

UNI Europa Guidelines on **European Works Councils**

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1 Introduction and Objectives of the Guidelines

1.1 A common approach

The objective of these guidelines is to define a UNI Europa approach applicable to all UNI Europa sectors on matters related to European Works Councils (EWC).

These Guidelines set out the basic strategies and approaches. They have been established throughout the proceedings of the cross-sectoral working group "Stronger EWCs @ UNI Europa". Every sector is invited to develop them further according to its specific needs and standard working procedures. The sectors should continuously exchange experiences and reflect together on the usability of these guidelines in the practical work. The guidelines can and should be improved and developed further over time.

The UNI Europa EWC Policy Officer will oversee and facilitate these developments and the cooperation between the sectors.

1.2 Focus on European Works Councils

Multiple forms of transnational employee representation and participation within different kinds of company structures exist today. The main forms are EWC and representative bodies in SE (European companies) . In practice, UNI Europa's work has been and still is focusing on EWCs.

For easier reading and understanding, the following document refers to EWCs only. Nevertheless, UNI Europa supports any other form of transnational employee representation and participation, along the principles described in these guidelines, according to the needs of the employees concerned and the capacities within the Secretariat. If necessary, these guidelines will be amended to include more specific guidance on SE, board level representation and company policy in general.

These guidelines shall provide guidance to UNI Europa affiliates, UNI Europa SNB/EWC coordinators and SNB/EWC members.

These guidelines explain how UNI Europa uses the possibilities offered by the legislation, the trade union goals it aims to achieve through and for EWC for the benefit of the workforce. Furthermore, they explain how UNI Europa and its affiliates can work together to coordinate and strengthen those bodies.

The legislation we refer to includes in particular:

- Directive 2009/38/EC on European Works Councils
- Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees
- Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community
- Directive 2001/23/EC on (...) the safeguarding of employees' rights in the event of transfers of undertakings
- Directive 2005/56/EC on cross-border mergers of limited liability companies
- The national transpositions of these Directives within the 30 countries of the European Economic Area

1.3 UNI Europa's goals

UNI Europa aims to:

- Ensure that employees' rights to information and consultation are respected at all times
- Ensure trade union support for EWC members
- Ensure that all EWC, irrespective of the date of signature of their agreement, fully benefit from the improvements of the Directive 2009/38/EC on European Works Councils
- Increase employee involvement in the decision-making mechanisms of companies falling under the above mentioned legislation
- Reinforce cooperation between employees' representatives across borders
- Link developments at the company level to the more general trade union goals
- Strengthen trade union alliances in the companies concerned
- Achieve representation of women and men and all other different groups according to the composition of the workforce
- Help to develop the EWC into a powerful tool of employee participation and to participate in the decision making
- Pro-actively influence the agenda of this social dialogue beyond the standard issues mentioned in the EWC Directive to cover also issues like Human Resources, Equality, Health and Safety, etc.
- Support especially EWC members from CEE countries in connecting to their trade unions, receiving adequate training and participating actively in the EWC
- Ensure – together with the affiliates concerned – a constant and high unionisation rate
- Ensure that the EWC is well embedded in other levels of employee representation/participation, (workplace, regional, national or international levels and board level representation)
- Empower the EWC to anticipate changes and to pro-actively provide possible alternative solutions to management

In order to put these goals into practice, a strong trade union presence in EWC is vital. Academic research as well as practical experience have shown that trade union coordination is important right from the beginning in the formation of Special Negotiating Bodies (SNB) as well as in the ongoing work of established EWCs. A trade union presence can safeguard minimum standards in agreements, ensure a European trade union perspective and assist SNB/EWC/SE-WC members to become a unified group.

2 Identification of companies that qualify for an EWC

UNI Europa's sectors should identify the companies within their sphere of responsibility that qualify for an EWC. UNI Europa affiliates should provide the necessary information from a national level and through their direct contacts to the workforce and the local works councils.

From UNI Europa's point of view, companies qualify if :

- they meet the legally required criteria concerning their structure and number of employees
- a significant proportion of the workforce is unionised and adequate representative bodies exist
- affiliates and employee representatives in at least two countries in this company support the creation of an EWC

UNI Europa is aware that whether or not to start an SNB is a decision which belongs to the employee representatives of a company. European law also ascribes the decision to the central management of a company.

UNI Europa Secretariat should however evaluate whether or not to start an SNB or if a different strategy towards the company concerned is more appropriate. The consequent initiative has to be taken in a timely manner and in cooperation with the affiliates concerned.

3 Trade union alliances

EWCs should always reflect the aims and objectives of the trade unions that organise in a company. EWCs need to be regarded as tools for UNI Europa and its affiliates to defend and promote employee's interests.

Therefore, the development of trade union alliances is a fundamental element in our work for EWC. We must ensure that trade union members benefit from the legal provisions mentioned above. UNI Europa will not allow companies' managements to circumvent legitimate trade union representatives.

Every SNB/EWC has to be embedded in a stable and clearly defined european trade union alliance covering the company concerned. It should encompass the unionised SNB/EWC members, the SNB/EWC coordinator, the representatives of affiliates (trade union officials) that organise in the company concerned.

The alliance can be extended beyond Europe to become an international trade union alliance.

UNI Europa sectors should initiate this alliance and decide on the structure, the scope and possible rules of procedure within such an alliance and make this information transparent.

The aim of a trade union alliance is to:

- ensure maximum support for the SNB/EWC
- secure a common trade union approach on the company concerned
- gather information and thus allow for a comprehensive overview of the company concerned
- guarantee a balance between the national interests of affiliates and thus allow for a truly european/international approachcreate a stable basis for transnational trade union activities (such as campaigns or negotiations for a global framework agreement)
- develop the EWC as a tool to empower members from countries with little or weak trade union involvement to demand and enjoy the same rights as colleagues from countries with stronger trade union power
- discuss and implement strategies for raising the unionisation rate in the company/the EWC in the company concerned
- protect and promote the interests of employees within multinational companies operating in Europe

4 Cooperation with other European Trade Union Federations

If different European Trade Union Federations that are members of the ETUC organise in the same company, UNI Europa will cooperate with these Federations in an open and constructive way, for the benefit of the employees concerned.

5 Starting a special negotiation body (SNB)

There are different possible points of departure to set up an SNB in order to establish an EWC. In any case, the most important element is continuous communication: As soon as any information of a prospective or already existing new SNB reaches UNI Europa's Secretariat, the sector(s) concerned will alert all affiliates concerned to secure trade union presence and coordination right from the start.

5.1 Responsibilities of UNI Europa Secretariat and the affiliates

The decision to start a procedure towards an EWC, and the necessary implementing steps, should be taken by UNI Europa Secretariat, and more specifically the relevant UNI Europa sector, in close cooperation with the affiliates concerned, according to the legislation but also according to the principles described in these guidelines.

It is the responsibility of affiliates concerned to inform the workforce of the company.

When an initiative to set up an SNB comes from UNI Europa affiliates or from the workforce within the company and is supported by UNI Europa affiliates, it is essential that affiliates always contact and consult with UNI Europa Secretariat before starting any procedure.

The UNI Europa sector(s) responsible will then contact all affiliates situated in the countries concerned.

The same applies if the initiative to start an SNB comes from the management's side.

5.2 Information of European social partners on the start of an SNB (via the procedure described in EWC directive 2009)

Article 5.2.c of EWC directive 2009/38/EG stipulates that

"Central management and local management and the competent European workers' and employers' organisations shall be informed of the composition of the special negotiating body and of the start of the negotiations".

The European Trade Union Confederation (ETUC) and the European employer organisation BusinessEurope have agreed to each provide a single contact e-mail address in order to ensure an effective transmission of information from companies to the competent European social partner organisations. The ETUC and BusinessEurope will each be responsible for disseminating the information to the competent sectoral social partner organisations on their side in a timely manner and according to their internal structures and procedures. The ETUC has set up the following e-mail address for this aim: ewc@etuc.org.

The ETUC is responsible for forwarding the requests to the European Trade Union Federation(s). For this purpose, UNI Europa has created an email account ewc@uniglobalunion.org. It is the responsibility of UNI Europa Secretariat to ensure that the necessary contacts are taken with the relevant company representatives : employees as well as management. UNI Europa will follow the information procedures proposed by ETUC, according to the « Rules of Internal Procedure - Information of European Social Partners of the start of EWC negotiation ».

UNI Europa affiliates should monitor in their countries if this procedure – to « inform the competent European workers' and employers' organisations » - is complied with by companies. They should inform UNI Europa's Secretariat if they are aware of the setting up of an SNB.

6 Negative response from the company's management to an SNB request

In case of negative responses to employee's request for an SNB, affiliates should inform the UNI Europa sector(s) concerned to decide together on coordinated action towards the company. If the company's management responds in a positive way (starts the procedure for the setting up of an SNB), but is obviously trying to avoid or even exclude trade union involvement, UNI Europa should be alerted and adequate steps should be coordinated between UNI Europa and its affiliates.

7 Steps towards setting up an SNB

Before the setting up of an SNB, the relevant UNI Europa sector will – if so decided and according to its capacities - convene a trade union coordination meeting with all potential members of the envisaged trade union alliance.

The aim of such a trade union coordination meeting is to

- Make the different actors meet and enable them to communicate with each other
- Act to maximise trade union representation in the SNB (support affiliates in coordinating elections of SNB members)
- Gather all information available
- Reach an agreement on common positions and steps to be taken
- Identify possible conflicting national interests and find solutions so there is no obstacle for the process

8 Negotiations for an EWC agreement

8.1 EWC agreements: From minimum standards to preferred outcomes

EWC agreements are always a result of negotiation and compromise. However, an EWC agreement must never go below the standards defined by EWC directive 2009/38/EC including the subsidiary requirements, as well as the applicable national transposition law or other applicable legislation.

However, UNI Europa wants to achieve better and more concrete provisions than those provided by legislation.

Beyond the basic legal standards, a trade union perspective on the good functioning of an EWC will include more aspects and more detailed provisions on certain issues. Therefore, these guidelines include an annex suggesting several concrete points to be included in an EWC agreement.

8.2 UNI Europa's role in the negotiating process

UNI Europa will ensure, through the communication and coordination described in these guidelines, that the employees representatives embrace a common approach and that negotiations run smoothly.

UNI Europa will encourage and support the SNB to draft a EWC agreement based on the Annex of these guidelines. This draft will be presented to management at the earliest possible stage of negotiations.

8.3 Signature of the EWC agreement

UNI Europa should be the (co-)signatory on EWC agreements negotiated within its sphere of responsibility. This is to show clearly that the trade unions involved stand united and in transnational solidarity behind the EWC.

UNI Europa will not endorse an agreement that is below the minimum legal standards. During the negotiating process, UNI Europa Secretariat will decide on a case by case basis how to proceed with the company concerned.

9 UNI Europa SNB/EWC coordinators

Every SNB and EWC should be coordinated by one trade union official responsible. A description of the role and tasks of a coordinator is included in the Annex to these guidelines.

EU Directive 2009/38/EC clearly provides for an SNB or EWC to be assisted by trade union experts and obliges company managements to cover the costs of at least one such expert. Accordingly, every SNB/EWC should have one trade union expert continuously present who can act as a coordinator – as described in this chapter.

In addition, each SNB/EWC should have access to other experts that can provide support in financial, economic, legal or any other matters relevant to the SNB/EWC.

The role of a coordinator is not in competition or even contradiction with the role of an SNB/EWC chair/president/select committee member from the employee's side. While an employee's side SNB/EWC chair conducts the everyday proceedings of the SNB/EWC, the coordinator's role is to bring together all members of the trade union alliance and facilitate a common approach, to provide support to EWC members, and to ensure that SNB negotiations/EWC proceedings are in line with UNI Europa's policy and be the link between the EWC and UNI Europa Secretariat.

9.1 The designation of SNB/EWC coordinators

The coordinator can be a staff of UNI Europa Secretariat, or a trade union official of a UNI Europa affiliate with a UNI Europa mandate.

The designation of SNB/EWC coordinators lies within the responsibility of UNI Europa's Secretariat. UNI Europa Secretariat will ensure the transparency of this nomination and the acceptance by the EWC. Affiliates must be included in this process, as they are the most important players in everyday SNB/EWC operations. Their role is to ensure that the coordinator has the necessary profile and resources. They inform UNI Europa Secretariat if he/she is no longer able to act as a coordinator and they propose another person to replace him/her. The future coordinator has to be informed about what is expected from him/her.

9.2 SNB/EWC coordinator profile

A coordinator should have experience with SNB/EWC, have negotiating and mediation skills and should speak at least two European languages. He/she should be familiar with the sector as well as the company concerned. If he/she has not followed SNB/EWC proceedings from the very beginning, he/she should be informed about the specific history and potential problems. UNI Europa and its affiliates are aware that this person will need time and resources to fulfil his or her duties as a coordinator.

9.3 UNI Europa support for SNB/EWC coordinators

Support from UNI Europa Secretariat should include:

- Informing the coordinators regularly on EWC- and relevant internal UNI Europa or policy issues
- Providing possibilities for training that focuses on coordinator's tasks
- Improving cooperation and networking between coordinators
- Providing best practice examples

Support from the affiliate which is the coordinator's home union should include:

- Giving him/her the necessary time and resources
- Providing possibilities for training that focuses on coordinator's tasks

10 Implementing EWC Directive 2009/38/EC to already existing EWC

The EWC Directive 2009/38/EC, officially in force from June 2011, brought some significant improvements concerning the definitions of information, consultation, transnationality, the involvement of trade unions, right for training, and many more. UNI Europa sectors should seek to identify existing agreements that need to be adapted to benefit from these improvements. If desirable, an initiative should be taken towards an adaptation the existing agreement to the new standards.

The EWC Directive 2009/38/EG offers the possibility to negotiate a new EWC agreement in case of significant changes in company structure (“adaptation clause”). This possibility should be used as widely as possible to provide for the improvement of information and consultation.

11 Training

Training seminars are essential to make EWC members aware of their new rights provided by EWC Directive 2009/38/EG and how they can enforce them in practice.

UNI Europa will support and facilitate according to its capacity the possibility for EWC members and EWC coordinators to obtain training. UNI Europa sectors should provide training seminars, using the relevant budget lines of the European Commission and seek also to use other sources for funding. In addition, UNI Europa should seek to provide cross-sectoral training and exchange forums for EWC members and more specifically for coordinators.

UNI Europa will closely cooperate with the trainers of the European Trade Union Institute. Private training providers (private training institutes or individual trainers who are not employed by a trade union) will only be included in training seminars under the condition that UNI Europa defines the concept of the training and decides on the training contents. Trainers will report to UNI Europa Secretariat on the outcome of the training.

12 Annex 1: Elements for an EWC agreement

An EWC agreement must include the standards and definitions set by the EWC Directive 2009/38/EG including the subsidiary requirements, the applicable national transposition law. In addition, UNI Europa recommends to include the following points:

Meetings:

- The EWC must be able to hold at least two meetings per year
- The right for extraordinary meetings – whenever the EWC considers it necessary - must be included
- The agenda for the meeting(s) is worked out between the Steering Committee of the EWC and management
- The official EWC meeting should last at least one day
- There should be one full day for a preparation meeting and sufficient time for de-briefing
- Travel time = working time

Select committee:

- According to the subsidiary requirements of EWC Directive 2009/38/EC, the employees' representatives within the EWC must have the right to elect a select committee
- The mandate of the select committee members emanates from the agreement and is given by the full EWC
- The EWC agreement must define the role and responsibilities of the select committee so that it at least contains the following rules:
- It discusses and agrees with management on the location, agenda and structure of the plenary meeting
- In co-operation with management it discusses and agrees on the minutes and statements of the plenary meeting
- The select committee must have the right to hold regular meetings financed by the company

- It must be informed and consulted by management in good time especially in the period between official meetings if extraordinary transnational aspects become relevant
- The select committee must have the right to produce and circulate position papers. Furthermore it should have the right to have these papers translated into the relevant languages
- The select committee must have the right to hold meetings fully or partly without any representation of management
- Information and consultation that takes place in select committee meetings with management can not replace information and consultation at full EWC meetings
- In order to have a strong select committee it is recommended to elect substitutes

Composition of members

- Equal representation of women and men as well as all different types of employees according to the composition of the workforce
- This concerns not only the number of male and female participants or participants of different groups but also the inclusion of contents to be dealt with by the EWC (such as antidiscrimination, equal pay, women's health, and others according to the company's situation)
- Only legitimate employees representatives (according to national law) can be members of an SNB/EWC. How members have been elected or appointed in their countries must be transparent to the entire EWC.
- UNI Europa is in favor of including employee representatives from countries that do formally not belong to the European Union or the European Economic Area. Especially companies operating in Switzerland should include Swiss employee representatives in their EWC. Also other countries "beyond" Europe should have the possibility to be present in EWC. If full participation cannot be achieved, they should be included as observers.
- In order to have a strong EWC, all members should have substitutes

Information and consultation:

- The definitions ("information", "consultation" but also "transnationality" including Recital 6) of the EWC directive 2009/38/EC are to be explicitly incorporated in the agreement's text. If the national legislation which is going to be applied provides for better and even more concrete rules, then these provisions are to be incorporated.
- It should be clear that the duty to conduct proper information and consultation on the part of management must be based on a written report made available in good time prior to the pre-meeting to all members of the EWC in the appropriate languages.

Languages

- Simultaneous interpretation from and into all relevant languages must be provided for the main EWC meeting, the pre-meeting, de-briefing meetings and select committee meetings
- Long-term plans to achieve one major working language with suitable language teaching should be avoided and cannot be used to restrict simultaneous interpretation and translation where this is necessary

Trade union representatives and additional experts

- The agreement must provide for a permanent seat for a trade union representative

- In addition, the EWC and the select committee must have the right to invite experts (financial, economic, legal, ...) of their own choice to all meetings
- Management should be informed of this, it is however not acceptable that experts can only be invited to certain pre-determined points on the agenda
- The EWC agreement must ensure that the company covers the cost of at least one expert, at least concerning travel and accommodation

Confidentiality

- The rules for confidentiality can only cover such information as has been explicitly and reasonably designated as a business secret
- The rules of confidentiality must not apply to members of organisations that are already covered by national rules of confidentiality
- The rules of confidentiality must not apply between EWC members
- The EWC members should be able to discuss the confidentiality of certain information.
- Infringements of the rules of confidentiality by employees can only trigger sanctions on the basis of the respective national laws, rules and traditions.

Costs and means required

- All costs in connection with the work of the EWC must be met by management. That includes travel, accommodation, interpretation, translation, communication facilities, training, wages for the time spent on EWC work
- EWC members shall have access to communication facilities (internet access, local and international phone calls, Fax, e-mail, website, webcam)
- EWC members shall have access to translation services in order to communicate and exchange information between meetings

Training

- Sufficient training for EWC members to fulfill their mandate must be provided
- New EWC members must be entitled to basic training on EWCs
- Regular possibilities for training and participation in specialised seminars should be provided
- Trainers and contents of the training are to be chosen by EWC members according to their needs
- Trainings should be available to the entire EWC as a group. This is to support the development of group coherence and a common basis of knowledge.

Internal rules of procedure

Internal rules of procedure can help to prevent conflicts within the EWC. They can describe the roles and tasks of the chair, the select committee members, and other functions within an EWC. Such rules do not necessarily have to be a part of the agreement but can be an internal document for employees reps only. Such rules do not need acceptance by management.

Applicable national law

SNB members and management should jointly decide under which national law the EWC will operate and which is the court of jurisdiction and include this in the agreement

13 Annex 2 : Role and tasks of SNB coordinators

Liaison, communication, trade union presence

- represent UNI Europa
- act as the liaison person between SNB members as well as towards UNI Europa Secretariat
- make sure that UNI Europa EWC guidelines are understood and accepted

monitor the SNB member's election process in order to ensure maximum trade union presence in the SNB

- keep an updated the list of SNB members including their trade union membership
- participate in all pre-meetings, meetings with management and de-briefings
- inform the UNI Europa Secretariat on the progress made in the negotiations

Guidance and advice

- inform SNB members on their rights (EWC directive applicable, relevant national transposition law) and prepare them for their role in the negotiation process
- guide and assist the SNB members in the negotiating process
- know other EWC agreements and provide best practice examples
- advise on negotiating strategy

Support group cohesion and a European perspective

- Make SNB members aware of the differences in national legislations and industrial relations
- detect possible sources of conflict and help to find solutions in order to support the advancement of the negotiations
- promote that the interests of employees from all countries to be fairly represented and the composition of the SNB to reflect the composition of the workforce
- promote and initiate training possibilities provide contacts to other experts (financial, economic, legal, etc.)
Ineeded

14 Annex 3: Role and tasks of EWC coordinators

Liaison, communication, trade union policy

- represent UNI Europa
- act as the liaison person between EWC members as well as towards UNI Europa Secretariat
- stimulate communication between EWC members, or at least between select committee members, in between meetings

- participate in all pre-meetings, meetings with management and de-briefings
- keep an updated the list of contact persons in the EWC, including their trade union membership
- produce at least once a year a brief summary of recent developments and EWC activities in the company

Guidance and advice

- know and inform about the relevant legislation (EWC directive applicable and its national transposition law, etc.)
 - guide and assist the EWC members in their work
 - advise the EWC members on the enforcement of the EWC agreement
 - know other EWC and provide best practice examples
- provide contacts to other experts (financial, economic, legal,etc.) if needed
- support the establishment of internal rules of procedure (see chapter on minimum standards for EWC agreements)

Ensure a European perspective

- Make EWC members aware of the differences in national legislations and industrial relations
- foster the cohesion of the group
- detect possible sources of conflict and help to find solutions in order to support the advancement of the EWC's work
- embrace a European position, especially in exceptional circumstances such as transfer of production, plant closure, redundancies, etc.