

How to deal with EWC/SE negotiations during the COVID-19 crisis

Joint European Trade Union Federations' Recommendations

April 2020

The Directives governing European Works Councils [EWC] and worker involvement in European Companies [Societas Europaea – SE] materialise workers' fundamental rights to be informed and consulted on company decisions which may affect their interests across borders. The Directives set a general framework and leave it up to worker representatives and the management in each concerned company to negotiate the concrete operation, roles and resources of an EWC or SE-Works Council. Those negotiations lay the foundations of the future social dialogue in the multinational company. There is no efficient EWC or SE-Works Council without a high quality EWC or SE agreement. Securing a quality agreement is all the more important than it is a legally binding document stating each party's duties and responsibilities for the years to come. It is therefore of the utmost importance to ensure that the conditions are met for EWC/SE negotiations to be properly conducted.

Against this background, and during the exceptional circumstances of the COVID-19 crisis:

⇒ No EWC/SE negotiation meeting should take place via phone or videoconference. Instead, meetings should be postponed until face-to-face meetings are once more allowed¹

⇒ If your company wants to launch negotiations now or if you consider the possibility to request the launch of negotiations, we advise you to contact the officer responsible for EWC/SE issues in your trade union

While confronting the management with this position, you may be faced with challenges as the EWC and SE Directives set tight time constraints:

- Once you have officially requested the launch of EWC negotiations (e.g. before the Covid-19 crisis hit), the company is obliged to convene the first meeting of the Special Negotiation Body [SNB] within a maximum of six months following the second application;
- EWC negotiations can last up to a maximum of 3 years following the second application;
- The timeline is even stricter for SE negotiations which only last a maximum of six months as from the date the SNB is established and yet include not only the negotiation for the setting up of an SE-Works Council but also worker representation on the company board. The negotiation period can be extended by a further six months, provided that both parties agree. Companies' consent to extend the negotiation period is thus a prerequisite.

Moreover, in the case of SE negotiations, the management may put additional time pressure on because it needs to first reach the SE agreement before having its shareholders' general assembly approve the adoption of the SE statute and then formally register the new SE.

¹ See the [joint ETUF's recommendations to EWC/SE during the COVID-19 crisis](#).

Our recommendation is to take action:

#1 Request negotiation meetings be delayed:

- By ordinary mail in which you either request to postpone meetings or suspend negotiations until face-to-face meetings are once more allowed, depending on what you consider best suits your situation;
- If the parties agree, it is always possible to extend the negotiation period. You may want to formalise this in an agreement between the parties.

Agreement on extending the negotiation period was already reached in some cases (e.g. at General Dynamics, Idemia, Syneos, Vertiv).

A rather straightforward argument you can use is that in any case no new SNB and no new EWC or SE-WC can be set up until the confinement measures have been lifted. Indeed, national procedures for the nominations of delegates in SNB, EWC and SE-WC cannot be implemented in some countries (e.g. in France, electoral processes are suspended during the health crisis).

#2 If the management refuses:

- Examine together with the trade union expert assisting your SNB which option is best for you: either agree to sign the draft agreement or acknowledge the failure of the negotiation at the end of the 3 year (for EWC) / 6 month (for SE) deadline and opt for the subsidiary requirements;
- In such a situation, it is advisable to liaise with your trade unions. The trade union expert assisting your SNB will also contact the different trade unions concerned with the aim to bring a coordinated trade union response.

Your European trade union federation is available should you have any further questions:



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