

EWC'S IN TRANSPORT

MORE AND BETTER WORKER PARTICIPATION NOW!









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FOREWORD

Like many other sectors, over the past years, the transport sector has seen its companies growing, merging and operating in an increasing number of European Countries. Companies that were once national or local have now acquired an international dimension with branches in a number of European countries. Transport workers from different EU Member States, who continued to work at the same airport or drive the same buses in their hometown, found themselves working for the same employer.

The European Works Council's Directive is of significant relevance to our transport sectors as it provides all workers with the opportunity to create a European information and consultation body for their representatives in these multinationals.

This project succeeded in raising the awareness of ETF affiliates coming from all modes of transport on the role and prerogatives of an EWC, and the issues that should be considered when creating and running an EWC. Several new transport EWCs were launched during this project which was a significant achievement for us.

The information and consultation rights of the European Works Council can be a powerful tool to cope with restructuring processes that normally take place at national and local level, but also have repercussions and relevance on a transnational level.

In a time of digitalisation and automation of transport processes and operations, EWCs can have an important role to play in addressing the consequences of such developments on jobs and working conditions.

Moreover, the EWC is a unique tool for creating and strengthening trade union networks. Worker's representatives can meet and keep in touch beyond formal EWC meetings. Indeed, we acknowledge that it adds value to have direct contacts that can assist our members in addressing issues and helping each other.

As a result of this project, ETF consolidated its vision and policy on European Works Councils. We will continue working in that vein with our affiliates and in coordination with the ETUC and the other sectorial European Trade Union Federations.



Livia Spera
ETF Acting General Secretary



CHAPTER 1

MORE AND BETTER EWCS IN TRANSPORT





SETTING UP A SPECIAL NEGOTIATING BODY AND AN EWC

Before requesting to negotiate the set up of a new EWC, several prerequisites must be met:

- a) ETF affiliates should check whether the trade union representation is enough to ensure that the EWC does not become a management puppet and ...
- b) several legal thresholds must be adhered to. To do so, it is recommended to conduct a mapping process covering in particular the company operations and social relations before moving on to the next step.

TRADE UNION POLICIES: IS AN EWC NEEDED?

EXAMPLE OF AN IDENTIFICATION SHEET TO BE USED TO ASSESS THE FEASABILITY AND OPPORTUNITY FOR ESTABLISHING AN EWC

Company name and sector of activity	•	•
Employee numbers in EU and EEA		
Country of HQ and potential applicable law		
Unions represented and affiliation to ETF		
Company culture of supporting social dialogue		
Company visibility in the sector and possible multiplier effect		
Past or potential restructurings		
Other:		

The objective of this sheet is to assess the strong points in favour or against the establishment of an EWC. Are there representative trade unions in the company and are they ETF affiliates? What national law will apply to the EWC?





WHAT IS AN EWC FOR?

AN EWC IS A TRANSNATIONAL BODY THAT SHOULD BE USED:

- > For information and consultation by management. EWC's are very helpful to receive strategic information and to challenge management decisions.
- > For social dialogue (working groups) to anticipate changes like restructurings
- > As a trade union platform for coordination purposes because EWCs are one important piece of a constellation of leverages for workers' representatives and trade unions to raise their claims and be stronger together across borders.

A EWC is not a negotiation team (except for the EWC agreement!)

AN EWC WITHOUT TRADE UNIONS ON BOARD IS:

- > A) weak
- > B) a potential tool at the service of management to challenge trade unions

GOOD PRACTICE: BEFORE ESTABLISHING AN EWC, CONDUCT A MAPPING OF THE COMPANY. SYNDEX AND ETF CAN HELP YOU IDENTIFY RESPECTIVELY THE COMPANY'S MAIN LOCATIONS, OPERATIONS AND TRADE UNION CONTACTS.

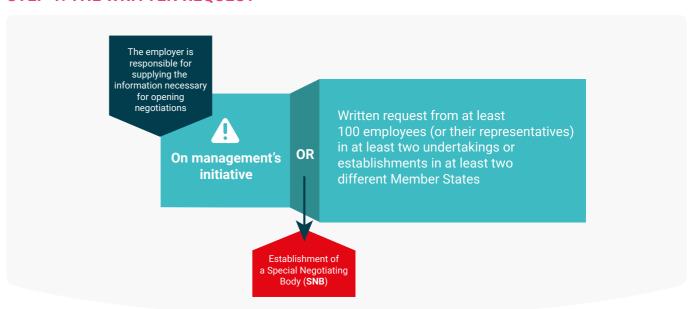
LEGAL REQUIREMENTS TO SET UP AN EWC



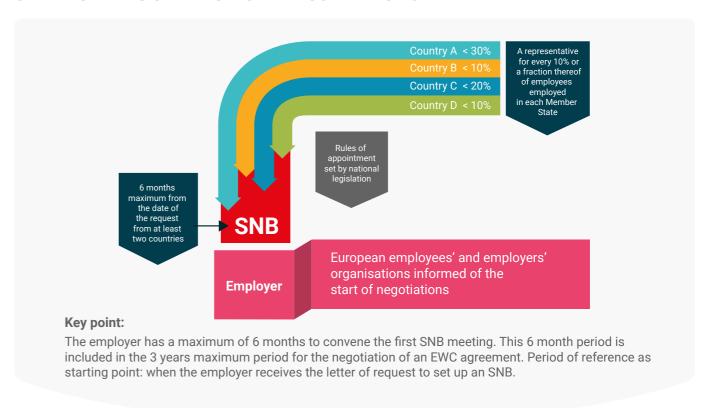
ESTABLISHING AN EWC IN 4 STEPS

A negotiation may last three years maximum. Each country where the company is operating should be represented as enacted by law. There are four steps to follow.

STEP 1: THE WRITTEN REQUEST



STEP 2: SETTING UP THE SPECIAL NEGOTIATING BODY



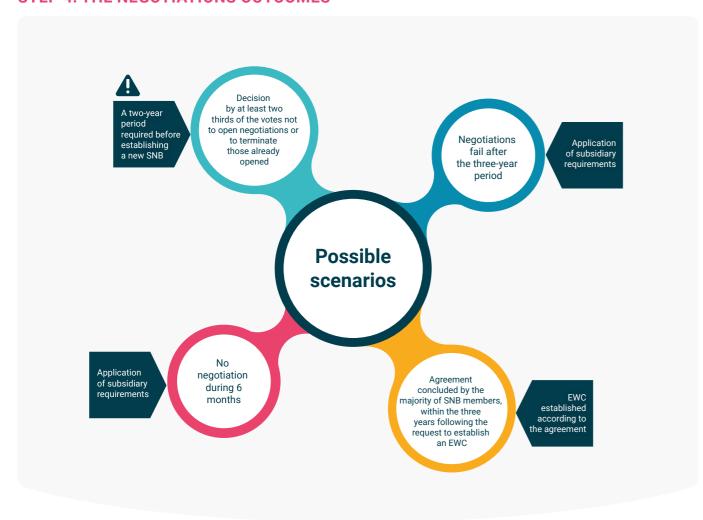




STEP 3: YOU ALREADY HAVE RIGHTS TO CLAIM!



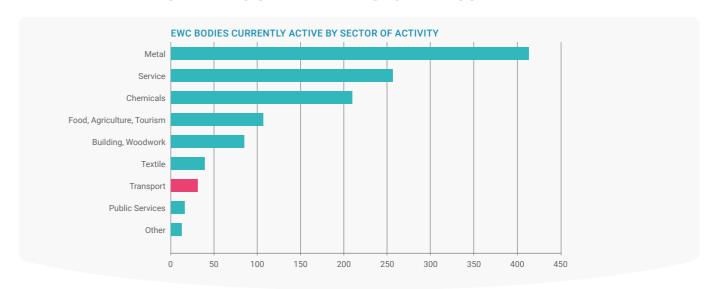
STEP 4: THE NEGOTIATIONS OUTCOMES



MAPPING EWC'S IN TRANSPORT: THE MARITIME SECTOR EXAMPLE

You are negotiating or renegotiating an EWC agreement. Where do you stand? Compare your draft to other EWC agreements of similar companies and in any case, make sure that its clauses go beyond the minimum legal requirements (called "subsidiary requirements")

RELATIVELY FEW ACTIVE EWC'S IN THE TRANSPORT INDUSTRY



- > Only 38 EWC agreements in the transport industry out of 1,137 active agreements in Europe. However, only 29 are active according to a recent research study.
- > Many additional companies meet the legal thresholds: Up to 70 80 new EWC's could still be created.
- > Out of those 38, only 4 in the maritime sector
- > Out of those 4, only 1 company operates in port handling (Port and Freezone World)

COMPOSITION OF THE EWC

Companies and EWC agreements	Scandlines	Hapag Lloyd	Stena Line	Port and Freezone World	GOOD PRACTICES
Number of employees	2,721 when the agreement was signed	2,915 when the agreement was signed	5,600	30,000 (estimate)	Employers shall communicate updated figures on a yearly basis.
Number of representatives	"At most 15 representatives", currently 10	13	15	?	At least one per country.
Representatives by country	Denmark: 6 Germany: 4	Austria, Belgium, Netherlands, France, Finland, Poland, Spain, Italy, Sweden, Denmark, UK:1 Germany: 2	Denmark, Ireland, Norway, Germany, Poland: 1 Netherlands: 2 UK: 3 Sweden: 5	One per member state where PF World has employees plus one for every 1,000 employees in that state.	Avoid over representation of one country by adding seat numbers when needed.
Term of mandates	4 years	4 years	3 years	4 years	Usually 4 years in practice to avoid turnover.





MEETINGS

Items	Scandlines	Hapag Lloyd	Stena Line	Port and Freezone World	GOOD PRACTICES
Number of meetings	2 per year If needed the EWC can hold further meetings	One annual conference	2 per year An extraordinary meeting may take place under exceptional circumstances.	2 per year. Special meetings may be arranged where a significant urgent transnational issue arises.	One meeting is not enough to draw outcomes from an EWC.
Languages	English. Translation into German and Danish for a transition period	German. Interpretation in German and 3 languages (the Presiding Committee will decide which ones)	English.	English. "The company will provide appropriate translation/ interpretation facilities".	Interpretation and translation are very important. EWC members who need these services should have them.
Preliminary meetings?	Yes, the day before EWC meetings	Yes, the day before the annual conference	Yes, the day before the Forum meeting.	Yes, the day before the Forum meeting. A post council meeting may also be held.	Preliminary meetings facilitate coordination. Post meetings are fundamental to ensure debriefings and follow up between meetings.
Organisation of the meeting	Meetings conducted by the Chair		Management will lead the meetings.		Who chairs meetings depends on the national law and practices. Co-chairing maybe an option too. The content of the agenda should be agreed by workers representatives.

INTERNAL ORGANISATION OF THE EWC

Scandlines	Hapag Lloyd	Stena Line	Port and Freezone World	GOOD PRACTICES
The EWC shall lay down its rules and procedures during its constitutive meeting. At this meeting the Chair and the Deputy Chair of the EWC will be elected.	A Chair and a Deputy Chair and 3 further members are elected for the duration of the term. These people form the Presiding Committee. The Presiding Committee is in charge of assisting the Chair.	The EWC representatives elect a Select Committee during their first preparatory meeting. The Select Committee consists of 3 EWC representatives, one of whom is elected as the Spokesperson in charge of liaising with Management	A Steering Committee of up to 4 representatives may be elected. The Council Administrator will be responsible for operational and administrative aspects of the Council.	Democratic and transparent processes will reinforce the EWC capacity to influence management plans. Select Committee and spokespersons are operational bodies to operate. The EWC as a whole is the decision-making body.
	The Presiding Committee holds 9 meetings per year		The Steering Committee should meet twice a year (in addition to the two plenary meetings of the EWC)	Select committees should meet as much as needed and shall ensure that information-consultation and coordination take place.

EXPERTS

Scandlines	Hapag Lloyd	Stena Line	P&0	Port and Freezone World
Not mentioned in the agreement	The EWC may be assisted by outside experts of its choice. Upon the request of the Presiding Committee, experts may attend meetings of the EWC and its institutions. "Reasonable costs" are borne by the Company.	EWC representatives may, if agreed in advance between the parties, be assisted by one external expert at Stena's expense.	The EWC of the Steering Committee may be assisted by experts of its choice. If an expert is needed the Company shall be liable to refund the expertise costs of no more than one expert per Forum meeting. Expenses must be submitted on a basis approved in advance by the Secretary.	The EWC of the Steering Committee may be assisted by experts of its choice. If an expert is needed the Company shall be liable to refund the expertise costs of no more than one expert per Forum meeting. Expenses must be submitted on a basis approved in advance by the Secretary.

GOOD PRACTICE ON EXTERNAL EXPERTISE

DIFFERENTIATING TRADE UNION EXPERTS AND TECHNICAL EXPERTS MATTERS

- > TRADE UNION EXPERTS usually have a mandate to support the EWC as regards trade union policies and coordination. They are not employed by the company.
- > TECHNICAL EXPERTS are called in by workers' representatives for support to analyse management information. Experts are independent and they help identifying misinformation and loopholes in economic, strategic, legal and many other issues. The EWC should select the experts of its own choice.

Note: SNB's have the right to be supported by an expert of their choice during the negotiation process. EWC members have access to experts when this is stipulated in the EWC agreement, or when the subsidiary agreements apply to them.

EXAMPLE OF GOOD PRACTICE EWC AGREEMENT REGARDING TECHNICAL EXPERTS

- > E.g. 1: The annual provision for the participation of Experts is X Euros. In any case, the annual budget of X Euros may be exceeded following an agreement between the Select Committee and Central Management to meet exceptional needs.
- > E.g. 2: In case of disagreement on the scope, timing and budget of the expert assignment between management and workers' representatives, the minimum rules will apply: 20 days maximum of expertise, restructuring plans and any transnational management plan having significant impact on workers' interests.





TRAINING / COSTS AND BUDGET

Items	Scandlines	Hapag Lloyd	Stena Line	Port and Freezone World	GOOD PRACTICES
Training	Yes, but no common training provided. Training will be organised "regionally"	6 days of training per term of office.	Training provided in "English or other agreed language". No details given.	Yes, but no details given in the agreement. Training requests must be approved in advance by the Council Administrator.	EWC members will be adequately trained as a group without loss of wages. Management and workers' representatives should agree on a 4 year training programme.
Costs and budget	All travel and accommodation costs borne by Scandlines	All costs related to the EWC borne by Happag Lloyd.	The operating costs of the EWC (training, travel,) and the costs related to the use of experts are financed by Stena.	All reasonable costs and expenses related to the EWC borne by the Company	For more autonomy, the EWC Select Committee may manage a yearly budget (negotiated in the EWC agreement) for training, experts and workplace visits.
Other provisions		Office space provided. Secretarial support person provided for the first year of the EWC's existence (8 hours per week)			Additional functioning resources may be negotiated to facilitate the EWCs activities.

LINKING FOR SUCCESS: LINKING LOCAL, NATIONAL AND EUROPEAN WORKERS'PARTICIPATION RIGHTS

The EWC members' influence on management's decisions is linked to the workers representative's capacity to liaise and coordinate their action between each other. EWC members should be pro-active and exchange information between countries. They should also be well connected to the workers' representatives bodies from their respective countries. This way, they will be in the position to challenge management information loopholes or misinformation.

TWO PRINCIPLES

SUBSIDIARITY

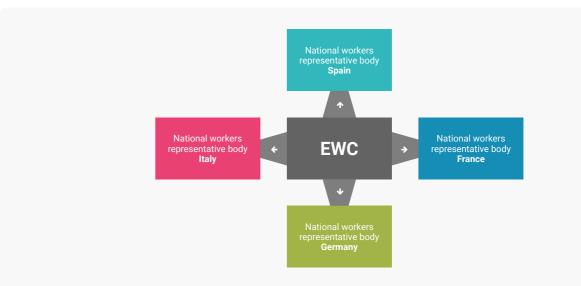
- > This terminology means that an EWC cannot replace national bodies of workers' representation, and that
- National bodies are the ones that can deal with national issues.
- The EWC deals with transnational issues but acts in the interest of the workforce as a whole.

SIMULTANEITY

- The EWC information consultation is conducted at the same time to national bodies ones.
- In practice, simultaneity is not always possible: national legislations differ.
- > Can EWC and WC bodies overlap on some occasions? If yes, how can we avoid this and improve cohesion?

LINKING IN DIAGRAMS

TOP-DOWN APPROACH



Added Value:

- The EWC members should take a stand to the common benefit of all workers in the company, regardless of their country of origin.
- The EWC is recognized by management as a social dialogue partner. Win-win outcomes become possible.

Limits:

- The quality of the EWC members is critical. Certain isolated workers are not aware of the national company situation. They may not have the capacity or enough information to make up their mind.
- The EWC members of the headquarter country may use their dominant position to impose their views.



BOTTOM-UP APPROACH



Added value:

- Quality of information consultation: The EWC members get valuable information from national bodies of I&C. Their decisions are not solely based on Management information.
- Democracy: The I&C process involves all levels of workers representation in the company.

Limits:

- EWC weakening: The EWC would lose the legitimacy given by the EWC directive. The EWC members are « hostage » of national interests versus common transnational interests of workers
- Slow process not always relevant: The EWC I&C process is frozen by national processes that may take time.

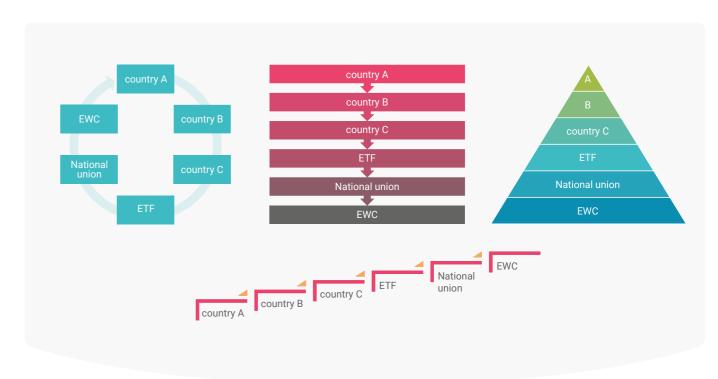
GOOD EUROPEAN COORDINATION VERSUS COMPETITION BETWEEN NATIONAL INTERESTS

The coordination between transnational and national information - consultation levels can be part of trade unions strategies: no coordination means no worker voice. Good cooperation means influencing management projects and decisions.

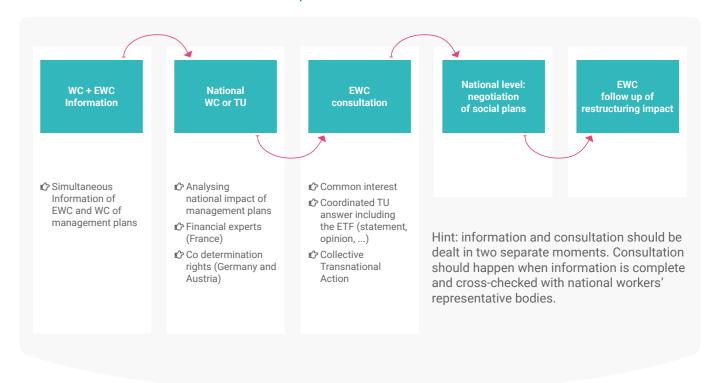
Good coordination means a good knowledge of national information - consultation rules to gain time and influence.

- Negotiate with management the relevant process for information / consultation. As an example : Merger ≠ spin off ≠ collective redundancies
- > Keep control over the process timing: make sure you know what card to play first
- > Use all tools at your disposal to make sure that you have the right information: WhatsApp, Google groups, technical expert, trade union expert, extraordinary meetings, declaration, public statement, opinion, ...
- > Adopt clear internal rules for functioning together with a democratic process (ballots, spokesperson, steering group)
- > National trade unions should support their EWC members. They should make sure that the right people are on board.
- > Access to training is very important for new comers. Avoid invisible members.
- > Finally: Go to Court when needed AND WHEN YOU ARE SURE TO WIN (Avoid negative jurisprudence for other EWC's)

HOW WOULD THE PERFECT COORDINATION OF WORKERS' REPRESENTATIVES BE IN YOUR COMPANY?



EXAMPLE OF LINKAGES FOR INFORMATION, CONSULTATION AND FOLLOW UP OF DECISIONS





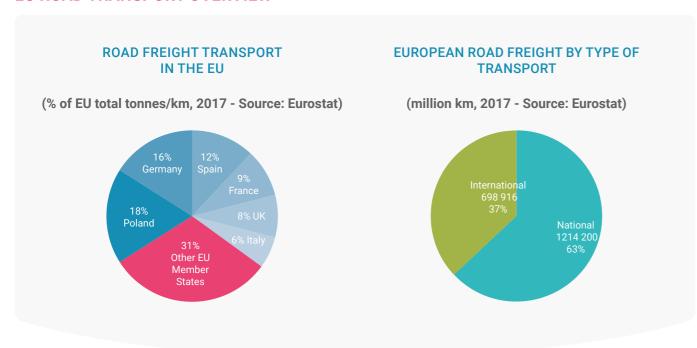


TAKING ON BOARD SECTORAL IMPACTS ON THE COMPANY

THE ROAD TRANSPORT EXAMPLE

Company management pay great attention to sector trends in which they operate: fierce competition, available manpower, development of new technologies, staff costs differences between countries, CO2 ... All these factors will impact the company, therefore it is necessary for EWC members to be familiar with this environment in order to better appreciate management's strategic choices, which may have consequences on jobs and working conditions. In the road transport example hereafter, economic information provides guidance to workers' representatives for strategically influencing management plans.

EU ROAD TRANSPORT OVERVIEW



- > Measured in tonne/kilometre (tkm) the road freight sector accounts for about 73% split amongst all modes of inland transport.
- > In 2017, Poland (17.5 % of EU total tkm) was the leading country for road transport in Europe, followed by Germany, Spain, France, the UK and Italy.
- > National transport in the EU 28 represents 63 % of total transport whilst international transport accounts for the remaining 37%.
- National transport grew by 3,5% in 2017 and international transport by 6,4%

Glossary: A tonne-kilometre, is a unit of measure of freight transport which represents the transport of one tonne of goods by a given transport mode (road, rail, air, sea, inland waterways, pipeline etc.) over a distance of one kilometre.

GROWTH IN EU ROAD FREIGHT TRANSPORT FOR THE FIFTH CONSECUTIVE YEAR...

- > In terms of tonne-kilometres (tkm), European road freight transport increased by 4.5 % from 2016 to 2017.
- > In 2017, the European road freight transport was the highest recorded over the last 5 years: it increased by 11.8 % from 2013 to 2017.
- > Poland (17.5 % of EU total tkm) has now overtaken Germany and become the leading country for road transport in Europe.
- > Among other countries with a large road transport industry, France, Spain and Italy saw rises ranging from 6.3 % to 7.6 %, driven by important increases in national transport, while Germany and the United Kingdom reported decreases of 0.8 % and 0.7 % respectively.

...MOSTLY DRIVEN BY EASTERN EUROPEAN COUNTRIES' GROWTH IN INTERNATIONAL TRANSPORT

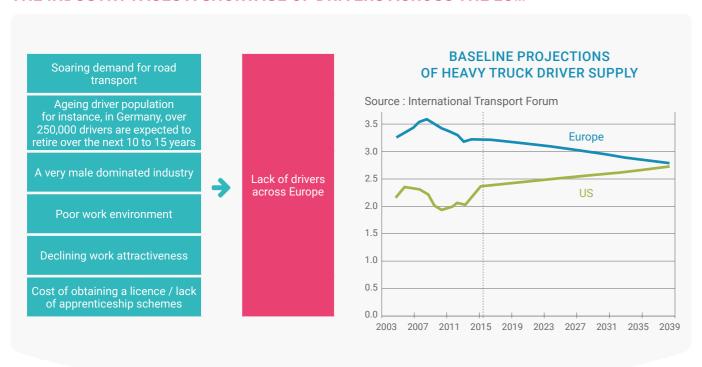
- > The growth in European road transport is mostly driven by Eastern European countries, especially as far as international transport is concerned.
- > Over the past ten years, Eastern European countries such as Poland, Lithuania and Bulgaria have indeed cumulated a steady growth in their domestic market and a very dynamic development of their international activity.
- > In the meantime, western European countries such as Belgium, Italy and France have recorded a decrease both on domestic and international transport.

A COST COMPARISON STILL VERY FAVOURABLE TO EASTERN EUROPEAN COUNTRIES PARTLY CAUSED BY ECONOMIC AND SOCIAL DUMPING...

- > The main operating costs of the transport industry (driver costs, fuel costs and vehicle financing and ownership costs) are still much lower in Eastern Europe.
- > These key cost differences may also be reinforced by the fact that in some Eastern European countries' driver costs are kept to a low level by hiring drivers form outside the European Union.
 - Polish carriers frequently call on foreign drivers including Ukrainians, Russians, Georgians or Kazakhs in order to limit their staff costs.
- > Lithuanian carriers as well as some of the other Eastern European carriers also benefit from cheap fuel thanks to their trips to Belarus and Russia. The fuel purchased at a very low cost in these countries is then used for part of the journeys in the European Union.
 - △ According to the calculations of CNR, nearly 40% of the fuel used by Lithuanian carriers comes from outside the EU, with an average cost of €0.58/l.

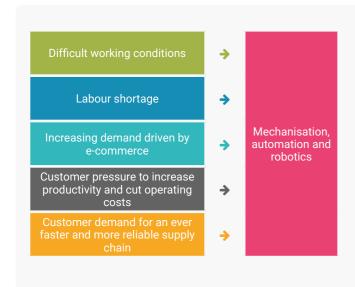


THE INDUSTRY FACES A SHORTAGE OF DRIVERS ACROSS THE EU...



- > In addition to the lack of drivers across Europe, there is also an increasing shortage of more qualified labour in the road transport industry (freight forwards, team leaders, managers...).
 - 🖒 This lack of qualified labour particularly affects larger transport companies and logistic operators who operate as freight forwarders.

LOGISTICS: A HUGE POTENTIAL FOR MECHANISATION, AUTOMATION AND ROBOTICS...



- > According to a DHL study on robotics in 2016, 80% of current warehouses are manually operated with no supporting automation...
 - ♠ Around 15% are mechanised using some type of material handling automation such as conveyors, sorters, goods-to-picker solutions, and other mechanised equipment to further improve the productivity of the workforce.
 - Only 5% of current warehouses are automated.
- > ...thus, leaving a huge potential for mechanisation, automation and robotics.

NEW ENTRANTS TO THE LOGISTICS INDUSTRY

START-UP COMPANIES...

- > Most of the new entrants to the logistics sector are start-ups, and many of these are looking to use new technology to enter
- > Amongst them are last-mile delivery companies using technology that matches available capacity with delivery needs.
 - Pror instance, Dolly in the USA helps people to get things transported within their city by connecting them with registered drivers. In Europe, Stuart offers its customers a "green fleet" of independent couriers able to deliver goods 7 days a week in less than an hour in some large European cities.

... AND INTERNET GIANTS

- > Amazon is looking to expand its in-house expertise in warehousing as well as develop its own delivery capabilities.
 - Amazon Robotics, subsidiary of Amazon.com, automates fulfilment centre operations using various methods of robotic
 - Amazon already runs a fleet of 32 Boeing 767-300s and manages over 22 million square metres of distribution and fulfilment centres around the world.
 - ☼ The question no longer seems to be whether Amazon will take over a large logistics provider but when.
- > In Asia, Alibaba is trying to improve delivery services for its sellers by setting up Cainiao Network, a Joint Venture with several logistics companies, a department store, an investment firm and a company with port logistics operations.



LINKING THE COMPANY AND THE SECTOR LEVELS



THE ROLE OF THE EWC ON ECONOMIC AND FINANCIAL **ISSUES**

Is management securing the company's future by strategic investment or is it distributing high level bonuses and dividends? Who really owns the company? Are the jobs safe regarding the company's health and management plans? What are the current internal reorganisations between business units? The answers to these questions will have a major impact on employment and working conditions. Workers' representatives may follow training sessions when needed to ensure their participation into these debates. Technical experts may be called in to support the EWC.

FORMAT AND CALENDAR OF ECONOMIC AND FINANCIAL INFORMATION

KEY POINTS

- > The information on economic and financial state of play and prospects of the company cannot be limited to a simple document presented in plenary meetings by the management
- > The official accounting documents (quarterly and annual reports) must be provided to the workers' representatives
- > These documents should be transmitted before the EWC meeting so that the experts have time to analyse them and obtain the necessary details from the management and enable the members of the EWC to prepare their questions
- > It is recommended to avoid EWC plenary meetings be held before the results are published or much later into the year.
- > In countries where workers representatives receive training (works councils, trade unions, ...), it is good practice to add one module on EWC's to make the link between different levels of representation.

THE BASICS

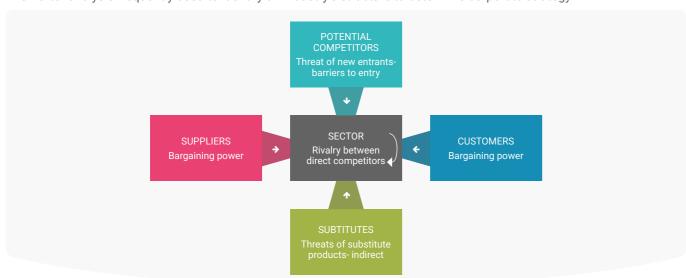
The following information should be provided to EWC members by management; EWC members should be trained to understand and challenge them when necessary:

- > Strategy and shareholders
- Acquisitions and divestments
- > Choice between volume and price in the company
- Activity and employment
- > Financial results and profitability
- Provisions and exceptional events
- Debt
- Investments
- Cash management

S synd

FUNDAMENTAL CONCEPTS: THE SECTOR AND THE COMPANY

The Porter analysis frequently used to identify an industry's structure to determine corporate strategy.



SOME PREVIOUS CONCEPTS: PORTER COMPETITIVE STRATEGIES

Porter's model can be applied to any segment of the economy to search for profitability and attractiveness.



DIVERSIFICATION AND INTEGRATION STRATEGIES

VERTICAL	HORIZONTAL
Down-stream Control or acquire distributors or retailers Up-stream Control or acquire suppliers	Control or acquire competitors

KNOWING HOW TO CONTEXTUALISE THE DATA

BE CAREFUL WITH:

- > Variation impacts in exchange rates (and consequently on the currency taken as a reference)
- Changing perimeter effects
- > Changes in account consolidation methods, fixed assets evaluation...
- > Impact of amortizations and provisions
- > Impact of exceptional events
- > Transfer prices
- > Time period taken as reference



CORPORATE SOCIAL RESPONSIBILITY, DUE DILIGENCE: WHAT ACTION LEVERAGE APPLY TO ÉUROPEAN WORKS COUNCILS?

Today, the vast majority of multinational companies issue corporate social and environmental reports that are easily accessible. In many cases, these reports consist of marketing information directed to investors. In order to challenge window dressing and to improve working conditions in the company and along the supply chain, new leverages exist. EWC members are in a good position to influence non-financial information reporting by participating in monitoring processes.

NON-FINANCIAL CORPORATE COMMUNICATION: AN OPPORTUNITY TO BROADEN AND **ENRICH SOCIAL DIALOGUE**

IN 2014, EUROPE VALIDATED A CORPORATE SOCIAL RESPONSIBILITY (CRS) REPORTING OBLIGATION FOR **CERTAIN COMPANIES**

- > The European directive on the publication of non-financial information was adopted on 22 October 2014; called Directive 2014/95/EU.
- > Companies called "public interest" companies i.e. listed companies (and particularly those in the financial sector) of more than 500 employees are now required to publish an annual CSR report in their management report.
 - ♠ Around 6,000 large companies and groups within the European Union are covered.
- > This declaration must contain information allowing the understanding of the development of the business, the performance, the situation of the company and the impact of its activity, relating at least to:
 - environmental issues,
 - social and personnel issues,
 - issues relating to respect for human rights,
 - issues relating to the fight against corruption.
- > Additional information on the diversity policy for governance bodies (management and supervisory bodies) is also required, particularly in terms of age, gender, geography and academic and professional background.

INTERESTING INFORMATION TO ANALYSE FOR SOCIAL DIALOGUE

The non-financial statement of the companies concerned, integrated into their management report, must contain:

- > A description of the company's business model
- > A description of the company's policies regarding social and environmental aspects, including the due diligence procedures implemented
- > The results of these policies
- > The main risks related to these issues in relation to the company's activities, including, where relevant and proportionate, the company's business relationships, products or services, which may have a negative impact in these areas, and how the company manages these risks
- > Key performance indicators of a non-financial nature concerning the activities in question

Points to be monitored

<u>It should be noted that when</u> the company does not apply a policy with regard to one or more of these issues, the non-financial statement must include a clear and reasoned explanation of the reasons for it ("comply or explain" principle)

IN THE EVENT OF NON-COMPLIANCE WITH THE NEW LEGAL OBLIGATIONS, SANCTIONS VARY GREATLY FROM ONE COUNTRY TO ANOTHER...

- > In France, the Act does not provide for any financial penalties in the absence of a "non-financial performance statement" in a company's management report.
- > In Belgium, the penalty (from €50 to €10,000) for failure to file annual accounts also applies to failure to publish the annual report and, where applicable, the separate report attached to the annual report.
- > In Luxembourg, the fines applicable to failure to publish non-financial data range from €500 to €25,000 and from €251 to €25,000 for insurance companies.
- > In Italy, company managers are responsible for the communication of non-financial information. They are liable to fines ranging from €20,000 to €100,000 in the event of non-publication and fines ranging from €50,000 to €150,000 in the event of incomplete or incorrect information being published.

... BUT WHICH MUST NOT PREVENT EMPLOYEE REPRESENTATIVES FROM MAKING THEIR VOICES HEARD

What means of action can employee representatives take?

While the sanctions provided for by Member States in the event of non-compliance with the new legislative framework are highly variable and not always dissuasive, the fact remains that the various stakeholders, starting with employee representatives, must be able to make their voices heard on the issue of corporate social responsibility in order to avoid non-financial reporting being limited to a communication operation.

- > Training in the issues of corporate social responsibility and responsible management
- > Contact with other stakeholders; public authorities, non-governmental organisations, subcontractors, shareholders,
- Using the assistance of an independent expert in the context of consultations with representative bodies at national or European level
- > Asking the management of their company/group about the information provided, asking questions, etc.
- > Asking to be involved in defining the indicators selected and the information published

DUE DILIGENCE: WHAT IS THE ROLE OF EMPLOYEE REPRESENTATIVES?

THE DUTY OF VIGILANCE: AN INTERNATIONAL CONCEPT RENDERED MANDATORY IN FRENCH LAW

- > This concept was introduced by ISO 26000, giving guidelines for corporate social responsibility (in 2010)
- > UN Guiding Principles on Business and Human Rights, 2011
- Guidelines for Multinational Enterprises, OECD, 2011
- > ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, revised in 2017
- > French law n°. 2017-399 of 27 March 2017 relating to the duty of vigilance of parent companies and contracting companies
- > The duty of vigilance covers the obligation of companies to exercise caution and supervision with regard to certain societal risks that their activities or those of their partners in their business sectors may create.



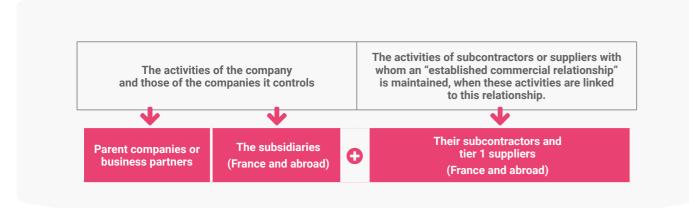


AN INNOVATION INTRODUCED BY THIS LAW: THE ANNUAL PUBLICATION OF A VIGILANCE PLAN

- > The vigilance plan must identify risks and aim to prevent serious infringements against:
 - human rights and fundamental freedoms
 - health and safety of persons
 - the environment
- > The law states that the plan is intended to be developed in association with stakeholders

THE LAW CONCERNS VIGILANCE INVOLVING WHICH ACTIVITIES?

> The law specifies that the plan includes reasonable due diligence measures on the risks resulting from:



WHO SHOULD PUBLISH A VIGILANCE PLAN?

- > The companies concerned are public limited companies, limited partnerships with shares and simplified joint stock companies:
 - $\,$ with more than 5,000 employees of their own and in their French subsidiaries

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- more than 10,000 employees of their own and in their French and foreign subsidiaries
- > A company whose parent company is subject to publication is exempt from publishing itself. Its vigilance plan is integrated with that of its parent company.

IN THE EVENT OF NON-COMPLIANCE WITH THE LAW A COMPANY IS SUBJECT TO JUDICIAL SANCTIONS

Any person having an interest in acting may bring an action before a judge in France

- > In the event of failure to publish a vigilance plan
 - Dr The Court in France can give notice to the company to publish its plan, with financial penalties imposed for each day of delay.
- > In case of damage:
 - If non-compliance with French law leads to damage that could have been avoided, the company may be ordered by the Court to compensate the damage in question, **including damages outside France**, by, for example, compensation for victims of persecution, compensation for a trade union organisation that is the victim of an anti-union campaign, restoration, etc.

Legal basis: "Everyone is liable for damages caused not only by his own actions, but also by his own negligence or recklessness." art. 1241 of the French Civil Code

DEVELOPING THE VIGILANCE PLAN WITH THE STAKEHOLDERS OF THE COUNTRIES OF IMPLEMENTATION (TRADE UNIONS, NGOS, PUBLIC AUTHORITIES...)

- A risk mapping to identify, analyse and prioritise risks
- Procedures for regularly assessing the situation of subsidiaries, subcontractors and suppliers with regard to risk mapping
- 3 Appropriate actions to mitigate risks or prevent serious harm
- An alerting and reporting mechanism on the existence or occurrence of risks, established in consultation with the trade union organisations representing the company
- 6 A mechanism to monitor the measures implemented and to evaluate their effectiveness

SOCIAL DIALOGUE AS A BASIS FOR DEVELOPING ALERT AND REPORTING MECHANISMS

What consultation is there with trade union organisations?

The text of the law does not provide details, but consultation can at least cover:

- > respect for the spirit of the law
- > the access of communication devices to all (several channels, several languages...)
- > procedures for recording alerts and reports
- how these alerts and reports are handled
- protection of whistle-blowers
- > procedures for monitoring the company's appropriate responses to alerts and reports

HOW CAN TRADE UNIONS IN FRANCE AND OUTSIDE FRANCE MAKE USE OF THIS LAW?

> Any organisation, anywhere in the world, can declare itself a stakeholder and ask the company to let it participate in the consultation on its vigilance plan

> Any trade union organisation established in a subsidiary of the group in France or outside France may rely on the text of the law to request to participate in the establishment of the alert and reporting mechanism

> Any trade union, even if it is not located within the company, can produce a report or trigger an alert by the system presented in the vigilance plan

Use Use

> In the event of poor compliance with the law by the company or a negative impact of a Company operations not adequately anticipated by the vigilance plan, a French or foreign trade union (or federation) may file a lawsuit in France



CHAPTER 2

EXERCISES FOR NEGOTIATORS AND EWC MEMBERS



These exercises are drawn from the training sessions that were conducted with about 200 participants during the years 2018 and 2019 by ETF and Syndex.

They can be adapted to new training seminars, depending on the profile of the participants for example.

The practical cases are based on real situations and make it possible to put into practice the legal theory learned in the former chapter.

Some exercises can be done in groups, in pairs or individually depending on the time available.

EWC members activity often merely consists in attending one or two meeting a year; to change the deal, the roadmap is a useful exercise to foster the active participation of EWC members who commit to conduct activities and to achieve their own objectives on the basis of a timetable.

MOCK SNB NEGOTIATION EXERCISE

This exercise consists of a mock negotiation of the special negotiation body. The participants are divided into two teams: one for "workers" and one for "employers".

The aim is to reach an agreement in a given time.

Caution: The exercise sheet must not be shown to the opposite party, otherwise it may povide an advantage during the negotiation.







1. FXFRCISE:

NEGOTIATIONS ON THE EUROPEAN COLLECTIVE AGREEMENT FOR "FLY-HI EUROPE"

WORKER'S SHEET

An employee representative, you are a member of the Special Negotiating Body (SNB) of "Fly-Hi Europe" at a European level. For almost the last three years, negotiations have been taking place with the Group's HR Department with the aim of concluding a European agreement. But this contains clauses which in your view are too restrictive. You would like to see these either modified in your favour or simply deleted. The negotiations have reached a "last-chance" stage.

Here are the new clauses you are pushing for:

Article 1: Designation

The agreement shall lead to the establishment of a European Works Council (EWC), without replacing existing national information and consultation bodies.

Article 2: Linkage between the information and consultation processes

The EWC must be informed and consulted by management before or alongside with the national employee representation bodies established within the Group.

Article 3: Scope of application of the agreement

The agreement applies solely to transnational issues. A transnational issue is a) any issue concerning at least two countries in which the Group has operating bases, or b) irrespective of the number of countries concerned, any issue of importance to the European workforce due to the magnitude of its potential impact, or which involves transfers of operations between Group countries.

Article 10: Facilities available to the EWC:

The EWC shall benefit from interpretation into the languages spoken in the Group countries represented in the meetings

Here is the clause you would like to see deleted:

Article 13: Confidentiality

All oral or written exchanges of information during the meetings are confidential and may not be disclosed to any third party. Failure to respect this may lead to prosecution.



Your goal is to reach agreement with the HR Department after having gained as many concessions as possible on the above clauses. To achieve this, you will be entitled to a preparatory meeting with employee representatives before the negotiations. You can also resort to separate sessions during the negotiations. You are entitled to involve an outside expert (to be requested from the HR Department during negotiations) to assist you, should you feel this necessary.

Please note: should no agreement be reached by the end of the session the minimum provisions will apply. Are you prepared to run this risk?

NEGOTIATIONS ON THE EUROPEAN COLLECTIVE AGREEMENT FOR "FLY-HI EUROPE"

EMPLOYERS' SHEET

You are a representative of "Fly-Hi Europe's" HR Department at European level. For almost the last three years, negotiations have been taking place with the Special Negotiating Body (SNB) with the aim of concluding a European agreement. But this contains clauses which in your view are too generous and costly. You would like to see these either modified in your favour or simply deleted. The negotiations have reached a "last-chance" stage.

Here are the new clauses you are pushing for:

Article 1: Designation

The European agreement shall lead to the establishment of a "Platform for Exchanging Views", without replacing existing national information and consultation bodies.

Article 3: Scope of application of the agreement

The agreement applies solely to transnational issues. A transnational issue is any issue concerning at least two countries in which the Group has operating bases.

Article 5: Exceptional circumstances

In the case of exceptional circumstances, corporate management shall convene an extraordinary meeting. Exceptional circumstances arise when corporate decisions have a major transnational impact on Group employees, i.e. involving at least 15% of total headcount (full time equivalents) on 31 December of the previous year.

Article 10: Facilities available to the "Platform for Exchanging Views"

The annual meetings take place via video-conference.

Here is the clause you would like to see deleted:

Article 11: Outside experts

11.1: The EWC members are entitled to consult a technical expert (a company outsider) of their choice.

11.2: A representative of the European Transport Workers' Federation may take part in the meetings in a union expert capacity.



Your goal is to reach agreement with the SNB after having gained as many concessions as possible on the above clauses. To achieve this, you will be entitled to a preparatory meeting with employer representatives before the negotiations. You can also resort to separate sessions during the negotiations.

Please note: should no agreement be reached by the end of the session, the minimum provisions will apply. Are you prepared to run this risk?





COMPARISON OF EWC AGREEMENTS

OBJECTIVE:

This is a practical exercise to familiarise yourself with the content of the directive 2009/38/EC and its use or misuse in several EWC agreements currently in force.

METHODOLOGY:

The participants are divided into working groups. Each group will receive a copy of two EWC agreements and a copy of Directive 2009/38/EC. Each group selects one chairperson to lead the debates into the group and a spokesperson who will report the outcomes to the plenary meeting (see session 2).

1ST SESSION: 1 HOUR AND 30 MIN: COMPARISON OF AGREEMENTS

The first part of the exercise consists of:

- a) checking how several topics are regulated in each agreement and
- b) comparing the agreements with the directive 2009/38/EC.

To make the comparison easier for you we indicate the articles to be consulted in the directive. On the next page you will have a chart to be completed, with the topics to compared.

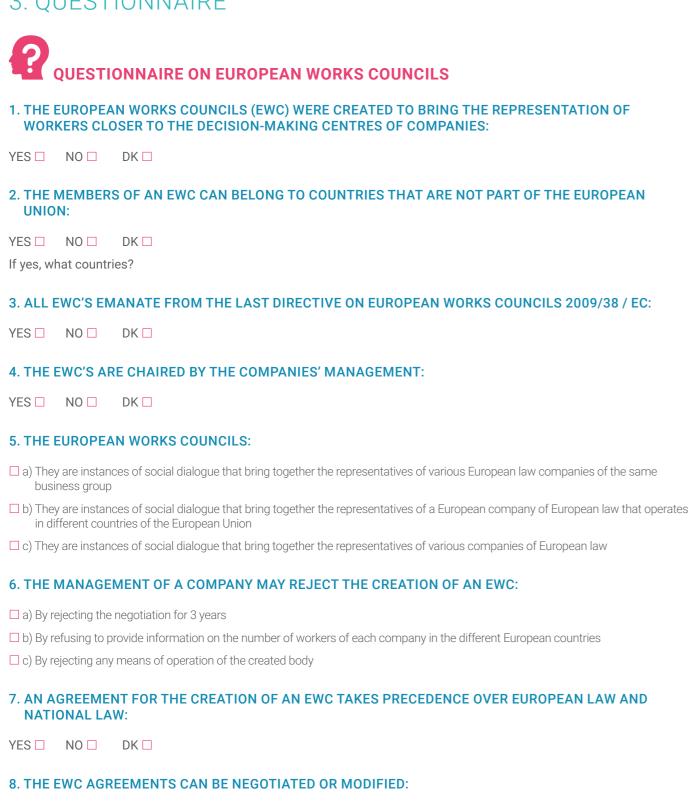
2ND SESSION: 1 HOUR: RESTITUTION OF OUTCOMES

What agreement do you think is best for each topic? Which one seems worse to you? Discuss the strengths and weaknesses of each EWC agreement in the plenary meeting.

TOPICS AND ARTICLES IN DIRECTIVE 2009/38/EC	EWC agreement 1	EWC agreement 2
	Company name:	Company name:
Prerogatives of the EWC on information Subsidiary requirements 1 a)		
Subsidiary requirements 1 a)		
Prerogatives of the EWC on consultation		
Subsidiary requirements 1 a)		
Transnationality: Recital 16 and articles		
1.3 and 1.4		
Confidentiality		
Article 8		
Experts		
Subsidiary requirements 5		
Training		
Article 10.4		
Paid hours to carry out mandate		
Article 10.3		
Expenses of EWC paid by management Subsidiary requirements 6		
Substituting requirements o		
Articulation and coordination between		
national and European level		
Article 12		
		I .



3. QUESTIONNAIRE



a) By the creation of a special negotiation group composed of the most representative trade union organizations in each country

 \square b) By the trade union organizations present in the group of companies with a European dimension

agreement signed by the majority of the EWC members

9. THE TRANSLATION OF THE INFORMATION PROVIDED WITHIN THE EWC IS MANDATORY:
☐ a) In accordance with the terms of the agreement
☐ b) Only the translation into the language of the group's European headquarters is mandatory
□ c) For all the languages of the representatives present in the EWC
10. THE HEAD OFFICE AND THE APPLICABLE LAW OF THE EWC:
\square a) It is the same as the headquarters of the dominant company of the group
□ b) It is freely determined by the company's management
□ c) It is in the European country with the largest number of workers
11. THE EWC IS:
☐ a) A transnational body of information and consultation
☐ b) An instance of transnational union coordination
□ c) An instance of transnational negotiation
12. THE NUMBER OF EWC MEMBERS IS DETERMINED BY THE EUROPEAN DIRECTIVE:
YES NO DK DK
13. THE ANNUAL NUMBER OF MEETINGS OF THE EWC IS DETERMINED BY THE EUROPEAN DIRECTIVE
YES NO DK DK
14. DOES THE MANAGEMENT OF THE COMPANY FREELY DETERMINE THE TRANSNATIONAL NATURE OF THE DECISIONS IT TAKES?
YES NO DK DK
15. THE TRANSNATIONALITY OF THE MANAGEMENT DECISIONS WITH A EUROPEAN DIMENSION CAN E SEEN:
\square a) Depending on the number of countries affected simultaneously by the decision
\square b) Depending on the size of the social impact, regardless of the number of countries affected by the measure
□ c) Depending on the chain of command that has led to the decision making
16. THE CONSULTATION OF THE EWC SHOULD ALWAYS BE CARRIED OUT IN ADVANCE OF THE CONSULTATION OF THE NATIONAL REPRESENTATIVE BODIES
YES NO DK

EWC'S IN TRANSPORT - MORE AND BETTER WORKER PARTICIPATION NOW!





ANSWERS TO THE QUESTIONNAIRE ON EWC

- 1) Yes
- 2) Yes, by law they can belong to the European Economic Area (Iceland, Norway, Lichtenstein). They can also come from any other country when this is formally agreed in the EWC agreement.
- 3) No, regrettably, a number of EWCs or Forum are not covered by the 2009 directive. These are derogative agreements that were signed before 22 September 1996 or between 5 June 2009 and 5 June 2011.
- 4) No. depending on the national law applying to the EWC agreement, the chairperson can be from the workers' side. Cochairing also exists in several countries.
- 5) Answers are **a)** many American, Japanese and Swiss companies for example do have an EWC, and **b)** European companies are covered (if they reach the thresholds) but be careful not to confuse with the European Company statute (SE) that has other rules for the representation of workers at transnational level.
- 6) No answer is correct here. Management cannot refuse to set up a Special Negotiating Body, except if the legal thresholds are not met.
- 7) No, except if the agreement is a derogative one (see question 3) or if the agreement is more favourable to workers than the legislation in force.
- 8) Answer c)
- 9) Answer a)
- 10) The applicable law is the one of the headquarter company based in the EU or EEA. If the headquarter is based outside these areas, management can choose one of its undertakings within the EU or EEA to represent them. The law applicable to the SNB and EWC is the one of a representative agent in principle, except if the EWC agreement states otherwise.
- 11) The EWC is a body of transnational information consultation by law, however, in practice, trade unionists and workers' representatives use the EWC as a tool to coordinate their actions. The EWC is not a negotiation body, except for the EWC agreement renegotiation.
- 12) No, the legislation only enacts the minimum number of seats by country, not the maximum ones.
- 13) No, only the subsidiary requirements set a minimum of one meeting a year. However, the national legislation may increase this minimum rule.
- 14) No, the European legislation of 2009 explains that "transnational" information-consultation should concern matters relevant to two countries at least or "matters which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States" (recital 16). The level of management (headquarter or local) involved in the decision making process is also a key criterion. The agreement can extend this definition.
- 15) Answers a), b) and c)
- 16) The information of the EWC and national bodies should in principle be conducted simultaneously but there are no specified rules as regards the links for the consultation of workers. The best practice seems to favour a case by case approach, depending on the plans / restructurings; this best practice usually gives priority to the EWC, as first body to be informed and consulted.

4. ROADMAP:

1. Identify the objective of the work plan

Please select ONLY 4 topics that you consider to be a priority for you according to your personal situation:

INDENTIFY PRIORITY NUMBER 1 to 4 only	Company level worker/ union representative	IDENTIFY PRIORITY NUMBER 1 to 4 only	National trade union Federation/ Organisation representative
	Contact your union to set up a Special Negotiating Body (SNB)		Gather more information on companies selected (mapping process)
	Negotiate a European Works Council (EWC) Agreement		Coordinate with other ETF affiliates to identify company targets for setting up an SNB / EWC
	Renegotiate or amend a pre-existing agreement		dentify company level trade union representatives to set up an EWC
	delighter Identify a trade union contact in your federation/ organization		Support the company level trade union representatives
			Set up a coordination with other ETF affiliates to follow up negotiations
	Gather more information on your company (mapping process)		dentify a financial/ legal expert to support you
	Develop a network of trade unionists in your company		Continue the learning process on EWC's legislation
	Continue the learning process on EWCs legislation		♣ Learn a language
	🖒 Learn a language		Set up a global union alliance with other ETF and ITF affiliates
	Grow the union in your company to be stronger together		Promote best practice within your Organization and ETF
			Other: Ot
	Find more resources to develop your goals (see question 3 below)		
	◆ Other:		

2	Explain the main actions that you will want to achieve before the next meeting for each priority (for instance, organize a meeting, set up network, meet the workers, meet management,):
>	Action 1:
>	Action 2:
>	Action 3:
>	Action 4:
3	. Identify the main resources that you will need to carry out your actions (for instance: financial support, IT communication needs, support from your trade union, budget from management, translation,)
>	Resource 1:
>	Resource 2:
>	Resource 3:
>	Resource 4:

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4. Calendar

Month	Priority	Action	Resources needed
January			
February			
March			
April			
7.0111			
May			
June			
July			
August			
riagast			
September			
October			
November			
December			
1.2			

5. EWC QUIZ:

LET'S CHECK WHAT WE KNOW AND WHAT WE WOULD LIKE TO KNOW!

EWC FAQ'S

- > What links between national and European information-consultation?
- > What does it mean to be an EWC member? Do you represent national workers or all workers?
- > What about the EWC's internal democracy? Who leads, who decides?
- > What is the impact of national cultural and trade union differences over the EWC activities?
- > How to work between meetings?

WHAT IS THE EWC ROLE?

Please raise your card and beware that there might be trick questions or several positive answers!

QUESTIONS	SCORE
To negotiate European agreements for all company workforce?	
To be informed and consulted on Management decisions?	
To provide an opinion on Management plans?	
A platform for trade union action?	

WHAT IS INFORMATION AND WHEN SHOULD IT HAPPEN?

Please raise your card and beware that there might be trick questions or several positive answers!

QUESTIONS	SCORE
Information is what you get from Management during the annual meeting?	
Any information you may get from Management and from your experts?	
Information must be confidential, otherwise it is useless?	
Information must be provided at least 15 days before the meetings?	

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WHAT IS CONSULTATION AND WHEN SHOULD IT HAPPEN?

Please raise your card and beware that there might be trick questions or several positive answers!

QUESTIONS	SCORE
Consultation is an exchange of views between workers and management?	
Consultation must take place right after information took place, in the same meeting?	
EWC consultation must take place only when national consultation has already happened?	
Consultation is useless, Management does not have to follow the EWC opinion.	

WHAT IS TRANSNATIONAL?

Please raise your card and beware that there might be trick questions or several positive answers!

QUESTIONS	SCORE
Transnational means: whole group or two countries at least?	
Any decision of Top management?	
Any plan of management significantly affecting the Company workforce?	
Can a transnational question include debates beyond the European Union?	

WHAT ARE EXCEPTIONAL CIRCUMSTANCES?

Please raise your card and beware that there might be trick questions or several positive answers!

QUESTIONS	SCORE
A change of CEO or of the main shareholder?	
A collective redundancy of at least 150 workers in two countries?	
Any transnational border transfer of activities, relocations, the closure of establishments or undertakings, and/or collective redundancies?	
Any project or event that may have a significant impact on the workforce?	





FEEDBACK FOR THE QUIZ (DEFINITIONS AND PRACTICES)

THE FUNDAMENTALS IN LIGHT OF 2009/38/EC DIRECTIVE (1)

WHAT IS A TRANSNATIONAL MATTER?

- According to article 1: a matter that concerns the group as a whole or at least two undertakings or sites in two different Member States.
- > But the spirit of the directive is less restrictive regarding recital 16: the scope of its potential effects, and the level of management and representation that it involves should be considered. These include matters which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States (hence transfer of capital).

DEVELOPING EWC'S OWN AND INDEPENDENT SOURCE OF INFORMATION

- With ETF's support, coordination between the members of the EWC and national and local representation bodies and trade unions must take place before and after EWC meetings and Select Committee meetings...
- > ...but also **throughout the year** thanks to a bidirectional flow of information
 - Information from local or national representatives to EWC reps of major developments on their sites, of implementation and course of European projects at the national and local level, of all other circumstances that could have a transnational impact.
 - Reciprocally, information from EWC reps to national and local reps of developments in the company in order to anticipate possible local consequences and European projects that could have a national or local impact
 - ♣ Specific coordination processes to be set up in case of restructuring

Good practices: During preparatory meetings, report on the company's situation from representatives from each country Members of national representation bodies' suggestions or comments about the EWC's draft agenda as well as on the contents of the preparatory documents

- > Setting up working groups: permanent (e.g. about health and safety) or one-shot (e.g. to monitor a restructuring plan)
- > Being in contact with workers and their reps (which implies free access to the company premises and the financing of travelling expenses by central management)

THE INFORMATION AND CONSULTATION PROCESS TO BE EFFECTIVE:

- > The definition of 'consultation' needs to take account of the goal of allowing for the expression of an opinion which will be useful to the decision making process, which implies that the consultation must take place at such time, in such fashion and with such content as are appropriate (recital 23).
- > 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 undertaking or group of undertakings to take decisions effectively (article1).
- > '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 time, in such fashion and with such content as which 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 (...) (article 2)
- > Clearly defining what is confidential or not (in the EWC agreement) and/or prior to the information and consultation process and how much time information will remain confidential
- > Once the information and consultation process has ended, **monitoring** the implementation of management projects and the deviations from original prospects
- > Carrying out **studies** or **surveys** by their own, with experts' and coordinators' support
- > Enforcing the right to receive **continuous information** relating to the life of the company and its economic, financial and social strategies at European level
- > Enforcing the right to receive written answers on opinions: "The consultation shall be conducted in such a way that the employees' representatives can (...) obtain a response, and the reasons for that response, to any opinion they might express" (2009 EWC directive annex)



MOREINFO

HOW TO FIND MORE INFORMATION ON EWC'S IN TRANSPORT

HOW TO FIND MORE INFORMATION ON EWC'S IN TRANSPORT?

- > Connect to http://www.ewcdb.eu/user/register
- > Set up an account (for free)
- > Once your account has been created, log on to http://www.ewcdb.eu/
- > Go to "SEARCH" / "AGREEMENTS"
- > Select a company name or search by industry using the filters

3 WEBSITES FOR EWC MEMBERS IN TRANSPORT:







- > moretransportewcs.eu
- > www.etf-europe.org/our_work/ european-works-councils/
- > www.syndex.eu/role/european-workscouncil-member

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* *	KNOWLEDGE FOR

NOTES:	NOTES:



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