



**SUPPORTING SETTING UP**

# **AND STRENGTHENING OF NEWLY ESTABLISHED EWCS**

TOOLKIT FOR EUROPEAN WORKS COUNCILS



Co-funded by  
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## Introduction

The establishment of European Works Councils (EWCs) is crucial for facilitating communication, information, and consultation between multinational companies and their employees. However, many organizations face challenges in setting up and effectively managing EWCs due to varying legal frameworks, cultural differences, and a lack of knowledge and expertise. To address these issues, this project aims to support the establishment and capacity building of EWCs across five partner countries: Poland, Croatia, Italy, Spain, and Romania and at an EU level.

The main objective of the project *“Supporting Setting Up and Strengthening of Newly Established EWCs”* (SUSEP) is to provide comprehensive support for the creation and functioning of EWCs by identifying the specific needs of multinational companies (MNCs) and their employees, assessing capacity building requirements, and developing a range of tools and resources to facilitate the process. The project targets EWC members, workers' representatives, and employers, ensuring that engaged parties are well-equipped to establish and maintain successful EWCs.

Specifically the objective of the toolkit is to provide a comprehensive resource for the successful establishment and operation of European Works Councils (EWCs), targeting both organizations considering setting up an EWC and newly established EWCs.

In the ongoing transformation of the world of work driven by environmental, economic and social sustainability, a meaningful involvement of workers at all levels and their representatives as regards the anticipation and management of change can help diminish job losses, maintain employability, enhance competitiveness and ease effects on social welfare systems and related adjustment costs. European Works Councils (EWCs), information and consultation bodies representing EU-based employees within multinational companies, whose rules are laid down in European Works Councils Directive 2009/38/EC1 (‘recast Directive’), are an important piece of an extensive policy framework on social dialogue.

The right to information and consultation is laid down in the EU Charter of Fundamental Rights of 2000 (Article 27). The Treaty on the Functioning of the European Union (TFEU) also promotes social dialogue between management and labour (Article 151) and recognises the role of social partners (Article 152).

EWCs are bodies representing EU-based employees within multinational companies. Through them, the employees of undertakings or groups of undertakings operating in two or more Member States are to be informed and consulted on transnational matters affecting them. EWCs play an important role in reconciling economic and social objectives within the

single market, especially in a changing world of work. EWCs create a link between employees of the same company or group in different Member States and provide a structure enabling effective dialogue between central management and worker representatives within these entities.

EU law on EWCs aims to bridge the gap between increasingly transnational corporate decision-making and workers' nationally defined and nationally confined information and consultation rights. When company decisions are taken at a transnational level, the national system of information and consultation does not enable employees in the different Member States to organise inputs and voice their views or concerns on these transnational issues together.

EWCs promote a shared understanding of the transnational challenges facing large multinational companies and the involvement of employees in the decision-making process, with the objective of exchanging possible solutions, facilitating their implementation and increasing the impact of strategic choices made by the employer.

According to the available data, in 2021, 3676 multinational companies operational in the EEA constituted an undertaking or group of undertakings within the scope of the Directive, employing close to 30 million workers in the EEA.<sup>55</sup> European Works Councils or agreements on transnational information and consultation agreed between employee representatives and the central management are operating in around 1000 companies<sup>1</sup>.

The number of companies with EWCs has been relatively stable in the last decades. The take up rate and the overall number of EWCs have not changed significantly since the recast, with newly established EWCs taking the place of those dissolved, mainly due to restructuring (mergers).

The EWCs can be established in companies under a jurisdiction of an EU/EEA Member State, even if the companies' headquarters are situated outside of the EU.<sup>58</sup> The largest number of EWCs are located in multinational companies headquartered in the United States (170), Germany (124), France (102), the United Kingdom (92), Sweden (69), the Netherlands (58), Switzerland (48), Italy (38), Finland (37), Belgium (36), Japan (31).

By sector of activity, the majority of EWCs are concentrated in large metal, services or chemical multinational companies.

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<sup>1</sup> EWC data base ETUI

## EWC – establishment, composition and structure

The establishment of procedures and/or the creation of institutions requires an initiative from the interested party. The initiator can be:

- central management,
- or at least 100 employees or employee representatives from at least two organisations located in at least two member countries must apply for the establishment of procedures. The number of employees from one country is not specified.

A trade union initiating the establishment of an EWC should agree with at least one other subsidiary, office or employee representative organisation operating in another Member State, or, if there are none, with a workers' community. The establishment of an EWC can also be initiated by two or more companies operating in the same Member State, but in this case the central management is not obliged to cooperate.

Another condition is that at least 100 employees, either through a trade union or directly - must be in the ranks of the initiators. This number must include workers employed in at least two companies. This means that if there are several companies or institutions and not all of their employees want to join the initiative, no obstacles are made to setting up a council.

The directive does not specify the content of the initiative, but it should include the intention to set up an EWC, the requirement for action by the central management and the approval of the above-mentioned conditions. The application must be addressed to the central management, managing undertakings or groups of undertakings at EU level. International, company-related provisions and its internal rules designate the responsible representatives of the enterprise. The structure of the enterprise may be made available in the public information concerning the enterprise. The request may be forwarded to the management of a local company or its branch. In this case, the addressees of the initiative should forward the request and all information about the initiators to the central management as soon as possible. The central management should communicate this information to all subordinate enterprises and their branches, so that they can join, if they wish, in the initiative.

Once an initiative has been submitted by one of the interested parties, **a special negotiating body** may be set up to conduct negotiations. The purpose of the team is to reach **an agreement** with central management on the right of workers to receive information and consultation on transnational matters. The members of the team shall be selected in proportion to the number of all employees of the company or group of companies in a particular member country. One member from each member country is selected from 10%

of the number of employees employed in all member countries. The procedures for the appointment of the members of the special negotiating body are defined by law by those countries in which they are elected or appointed.

Step one - determining the number of members to be appointed. Each member state (taking into account all companies and establishments operating in it) is entitled to one seat from 10% of all member state employees. Internally, the distribution of members is proportional to the number of employees in a company or group of companies in a particular member country.

Mandates are provided for central management to actively contribute during the establishment of the special negotiating team. The central management should cover all financial costs in connection with the establishment of the special negotiating body, its activities and any reasonable expenses.

During negotiations, the special negotiating team may request assistance from experts of its choice. These may include representatives of EU-wide workers' organisations. These experts and representatives of the workers' organisations may consult during the negotiations if so requested by the team. In order to strengthen its own position, the special negotiating committee, has the right to negotiate and bargain without central management. Central and local management and authorised European employee organisations should be informed about the composition of the special negotiating body and the start of negotiations in a particular multinational or group of companies.

The **special negotiating body** has the mandates of the European Works Council, the operational arrangements and the content of the consultations during the cooperation with the central management. The parties concerned can therefore agree on:

- the establishment of an EWC, with the definition of its conditions or based on national law; or
- the information and consultation of employees and operating procedures.

If negotiations get stuck or the parties concerned cannot agree on procedures, then the special negotiating body can decide by a two-thirds majority to stop the procedures by which agreement is sought. After such an event, a moratorium of two years (which may be shorter upon agreement of the parties) becomes effective. During this time, no other institution can be established.

**The agreement** between the special negotiating team and the central management must specify:

- EU establishments, EU companies or groups of EU companies concerned by the agreement;
- the composition of the EWC, the duration of the term of office, the number of members to ensure equal representation by area of economic activity, occupation of the workforce and representation by gender, as well as the distribution of the workforce in the Member States, the composition of the EWC, the number of members and changes to the distribution rules in the Member States after a significant change in the number of employees in the Member States;
- the tasks of the EWC, the principles for consulting and informing the EWC, agreeing on the principles for informing and consulting employee representatives and the EWC, respecting the principle that employees should be informed and consulted on a given topic at the appropriate administrative and representative level;
- the venue, periodicity and duration of EWC meetings;
- allocation of financial resources, assets and provision of services for the EWC's activities;
- the date on which the agreement becomes legally binding, the duration and amendment or termination of the agreement and cases when a new negotiation of a new agreement has to be started or a new negotiation of a new agreement has to be started on the basis of point 3 of this act, the rules of preparation, taking into account those cases when EU companies or the structure of a group of companies changes or when two or more points of incompatibility appear in the current agreement;
- the composition of the EWC Committee, but not more than 5 members, its establishment rules, tasks and working regulations.

The type of EWC activity depends on their activity, their structure, the traditions of the companies or group of companies, the activity of the workers' representatives' organisation and the willingness of the central management to cooperate. The main task and right of EWCs is to inform and consult in economic decision-making. Although consultation is only possible on matters related to corporate management decision-making, information on all international company matters affecting the interests of employees must be communicated to the EWC. These transnational matters are those that concern no less than two member countries of the operating company and have a potential impact on the affairs of the company's employees or are related to the transfer of activities from one member country to another. The information provided by management should create the conditions for employee representatives to make a comprehensive assessment of management's decision and to determine its anticipated impact. The consultation should provide opportunities for employee representatives to express their own opinion on the company's proposed measures. This opinion should be taken into account when decisions are made in the management of the enterprise. Such consultation should take place at a mutually convenient

time, without hindrance or unnecessary delay of the decision-making process and without exceeding the limits of management's responsibility. Management must respond to the opinion given by the EWC.

## **Effective communication and meeting management**

The agenda must be jointly defined by the Management and the Select Committee. However, the process must be democratic and include also the possibility for EWC members to transmit to the Select Committee requests / proposals for issues to be put on the agenda. A delay must be fixed for sending the invitation and the agenda to all EWC members. It is essential for a good preparation of EWC members that they also receive the working documents well in advance of the meeting. At time limit should be mentioned in the agreement.

The agreement must specify who is tasked with drafting the minutes. Central Management and the Select Committee must have the possibility to read, transmit amendments / comments and to approve the final version. A clear time frame must be provided to secure that all EWC members receive them minutes within a reasonable delay. The minutes must be made available in all necessary languages. Here too, a time frame must be determined.

Simultaneous interpretation must be provided in all necessary languages for all meetings. It is not acceptable to restrict the number of necessary languages for cost reasons. All EWC members must be able to understand and participate actively at meetings. Language training may not be used as an excuse to cancel interpretation. Still, this training is necessary to enable EWC members to gain sufficient knowledge of a language common to them for their communication outside of meetings.

Interpreters must be qualified professionals. The Management may not designate people to act as interpreters. All documents must be translated in the necessary languages by professional translators to guarantee the quality of the texts.

Face-to-face meetings remain the normal way for EWCs to operate. Preparatory and debriefing meetings with the employee representatives of the EWC should also be held in person, with the assistance of professional interpreters. The European trade union federations believe it is not advisable to resort to hybrid or online meetings for plenary EWC meetings, especially at the starting phase of a negotiation when members do not know each other particularly well.

Online or hybrid meetings could be envisaged for the meetings of the EWC working groups (if any), or for the EWC or select committee, provided these online / hybrid select committee



meetings help more frequent meetings to take place, in addition to those already planned in your EWC agreement. The decision to convene a meeting either online or hybrid must be subject to the EWC members' agreement, and decided on a case-by-case basis. Should you decide to resort to online / hybrid meetings on a permanent basis for the EWC working group meetings, and any additional meetings of the select committee, you may want to consider adapting your EWC agreement accordingly. Should that be the case, please liaise with the trade union expert / coordinator who is assisting your EWC ,and with your European trade union federation.

To ensure good quality online or hybrid - meetings, the European trade union federations recommend the following principles:

1. Agree formally with the management about the rules and specific conditions for the use of online or hybrid meetings. The first goal is to ensure that all delegates benefit equally from the same high-quality working conditions, and that no one will be disadvantaged (e.g. either by not having access to proper IT equipment or by not being present in the room at a hybrid meeting).
2. Request the best quality video conferencing / hybrid system ,i.e. one which provides for:
  - a. Participation by video, with the possibility of seeing every participant on the screen
  - b. Simultaneous interpretation in all required languages, provided by professional interpreters
  - c. Possibility for all participants to request the floor
  - d. A chat room, where delegates can interact during the meeting with all due confidentiality
  - e. Participation of external experts and trade union coordinators who assist the EWC
  - f. A high level of cybersecurity and privacy protection, while ensuring that firewalls and other network security devices do not prevent delegates from convening meetings between themselves (without the management), or prevent the involvement of external experts and trade union coordinators.
3. Secure access to and training in the use of the video conferencing system for all delegates. EWC members must have access to the necessary equipment (computer/tablet, high speed internet connection, headset, webcam) and to a dedicated office or (home) room to allow for their meaningful participation in the meeting. A training session on, as well as a test of, the chosen video conferencing system must be carried out before the first online / hybrid meeting takes place. Of

course, it is for the EWC delegates to decide, together with their trade union federation, what is best, depending on their own specific situation, provided social dialogue is maintained under high-quality conditions. The trade union expert / coordinator nominated to assist your EWC, as well as the European trade union federations, remain at your complete disposal should you have any questions.

A distinction must be made between at least two types of experts: one external expert who is a trade union Coordinator and who assists the EWC as permanent adviser. The Coordinator must have the right to attend all meetings, including EWC plenary meetings and Select Committee meetings. Other subject-matter experts whom the EWC may call upon from time to time when they need expertise in a specific area.

Travel time and time spent by EWC and Select Committee members in plenary, preparatory and debriefing meetings as well as training must count as working hours and be paid accordingly. In addition, EWC members must be given the necessary time off to deal with the tasks and responsibilities the mandate entails. This time-off must also count as working hours.

As part of their assignments, EWC members have a duty to report to the employee representatives, or in the absence of appropriate structures, to the whole workforce, about the work of the EWC. (See EWC directive, item 10.2). It is not good enough to limit the duty of reporting back to a general statement issued jointly by the Management and the EWC, after EWC meetings. The EWC members should not be deprived of the possibility to communicate personally with the employees whom they represent, without any interference from the Management. Employee representatives will generally use established national bodies of employee representation for reporting back to those they represent.

The EWC directive is not very helpful in defining which information is confidential and how to deal with it. Its article 8 leaves Member States to deal with this issue. The dialogue which takes place within the EWC must be open and transparent. Confidentiality must only cover such information as has been explicitly and reasonably designated as such. Treating every information as confidential is not acceptable as it would prevent EWC members from fulfilling their duties, especially in their communication with the national employees or bodies of employee representation. To avoid abusive classification of information as confidential, Central Management must provide an explanation why such information must remain confidential and how long the confidentiality applies. This obligation (also for external experts) must continue to apply even after the expiration of the term of office of EWC members but only as long as the information remains confidential.

## Information and consultation processes

EU EWC law aims to bridge the gap between the increasingly transnational decision-making of companies and the information and consultation rights of workers, defined and limited at national level.

When company decisions are taken at supranational level, the national information and consultation system does not allow workers in different Member States to organise their input together and express their views or concerns on these transnational issues.

EWCs promote a shared understanding of the transnational challenges facing large multinational companies and the involvement of employees in decision-making, with a view to sharing information on possible solutions, facilitating their implementation and increasing the impact of strategic choices made by the employer. Their potential should be fully exploited in the current context of the digital and environmental twin transition and deep industrial change.

## Definition of information and consultation

### Article 1 of the EWC Directive

Information and consultation of employees must occur at the relevant level of management and representation, according to the subject under discussion. To achieve that, the competence of the European Works Council and the scope of the information and consultation procedure for employees governed by this Directive shall be limited to transnational issues.

### Article 2 of the EWC Directive

‘Information’ means transmission of data by the employer to the employees’ representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees’ representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings;

‘Consultation’ means the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees’ representatives to express an opinion on the basis of the information provided about the

proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings;

Point 22 of the preamble of the EWC Directive

The definition of ‘information’ needs to take account of the goal of allowing employees representatives to carry out an appropriate examination, which implies that the information be provided at such time, in such fashion and with such content as are appropriate without slowing down the decision-making process in undertakings.

Point 23 of the preamble of the EWC Directive

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.

Workers and their representatives must be guaranteed information and consultation at the relevant level of management and representation, according to the subject under discussion. To achieve this, the competence and scope of action of a European Works Council must be distinct from that of national representative bodies and must be limited to transnational matters.

## **Capacity building and training**

Serving as an EWC member requires much knowledge and many skills. To name but a few: one needs to know the rules and regulations on EWCs and SEWCs; foreign language skills are often handy; one needs to know about working in intercultural settings and about transcultural communication; and an understanding of financial and business principles is important. Without mastering these skills, an EWC member may not live up to the full potential of his or her mandate.

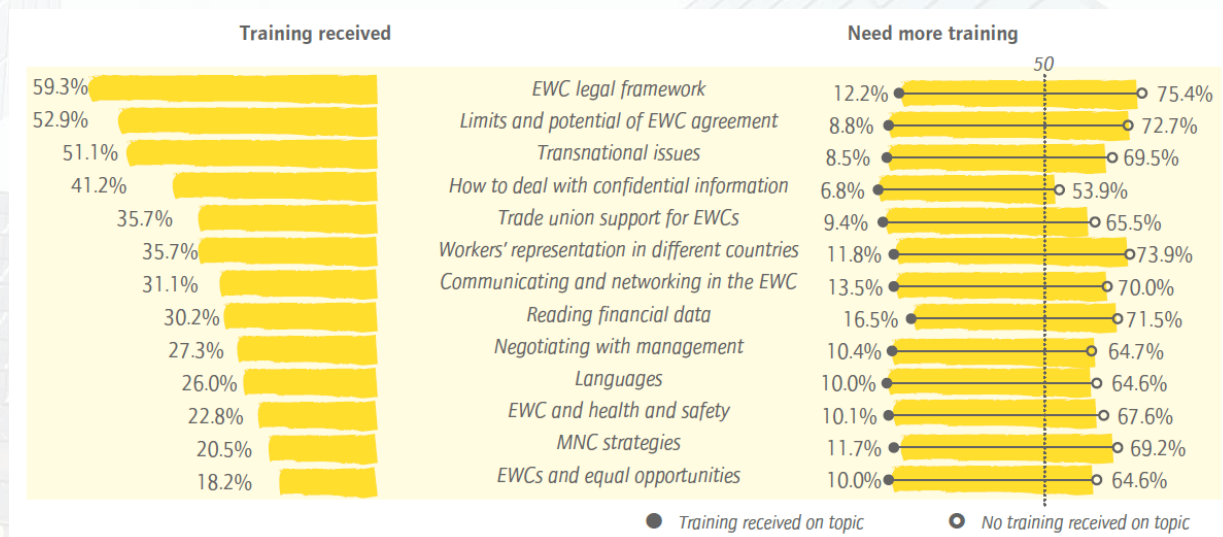
For this reason, the EWC Recast Directive clearly included the right for EWC members to attend training without loss of wages (see article 10.4). Training is indeed essential to enable EWC members to properly carry out their duties. Training courses must be considered an integral part of their mandate and remunerated as working hours. All training related costs including travel and accommodation costs must be covered by the Management. Whereas training needs can be identified in discussions with the Management, the EWC is best placed

to evaluate what kind of training it needs. Consequently, EWC members“ must be able to receive the training they require” (EWC directive, recital 33). It is important to distinguish between individual training and collective training directed at the whole EWC. Both possibilities must be provided for in the agreement.

According to the study conducted by the ETUI (Stan De Spiegelaere & Romuald Jagodziński, 2018), most EWC members say that they have received some days of training in the last three years (59.1%). However, this also means that over one in three says they had not attended any training in this same period.

A right to training is clearly established in the EWC Recast Directive; it is the responsibility of management to provide EWC members with access to training and, most importantly, to cover the costs and release EWC members from work duties. However, having the right to training does not mean that all EWC members actually receive training.

Focusing on those who have not received any training in the last three years, substitute and normal members are more likely not to have received any training compared to office holders. Among the latter, only one in four has not received any training in the last three years. Furthermore, those EWC members without the support of a union coordinator are more likely not to have received any training compared to those who have the support of one. Among the former, almost one in two has not received any training in the last three years compared to one in three of those where there is a coordinator to assist.



Source: Stan De Spiegelaere & Romuald Jagodziński, (2018), *Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives*, European Trade Union Institute

More than one-half of EWC members have received some training on the legal framework, the EWC agreement and on an understanding of transnational issues. The other topics are less common, with only one-quarter having had training on, for example, negotiation or languages and even less on health and safety, MNC strategies or equal opportunities.

In terms of identifying training needs, almost irrespective of the topic around seventy per cent of EWC members who have not received training express the need for training on that issue. The only exception is how to deal with confidential information, for which only a little more than one-half of those who have not yet received such training say that they need it.

As expected, when EWC members have received training on a topic they express less need for further training on that specific issue. However, about one in ten in each case still say they want further training, even where they have already received training on that topic. The outliers here are reading financial data and communicating and networking, where 16.5% and 13.5% respectively of those who have received such training still think they could benefit from more education on the topic.

## Monitoring and evaluation

The ultimate effectiveness of the EWC's work will quite obviously depend on the quality of the work and cooperation of the employee representatives and the willingness of the central management to undertake the process of informing/consulting/negotiating with the EWC. It is clear that even the best-functioning EWC made up of highly committed, cooperative, knowledgeable employee representatives can run into a wall of non-cooperation, unwillingness to dialogue on the part of central management. Situations may arise where central management violates national law/directives/contracts establishing EWCs. This thought is obvious. It should be stressed, however, that the first part of the reflection - the part addressed to workers' representatives - is primarily intended to sensitize EWC members to seek opportunities to increase the efficiency of their work regardless of the attitude of central management.

### **Dimensions instrumental to identifying areas for improvement (unions' perspective):**

- Procedural issues
  - Does the EWC meet with central management more than once a year?
  - Are there working groups within the EWC dedicated to specific areas/issues/problems?
  - Is there always a preparatory meeting of employee representatives before the meeting with central management?

- Is there always a meeting after the meeting with central management to summaries the meeting held with central management?
- Scope of the issues covered by the EWC
  - Strategic decisions of the management (corporate policies),
  - Financial management (including investments),
  - Market position, business and developments,
  - Technological change,
  - Mergers / acquisitions, restructuring processes,
  - Human resources management (employment and restructuring plans),
  - Training policies,
  - Anti-discriminatory policies,
  - Social information and disclosure of non-financial reporting,
  - Contemporary-relevant issues, including: decarbonization, digitalization, psychosocial risks, remote working.
- Representativeness of EWC and communication
  - Whether there are employee representatives from non-EU countries among the employee representatives (of course, the question only makes sense if the corporation has significant locations in non-EU countries). During the contract negotiations/during the follow-up, did the EWC members raise the demand to include workers' representatives from non-EU countries (in full or in part) in the work of the EWC and its meetings with central management?
  - Do worker representatives exchange information on an ongoing basis on issues of relevance to their locations (these may be issues that will not/cannot be raised in a meeting with central management because they do not meet the 'transnational issue' requirement)?
  - Do employee representatives respond honestly and fully to questions from other representatives, even if they concern "sensitive" issues, do you exchange information about wages in particular groups/ categories of employees? If there has been restructuring of a local nature (e.g. relatively small group redundancies in location X), do you get information from the employee representative of the location as to what has been negotiated (for example, information on severance pay, etc.)?
  - Would you agree with such a sentence: EWC members act as one team we just know each other and communicate well?

- Trade union solidarity and sense of common interest
  - Would you agree with the following statement: we are aware that central management may try to play one location off against another, but this automatically gives us a red light?
  - Would you agree with the following sentence: all trade unions are treated similarly by central management? If you wish to do so, will you receive a collective agreement / wage agreement etc. concluded by trade unions at another location within the corporation?

**Dimensions instrumental to identifying areas for improvement from the perspective of the central management:**

- Can you indicate what, in your opinion, is the added value resulting from central management meetings with the EWC? Do you see it only as fulfilling a legal obligation on the corporation?
- Do EWC meetings with central management take place in different locations, so that on the occasion of the meeting EWC members and central management representatives get to know the different locations?
- Can you indicate the demands of the EWC members that were raised during the negotiation of the EWC agreement and do you know why the central management rejected them? Was it solely due to the fact that the central board does not see the need to "go one step beyond" the minimum standards set out in the directive/national law?
- Can you point to provisions in the contract creating the EWC that you would consider to be driven by the specifics of the corporation you represent?
- Do EWCs have working groups on any issues/challenges/areas? Did the central management inspire their creation?
- Are local employers informed about EWC meetings with central management?











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