articles 178, 179 of the Labour Constitution Act, officials or employees of respective voluntary or statutory bodies of interest representation may act as substitutes.

What about companies without a works council?

- If no works councils has been established in an Austrian establishment or undertaking no representatives can be delegated to the SNB or, consequently, the EWC.

Who is entitled to appoint representatives to the SNB (and subsequently to the EWC) in Austria?

- Appointments are decided by the works committee. Where an undertaking has no works committee the works council shall assume this task.
- Where there are several establishments in a group which do not belong to the same undertaking in Austria, the appointment decision is taken by an assembly of the members of the works councils or works committees of these establishments.
- In undertakings appointments are decided by the Central Works Council (CWC). If no CWC has been established an assembly of works committees' representing the members of the works councils in the establishment shall decide.
- In the event that there are several undertakings and thus several CWCs in Austria an assembly of the Central Works Councils established in the undertakings shall take the decision.
- Where apart from one or several CWCs there is at least one works committee or works council not represented in a CWC, their chairpersons and deputies are called to the assembly of CWC members and are thus deemed CWC members.
- In groups of undertakings the Austrian members of the Special Negotiating Body are to be appointed by decision of the body representing the group. Where there is a body representing the group the above appointment procedure for undertakings shall be applied.
- In the event that there is a CWC, works council or works committee not represented by the body representing the group, the chairmen and deputies of the CWC or works council shall be included and are deemed members of the body representing the group.

How are representatives from other countries delegated to an SNB?

- For appointment, delegation or election of members from other EU/EEA countries the respective national regulations, which may differ significantly, apply. They are laid down in individual national EWC laws.

How to effect the constitution of a SNB?

- Following the announcement of the members to be appointed in accordance with the national EWC laws central management shall convene a constituting meeting of the SNB.
- After this meeting, during which a chairman and a deputy chairman must be elected from among the SNB members and rules of procedure are defined, negotiations on the establishment of a EWC shall be taken up without delay.

Who appropriates funds for the work of the Special Negotiating Body?

- Central group management shall provide all conditions necessary for the work of the SNB and appropriate the required funds.
- In particular, it has to bear the cost of required meetings (including travel and accommodation costs for SNB members, as well as interpreting and translating costs, and costs for at least one expert).

How does the SNB work?

- The SNB is entitled to convene a meeting before the negotiations with central management and have experts of its choice support it in its work.
- The body constitutes a quorum if at least half of the members are present; as a rule a simple majority of votes cast is sufficient for decisions.

How long does the work of the SNB take?

- The SNB's work starts with the date of its constitution.
- The work of the SNB ends
 - > where the undertaking or group of undertakings no longer fulfils the conditions for the establishment of a EWC,
 - > where the SNB decides by a two thirds majority not to commence negotiations on the conclusion of a EWC agreement or to terminate ongoing negotiations,
 - > where a court declares establishment of the Special Negotiating Body invalid (a suit has to be filed not later than one month after its constitution),
 - > if a EWC agreement has been concluded,
 - > or if a EWC has to be established by act of law.

What kind of EWC agreement can the SNB conclude?

- Agreements concluded by the Special Negotiating Body have to regulate the following areas in any event:
 - > the establishments and undertakings of the Community-scale group covered by the agreement, as well as any establishments and undertakings located in non-Member States, provided they are to be included in the scope of application;
 - > composition of the EWC, number of members, allocation of seats and the term of office including the impact of significant changes in the corporate structure, as well as of significant changes in the number of employees in the group of undertakings,
 - > topics, competences, as well as the type of information and consultation procedures,
 - > venue, frequency and duration of meetings,
 - > financial and material resources to be allocated to the European Works Council,
 - > duration of the agreement and the procedure to be applied for its renegotiation.

Can the EWC arrive at decisions other than establishment of a EWC?

- Yes, the negotiating body may decide by a two-thirds majority not to establish a European Works Council. In this case, a new request to set up a Special Negotiating Body may be submitted no sooner than two years after this decision was taken.
- The SNB may also decide to set up a different procedure to inform and consult employees. In this case, the agreement must stipulate the conditions under which the employees have the right to meet to discuss the information conveyed to them.

5. »EWC by Act of Law« (Application of subsidiary requirements)**When has a EWC to be established by act of law?**

- In accordance with the Community Directive, a EWC has to be established by act of law,
 - > where central management and the Special Negotiating Body so decide, or
 - > or where central management refuses to commence negotiations or does not commence negotiations within six months of the of first request,
 - > or where it is impossible to come to an agreement as described above within three years of the date of this request.

How is a EWC composed?

- For groups of undertakings with headquarters in Austria the Austrian Labour Constitution Act applies which stipulates that the EWC must consist of a minimum of three and a maximum of 30 members, composed as follows:
 - > one representative from each Member State where one or several establishments of the undertaking or one or several undertakings of the Community-scale group are located.
 - > Additional representatives are determined according to the number of employees in the group in one Member State in relation to the number of employees in the entire undertaking (in the entire group of undertakings).
 - > For at least 20 percent one additional member, for at least 30 percent three, for at least 40 percent five, for at least 50 percent seven, for at least 60 percent nine, for at least 70 percent eleven and for at least 80 percent thirteen additional members shall be appointed.
- For Community-scale groups with headquarters in another country within the geographical scope of the Community Directive, the stipulations of the respective national EWC laws apply.

How are Austrian members delegated??

- Austrian members are appointed on the same principle applied to the Special Negotiating Body (as a rule by the highest-ranking body representing the employees), however, officials or employees of a voluntary or statutory body of interest representation may become EWC members only if they are members of the works councils according to Art. 53 (4) of the Labour Constitution Act.

How is the EWC formally established?

- Central management shall convene a constituting meeting without delay where the members of the EWC shall elect a chairperson and one or several vice-chairpersons. The EWC is represented by the chairperson or in the event that she/he is prevented, by the vice-chairperson. In individual cases representation by other members is possible.

- The EWC can decide, by a majority of votes, to set up rules of procedure. Where justified by the number of members a select committee consisting of the chairperson and a maximum of two further representatives shall be formed.

What are the EWC's competences?

- The EWC is entitled to be informed and consulted on all issues relating to the economic, social, health and cultural interests of the employees of at least two of the undertaking's establishments or at least two undertakings belonging to the Community-scale group in different Member States.
- It has the right to meet with central management at least once a year on the basis of a central management report on business development and perspectives of the group of undertakings (the undertaking).

Which issues does the EWC's information relate to?

- The EWC's competences are based on the stipulations set in the appendix of the Community Directive, according to which it shall be informed and consulted on the following group issues:
 - > structure, economic and financial situation,
 - > anticipated development of business, production and sales,
 - > situation and anticipated trend in employment,
 - > investments,
 - > substantial changes in organization, introduction of new working methods or production processes,
 - > transfers of production and mergers,
 - > cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

What are the EWC select committee's competences?

- The select committee has the right to be informed on exceptional circumstances having a substantial impact on the employees' interests.
- It has the right to meet with central management or other appropriate levels of management so as to be informed and consulted on the measures.
- Where no such committee exists the EWC takes over these competences.

What is the term of a EWC by act of law?

- According to the Austrian Labour Constitution Act the term of a European Works Council is four years as of the date of its establishment.
- Four years after establishment of the European Works Council it may decide to negotiate an agreement to establish a EWC or to continue to apply the subsidiary requirements on the establishment of a EWC by act of law.
- If the European Works Councils decides to negotiate an agreement, the stipulations relating to the Special Negotiating Body apply.
- European Works Councils established by act of law in other European countries are governed by respective national stipulations on the term of a EWC.

Who finances the EWC?

- For groups of undertakings with headquarters in Austria the EWC and its work are basically financed by central management
- The EWC, in order to properly fulfill its tasks, has to receive reasonable financial and material resources in line with the size of the undertaking and the needs of the EWC.
- Administrative costs to properly fulfill its tasks, above all the cost of organising and convening meetings, including interpretation and translation costs, accommodation and travel expenses of EWC members, as well as costs of at least one expert designated by the EWC shall be met by central management (or local managements of undertakings or establishments).
- For Community-scale groups with headquarters in another country within the geographical scope of the Community Directive, the stipulations of the respective national EWC laws apply.

To what extent do the »subsidiary requirements« of the »EWC by act of law« represent the basis for negotiations to establish a EWC at a higher level?

- The »subsidiary requirements« laid down in the appendix of the Directive are not statutory requirements for EWCs negotiated in a regular procedure. The Community Directive does not specify the content of individual articles of the EWC agreement to be negotiated.
- From the employees' point of view they must be regarded as a minimum guide to the EWC standards to be negotiated (composition and organisation, scope of information and consultation procedures, etc.).
- Thus, the so-called »subsidiary requirements« are deemed the basis for negotiating establishment of a EWC to be improved according to the possibilities available and the necessary practice of the undertaking, which, however, are not to be undermined.

6. Legal Status of Employees' Representatives in the EWC

When does the EWC mandate begin and end?

- Membership for Austrian employees' representatives in the EWC (as well as in the Special Negotiating Body) starts with the announcement of the appointment decision.
- Their mandate ends with termination of membership in the works council, with resignation or dismissal by the nominating body, if the establishment or undertaking is withdrawn from the Community-scale group or if the EWC has come to the end of its term.

What is the legal status of EWC members?

- The work of Austrian employees' representatives belonging to the SNB, EWC or EWC by act of law is governed, in principle, by the same stipulations as those which apply to the work of works council members in establishments at the local level or in undertakings at the national level.
- This means that their voluntary work as EWC members must not be restricted and they must not be discriminated with regard to remuneration and career opportunities.
- The members of EWC bodies shall be provided with the funds required for exercising their duties, in particular they are to be granted the required leave of absence with continued payment of their wages. In addition, the protection clauses, in particular the usual stipulations on protection against dismissal and lay-off apply.
- For EWC members in subsidiaries of the group in other Member States, the protection and leave-of-absence stipulations as laid down in the respective national EWC laws of these countries apply.

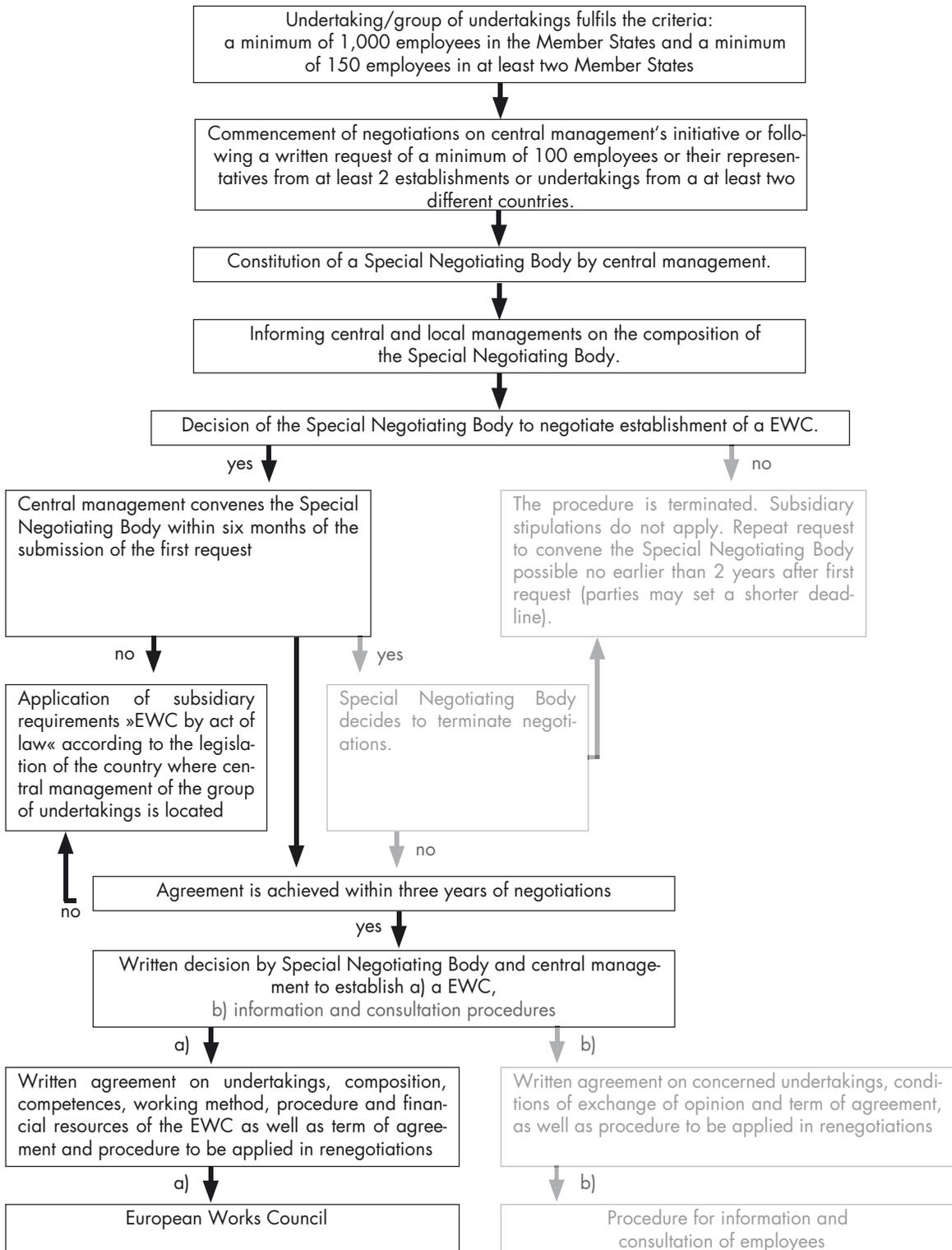
To what extent are EWC members subject to confidentiality?

- Members of a Special Negotiating Body, a EWC or a »EWC by act of law«, as well as supporting experts shall comply with the rules of confidentiality as laid down in the respective national EWC laws.
- According to Article 115 (4) of the Labour Constitution Act, Austrian EWC members are obliged to keep confidential any business and corporate secrets they have come to know or have been explicitly informed about in the exercise of their office. This obligation remains in force beyond their term of office.
- Confidentiality related to the work of the EWC does not apply where local employees' representatives have to be informed on the content of information meetings and results of consultations.
- The rules of confidentiality differ from country to country. It is therefore important to comply with the respective stipulations in national EWC laws.

CHAPTER 2

Milestones on the Way to a European Works Council

1. Course of Action in the Establishment of a European Works Council



2. Significant Phases in the Establishment and Development of European Works Councils

Phase 1: International information on the EWC at national and the international level

- Getting to know the Community Directive on the Establishment of a EWC and a EWC by act of law in the national legislation applicable to the group
- Identifying contact persons in national trade unions and European trade union federations, establishing contact and involving them in preliminary work
- Informing employees' representatives and employees (where applicable) on the possible establishment of a EWC (e.g. planning information and training events in cooperation with trade unions)
- Appointing EWC officials and determining responsibilities in the works council for the preparation of the EWC establishment.

Phase 2: Gathering information at the national and the international level

- Gathering information on the group, its corporate strategies and the European locations of the undertaking in the various countries
- Gathering information on trade unions and interest representation bodies in the countries to be involved in a future EWC
- Identifying structures of the interest representation bodies in the establishments in various locations and establishing first international contacts, where possible
- Preparing first international contact meeting of employees' representatives in the group and reaching a consensus on the establishment of a EWC.

Phase 3: Initiating negotiations with management

- Getting to know the rules of nomination for Austrian delegates as laid down by the Labour Constitution Act and making preparations for sending delegates to participate in negotiations
- Submitting to the management a request to take up negotiations on the establishment of a EWC in agreement with the European partners in the group
- Organising a further international contact meeting and deciding, in cooperation with the trade unions, on the main clauses of an employee draft for a EWC agreement
- Setting up a negotiating body to negotiate with management and, in close cooperation with the trade unions, pushing the conclusion of the agreement

Phase 4: Establishment of the European Works Council

- Establishing the EWC including election of a chairperson and vice-chairperson, setting up an executive or a steering committee
- Clarifying practical organisational EWC issues with management (such as keeping the minutes, preparing agenda, communication forms)
- Specifying content and topics of future EWC work and setting up the main features of a first working programme
- Securing participation of trade unions and maintaining close contact with employees' representatives and trade unions

Phase 5: Organising working methods for the European Works Council

- Developing infrastructure for effective EWC work, ensuring consultation services and support from trade unions and experts
- Promoting networking of EWC members throughout Europe and ensuring the flow of information within the EWC as well as to the trade unions
- Determining »the rules of the EWC game« in the rules of procedure and clarifying issues concerning interpreters, agreement processes, etc.
- Developing training programmes for EWC members and a working programme for the EWC and the agenda for the next EWC meeting

3. Ten Milestones on the Way to a European Works Council

Milestone 1: Ensuring involvement of national and European trade unions in preparations for the establishment of the EWC

Harmonising activities for the establishment of a EWC with the trade unions

- The initiative to take up negotiations on the establishment of a EWC should be taken by the employees' representatives of the respective group, a European trade union association or the competent trade union of the country the European headquarters of the Community-scale undertaking are located in.
- Employees' representatives or company-based trade union representatives should not undertake any steps to establish a EWC or agree to the establishment of a EWC without consultation with and involvement of the competent European trade union association at sector level and the trade unions of the country the headquarters of the undertaking are based in.
- Where proposals to establish a EWC are made, the officials responsible for EWC matters in the competent trade union of the Austrian Trade Union Federation should be contacted. Furthermore, all other relevant bodies in the undertaking or in trade unions are to be informed and involved as far as possible.

Ensuring involvement of European trade union federations

- Information and involvement of the competent European sectoral trade union in the process have to be ensured by trade union organisations. International and European departments of trade unions in the Austrian Trade Union Federation (ÖGB) have excellent contacts with the officials responsible for EWC issues in relevant European trade associations.
- Moreover, if the group of undertakings is a mixed group, i.e. the employees work in different business sectors and are therefore organised in different trade unions belonging to different trade union federations, cooperation with all of these trade union federations should be achieved.

Milestone 2: Securing high standards through involvement of all trade unions Minimum standards for European Work Councils must be maintained

High standards in the EWC agreement are a good basis for future work

- Since the Community Directive is committed to the principle of »social partner autonomy« it contains only few binding requirements relating to the substance of a EWC. The social partners can therefore negotiate their own EWC model, in order to meet the specific requirements of the respective undertaking.

- This, however, should not create a situation where the minimum standards for a EWC - e.g. in the »subsidiary requirements« for a so-called »EWC by act of law« are undermined. Such minimum standards are intended for those cases where despite all efforts to establish a EWC negotiations are not commenced or the EWC agreement is not closed by the required deadline.

Taking care not to sign agreements containing bad standards

- Employers, who disapprove of a EWC very often pursue a strategy of employing very »flexible« information and consultation procedures containing vague definitions of content with little institutionalised shape. To counteract this strategy agreements not achieving the so-called »subsidiary requirements should not be signed.
- Thus, the »subsidiary requirements« provide a significant basis for negotiations for employer representatives in the »Special Negotiating Body« and should be regarded a standard to be improved during negotiations for the closing of a EWC agreement.

Ensuring high standards by involving trade unions

- Thus, everything depends on preparing negotiations with management well. Central management must be expected to work with excellent legal advisers and sometimes even consultants experienced in international legal acts during negotiations for the establishment of a EWC. It is therefore recommended that competent trade union organisations at the national and the international level are contacted at the earliest possible time to ensure their active involvement in the Special Negotiating Body.
- This is the only way to avail oneself of their rich experience gained during numerous previous negotiations for transnational agreements with groups of undertakings and in meetings with European Works Councils established in other undertakings.

Milestone 3: Spreading information on the planned establishment of a EWC in the undertaking and allocating responsibilities for EWC preparations

Creating acceptance for establishment of a EWC among employees and employees' representatives

- Any reservations and scepticism relating to the establishment of such a body, voiced by employees' representatives, must be looked at and discussed with the help of the trade unions. Reservations may be made on the grounds that the EWC has limited formal rights compared to the Austrian Labour Constitution Act, but also due to insufficient experience in communicating with representatives of other European labour relations and management cultures.
- Transparency in the establishment of the EWC and its work is a significant prerequisite for the EWC to be accepted by company-based interest representation bodies but also by the employees.

Organising information and training events on the EWC

- A special EWC information and training event can be organised with the support and participation of trade union EWC experts to explain the »added value« of transnational representation in the group, to achieve agreement on the joint establishment of a EWC and to draft first ideas on the further steps.
- It is also important to make clear,
 - a) that the EWC's activities are no cost-intensive travel and conference tourism, but an important first step toward transnational cooperation and participation of employees' representatives in transnational groups of undertakings
 - b) that the European Works Council is to supplement the bodies representing employees in the individual countries but not replace them. So the EWC neither interferes with the rights to information and consultation granted to employees and their representatives by national laws nor any other rights of employees and their representatives, unless such interference would cause improvement.

Defining responsibilities for the establishment of a EWC

- Establishment of a EWC should be initiated primarily by the chairperson of the central or group works council. Distribution of responsibilities and of tasks among employees' representatives for the EWC establishing phase must be clarified in the process.
- The employees' representatives concerned should be aware of the fact that establishment of a EWC is quite demanding. In addition to day-to-day business, preparation of EWC establishments is time-consuming and means that many new and demanding topics must be dealt with.
- Thus, a member of the works council with experience abroad and knowledge of foreign languages or an employees' representative from an undertaking experienced in EWC matters might supply important ideas and stimuli; they should therefore be involved in preparations at the earliest possible time and be appointed »EWC commissioner«. Consideration should be given to the establishment of a trans-locational EWC committee or a working group concerned with employee cooperation at international level.

Milestone 4: Gathering information on the group and its locations in Europe and setting up a profile for the group in cooperation with the trade union

Getting an overview of the profile of the undertaking/group of undertakings

- It is a central task of employees' representatives or persons responsible for the EWC to speedily acquire and prepare Europe-wide or global data on the group.
- From the very outset information must be gathered
 - > on (-) the structure, organisation, branches of the undertaking/group of undertakings, (-) the number of employees in the various locations in other European countries, (-) the type of product lines or business activities in the other countries, (-) working conditions and employee representation in other locations of the group; it is also important to know, where the group headquarters for Europe are located as well as who takes the most important decisions in the group and how?

Information on the group as a whole as well as on individual locations

- Furthermore, the following information on the group, gathered with the help of the local trade unions and competent European trade union federations, may be useful for the establishment of a EWC:
 - > What is the group profile for Europe and world-wide (distribution of production facilities, central/decentralised group organisation)?
 - > Which products are manufactured in which locations; are there parallel production facilities which might create competition between locations?
 - > How many employees are there in the various locations?
 - > Which business strategies are pursued on the European Single Market?
 - > Where are the most important European branches and production facilities of the group located and which countries have strategically significant locations (e.g. competence and research centres)?
 - > In which locations are there company-based or trade union employees' representatives?
 - > Are there any transnational contacts with colleagues in other countries and which countries would be involved in the establishment of a EWC?
 - > What type of management culture applies to the group and what can the management's attitude towards the establishment of a EWC be expected to be?

- According to the Community Directive central and local managements are obliged to provide information on structure and organisation, locations and the number of employees in the various locations.

Milestone 5: Knowledge of the most important legal provisions for the EWC in the Community Directive and the national EWC implementation acts.

Knowledge of the Community Directive and the Austrian implementation act are prerequisites

- Apart from the Community Directive on the EWC and the Austrian implementation of the EWC Directive in the Labour Constitution Act the legal basis for EWCs in other countries must also be studied carefully prior to establishment of a EWC.
- The full wording of the Community Directive on the establishment of a EWC and the Austrian EWC law implemented in the Labour Constitution Act (European statutory framework of the rights of employees at their place of work) is presented in Chapter II of this publication and may also be downloaded from the internet, e.g. from the website of the European Commission.

Establishment of a EWC requires knowledge of the EWC law in Austria and other EU Member States

- the relevant codes of practice laid down in the national EWC law of the country the group's central management is located in apply to the establishment of a EWC. This is why knowledge of the EWC law of this country is of special importance. Submission of the request to establish a EWC and negotiations and the subsidiary requirements applicable if the agreement cannot be concluded within the set time-frame are governed by the procedural rules of that country.
- Additional issues and individual stipulations in EWC laws of other countries are also important. They are, in principle, laid down in the respective national EWC acts: regulations on appointing employees' representatives to the CNB, calculation of numbers of employees in the individual Member States and all provisions regulating the legal status, in particular the leave-of-absence and protection regulations of the individual country representatives.
- It is therefore necessary to get to know the most important provisions of national EWC implementation acts - in particular appointment procedures for the SNB/EWC.
- It is often difficult to get an overview of the many different provisions. Even though the European Commission has had all national EWC acts translated into English and put on the Internet, a fast and concrete search may still be difficult. European trade union organisations and other union-related consultation institutions have compiled information material (see internet addresses in the appendix to this guide).
- It is recommended to also contact the person responsible for EWC matters in the competent local trade union. Through the European trade union network it is possible, particularly concerning questions about individual national EWC laws, to contact trade union lawyers in the various Member States.

Establishment of a EWC requires knowledge of the EWC law in Austria and other EU Member States

- The subsidiary requirements, applicable to an »EWC by act of law« if an agreement on the establishment of a EWC cannot be concluded within a set period of time, serve as basis for negotiations. EWC negotiators representing the employees may at any rate request application of these rights. They can be used as a benchmark for demands presented in the course of negotiations and should be considered minimum requirements. Agreements achieving a lower standard do not seem reasonable and should be avoided.
- Future members of the Special Negotiating Body should therefore know exactly which subsidiary requirements apply should negotiations fail. Their advantages and disadvantages for the employees' representatives must be known and analysed to decide whether they can be a serious alternative for any achievable negotiation result.
- It is therefore necessary to study in detail the »subsidiary requirements« of the EWC act of the country the central management is located in and the EWC law of which is applicable to the entire negotiations.

Milestone 6: Gathering information on trade unions and company-based employees' representatives' right to participate in other countries

Gathering information on company-based employees' representatives in other countries

- In order to build international contacts it is indispensable to study the cultural and political conditions in other countries.
- In the course of networking with employees' representatives and trade unionists from other countries, which is necessary for the establishment of a EWC, lack of knowledge about other trade unions' structures and company-based employees' representatives may foster misunderstandings.

Getting an overview of trade union representations in other locations/countries

- With the help of national and European trade unions it is possible to gather the following information about company-based and trade-union representatives in other countries before contacting colleagues in other countries, seeing as this information is important for the establishment of a EWC in one's own group. The following questions should be focused on, among others:
 - > Which trade unions are represented in the other group locations/countries? What is their structure? What influence do they have on the undertaking/the business sector?
 - > Are there employees' representatives similar to a works council? Is a trade union represented in the establishment/undertaking or - as in numerous EU countries - are both bodies represented? What are the rights of participation of these employees' representatives? Who will be the decisive player if a EWC is established and should therefore be contacted?
 - > What is the social and political situation in these countries? What type of European labour relations culture can be identified in the countries involved? (Northern European corporatism, the Central European social partner model, Anglo-Saxon pluralism, South European »conflict« model?)
 - > Which parts of the employment conditions (wages, working hours, occupational safety) are regulated by law and which by collective treaties?

Milestone 7: Initiating transnational contacts and developing first strategic considerations regarding the establishment of a EWC

Building first contacts with employees' representatives in other countries

- Having gathered initial information about the international structure of the group and the trade unions and employees' representatives throughout Europe, first contacts with colleagues in other countries can be established with the help of national and European trade unions.
- First and foremost it is important to find out in which of the countries there are employees' representatives at the level of establishments or undertakings and whether they are, in principle, interested in the establishment of a EWC. The next step is to organise a first informal meeting.
- Having built first transnational contacts with trade unionists and employees' representatives in the group two basic questions should be clarified prior to a first meeting of trade union and employees' representatives.
 - 1) What is the management's basic attitude towards the establishment of a transnational body representing employees?
 - 2) At which level of the undertaking/group of undertakings should the EWC be established?

Finding out about the management's attitude towards possible establishment of a EWC

- Concerning the first question it is necessary to find out whether management is willing to keep negotiations brief and come to an agreement or whether long-winded negotiations are to be expected. This decides on the strategy to be applied during negotiations with management. According to the Community Directive the following approaches are possible to achieve a European Works Council:
 - > Closure of a EWC agreement, which provides for transnational information and consultation of employees, is valid for all employees of the undertaking and has been negotiated by central management and the so-called »Special Negotiating Body« consisting of employees' representatives from the countries the group is represented in.
 - > Application of the »subsidiary requirements« as laid down in the appendix to the Directive, should negotiations with the employer fail (»EWC by act of law«).

Settling information and consultation rights at the appropriate group level

- For the second question it is important to find out at which level of the undertaking or group of undertakings information and consultation rights would make sense.
 - > The European Works Council, in principle, should be established at the top of an undertaking or group of undertakings and comprise the employees of all undertakings and establishments in the group in all countries covered by the agreement. This is stipulated by the Directive and is also in line with the intention of creating a transnational body of interest representation at the level central decisions for the undertakings and the group are taken at.
 - > Establishment of a EWC at the top of the group, however, should not prevent exchange of information at the divisional and sectoral level of the undertaking. This is also important for mixed groups active in entirely different sectors and lines of business and managed independently of each other.
 - > In such cases it may make more sense to establish several (maybe smaller) European Works Councils for individual lines of business instead of one comprehensive central EWC at the top of the group. Of course, such »divisioning« of the EWC requires the management's approval. Divisional European Works Councils are ideally united in an »overall EWC« which may consist only of the chairpersons of the individual divisional EWCs and their deputies.

Milestone 8: Planning a first international employees' meeting: Getting together, building trust, coming to an agreement on the establishment of a EWC

International meeting of employees' representatives prior to the establishment of a EWC

- Prior to taking up negotiations with management employees' representatives from the different countries the group has locations in should convene at the European level for at least one independent meeting. Trade unions can make valuable contributions to organising such a meeting.
- In addition to getting to know each other, first agreements on the aims and the working method of the EWC should be achieved. Here, the basic principle applies: Developing clear ideas on transnational cooperation within the EWC at the beginning will increase the efficiency of the EWC.
- After all, the aim of such a meeting is to come to an agreement on submitting a request on the establishment of a EWC and to discuss a realistic schedule for negotiations with management.

Employees' representatives in the group should get to know each other

- At the first international meeting the following issues should be discussed for each country the subsidiaries of the group are located in.
 - > Which products are produced or which services rendered?

- > What is the economic situation in the country and how many employees are there in the individual establishments/undertakings in the country?
- > Has the establishment been restructured recently? What are the plans for the future?
- > Are there employees' representatives in the establishments? What is their structure? Which trade unions are active in the establishments? How do trade union and works council work together?
- > What is the relationship between management and trade union or works council? Are there any specific social problems in the establishment?
- > What topics should have priority at future EWC meetings?

Arriving at a consensus on the main elements of a EWC agreement in time

- One of the main purposes of a European meeting should be to develop the main elements of a joint EWC draft agreement with management.
- It is of the utmost importance to prepare this meeting at European level really well. A concept for an agreement based on existing EWC agreements should be prepared together with the competent trade unions prior to the meeting.
- The draft should go far beyond the subsidiary requirements (i.e. the minimum standards). The draft may serve as a basis for discussion and should be translated into the languages represented in the group.

Milestone 9: Strategy for dealing with blockages at the central management level: Creating facts and increasing pressure by submitting the request

Submission of the request to establish a EWC calls for the management to act

- As a first step, a lasting cooperation of employees' representatives/trade unions should be established at European level. To begin with it is necessary to pursue one's own plans and at any rate submit a valid and transparent request to establish a EWC.
- The undertaking is thus obliged (1) to commence negotiations with employees' representatives and (2) to establish by negotiations and within a certain period of time a EWC in the group with transnational information and consultation rights.
- A request is deemed to be submitted if employees' representatives from at least two countries representing a minimum of 100 employees in an establishment or undertaking of the group, send a letter to local and/or central management requesting establishment of a European Works Council. Requests may also be made by means of a joint letter signed by several employees' representatives from different countries.
- If central management, following due submission of the request, does not commence negotiations within six months, in accordance with the respective national EWC laws, a «EWC by act of law» providing for the minimum rights in line with the Community Directive has to be established without delay. There are several cases where, faced with establishment of a EWC by act of law without any room for negotiations, management was willing to seriously discuss establishment of a EWC.
- First of all it is important to convince the management opposing a EWC with arguments in favour. Practical examples of successful cooperation between central management and EWC in other major undertakings can be used to counter possible preconceptions and resentment.
- It should also be pointed out that the Community Directive provides for sufficient leeway to tailor future information and consultation procedures to the specific needs of the group. Establishment of a EWC by act of law may increase the costs for participants, interpreters, travelling and experts.

- Quite often the various management levels and also central management hold different views on the establishment of a EWC and its possible benefit for the group. Experience has shown that group managers expect to profit from a EWC in several fields:
 - > Information from EWC delegates to central management are authentic and can be used to check the reports local managements in individual countries submit to the central management;
 - > Moreover, the EWC can be used to convince employees' representatives from countries with conflict-oriented labour-relations cultures of the consensus-oriented negotiation culture in the group's home country.
 - > Ultimately, the EWC can become a tool the management may use to foster understanding among employees' representatives in the case of restructuring and thus avoid the risk of cost-intensive labour conflicts in the individual locations.

When it comes to the crunch: Increase trade union pressure on management

- In addition, pressure on management can be increased by publications in the media or on trade union websites, by petitions or legal action (for example, if the management refuses to make the required information public).
- It is recommended to strictly coordinate the activities and campaigns of European and national trade unions which can be organised in the form of »days of action« at group locations, to generate publicity. Experience to the effect for groups has been made in several business sectors.

Milestone 10: Preparing and planning the Special Negotiating Body (SNB) Determining the main elements of a EWC agreement from the employees' viewpoint

The deadline for establishment of a EWC is set only once the request has been submitted

- In a first step employees' representatives request establishment of a Special Negotiating Body (SNB). A request is valid if it has been signed by at least 100 employees or their representatives from at least two European countries and sent to central management (»central management of the controlling undertaking«).
- A request is deemed to be submitted if employees' representatives from at least two countries, representing a minimum of 100 employees in an establishment or undertaking of the group, send a letter to local und/or central management requesting establishment of a European Works Council. Requests may also be made in a joint letter signed by several employees' representatives from different countries.
- Once the request has been submitted correctly deadlines are set within which a »EWC by act of law« can be established even without agreement with central management. It can be established after a six-month period if negotiations are not taken up or of no agreement has been achieved after three years.

Arriving at a consensus on the main elements of a EWC agreement in time

- It is of the utmost importance to prepare this meeting at the European level really well. To ensure efficiency of the SNB it is important to agree on the main elements of the draft agreement and to come to an understanding on the strategy to be pursued during negotiations with central management with the aim to achieve a swift and expedient agreement on the establishment of a EWC.
- A concept should be agreed together with the competent trade unions on how to arrive at an agreement based on existing EWC agreements and internal investigations may be made about the scope action for the negotiations with the management prior to the meeting.
- The draft should aim at the highest possible standard far beyond the subsidiary requirements, i.e. the minimum standards of a »EWC by act of law«. The draft may serve as a basis for discussion and should be translated into several languages, to enable a well-founded discussion and understanding among the representatives from different countries.

There are no templates for the content of a EWC agreement

- Europe-wide negotiation on transnational information and consultation rights in Community-scale groups of undertakings is mostly new ground for many trade unionists and employees' representatives.
- The different legal bases of employee participation in the establishments and undertakings in the different European countries have to be taken into consideration along with the different traditions of relationship and cooperation among employees' representatives and trade unions.
- Furthermore, allowance must be made in all negotiations concerning EWCs for the special structures of the undertaking or group of undertakings. This is why there is no uniform scheme for EWC agreements.

There are, however, certain elements that should be contained in every EWC agreement

- Even though there is no standardised agreement template to use for EWC agreements, there are certain elements that have to be taken into consideration for all negotiations and from the employees' representatives' viewpoint should be contained in the agreement one way or another.
- The Community Directive does not specify standards for individual stipulations in the EWC agreement to be negotiated. The negotiating parties decide on the final form of the EWC, its composition and organisation as well as the extent of information and consultation procedures:
- Even a »good« EWC agreement does not guarantee successful practical work of the future EWC, in most cases, however, it is the required basis.
- Ultimately neither the Community Directive nor the national EWC law, but the EWC agreement negotiated by the Special Negotiating Body and central management is the legal basis for the EWC.

Transparent structures and binding regulations as basis for good EWC work

- It takes transparent structures and binding regulations to make sure that management is willing to have a constructive, comprehensive and co-operative dialogue which will help form opinions and make decisions after extensive consultation with European employees' representatives, as well as local and national representatives.
- It is therefore decisive to build the EWC in the EWC agreement in such a way
 - a. that employees' representatives receive information on significant developments and plans with a major impact on labour and employment conditions in time and will be consulted and involved in the decision-making process before a decision is taken;
 - b. that in practical EWC work regular exchange of information, experience and aims of all employees' representatives in the group is taking place and that it is possible to develop joint strategies based on trust and cooperation for transnational employee representation bodies in the group.
- Clear regulations have to be agreed on so that management cannot deny its obligation for transnational information and consultation of employees and their representatives.

The »subsidiary requirements« form the basis to be improved

- The »subsidiary requirements« laid down in the appendix of the Directive for a »EWC by act of law« can be used in the EWC negotiations as a guideline for minimum rights, the standards contained therein being established at any rate should negotiations fail upon expiry of the three-years negotiating period at the latest.
- That is why the so-called »subsidiary requirements« are deemed the basis for negotiating establishment of a EWC to be improved according to the possibilities available and the necessary practice of the undertaking but not to be undermined.

- That is why there is no generally applicable model agreement for establishment of a EWC. The officials responsible for EWC matters in the trade unions and the Austrian Trade Union Federation provide help with the drafting of the EWC agreement in line with the indicated fixed elements.

Ensuring high standards by involving the trade unions

- In any event it is necessary to contact the competent trade union organisation at the national and the European level as soon as possible before the start of negotiations on a EWC agreement and to ensure their active involvement in the negotiations within the framework of the Special Negotiating Body.
- This is the only way to avail oneself of their rich experience gained during numerous previous negotiations for transnational agreements with groups of undertakings and in meetings with European Works Councils established in other undertakings..

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Regionalgeschäftsstelle Kärnten

9020 Klagenfurt, Bahnhofstr. 44/4

Regionalgeschäftsstelle Oberösterreich

4020 Linz, Volksgartenstraße 40

Regionalgeschäftsstelle Salzburg

5020 Salzburg, Markus-Sittikus-Str. 10

Regionalgeschäftsstelle Tirol

6020 Innsbruck, Südtiroler Platz 14

Regionalgeschäftsstelle Vorarlberg

6900 Bregenz, Reutegasse 11

Es gibt vieles, für das es sich lohnt,
organisiert zu sein.



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