



UNI Europa Guidelines on
European Works Councils

Brussels, December 2010

Index

| | |
|--|----|
| 1. Introduction and Objectives of the Guidelines | 1 |
| 1.1. A common approach..... | 1 |
| 1.2. Focus on European Works Councils | 1 |
| 1.3. UNI Europa's goals..... | 1 |
| 2. Identification of companies that qualify for an EWC | 2 |
| 3. Trade union alliances..... | 2 |
| 4. Cooperation with other European Trade Union Federations..... | 3 |
| 5. Starting a Special Negotiating Body (SNB) | 3 |
| 5.1. Responsibilities of UNI Europa and the affiliates..... | 3 |
| 5.2. Information to European social partners on the start of an SNB (via the procedure described in EWC directive 2009)..... | 3 |
| 6. Negative response from the company's management to an SNB request..... | 4 |
| 7. Steps towards setting up an SNB..... | 4 |
| 8. Negotiations for an EWC agreement..... | 4 |
| 8.1. EWC agreements: From minimum standards to preferred outcomes | 4 |
| 8.2. UNI Europa's role in the negotiating process | 4 |
| 8.3. Signature of the EWC agreement | 5 |
| 9. UNI Europa SNB/EWC coordinators | 5 |
| 9.1. The designation of SNB/EWC coordinators | 5 |
| 9.2. SNB/EWC coordinator profile..... | 5 |
| 9.3. UNI Europa support for SNB/EWC coordinators | 5 |
| 10. Implementing EWC Directive 2009/38/EC to already existing EWCs..... | 6 |
| 11. Training..... | 6 |
| Annex I: Elements for an EWC agreement..... | 7 |
| Annex II : Role and tasks of SNB coordinators..... | 10 |
| Annex III: Role and tasks of EWC coordinators..... | 11 |



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 (EWCs). These Guidelines set out the basic strategies and approaches. They have been drawn up through the work of the cross-sectoral working group “Stronger EWCs @ UNI Europa”.

The Guidelines are intended to provide guidance to UNI Europa affiliates, and to coordinators and members of EWCs and Special Negotiating Bodies (SNBs).

Each UNI Europa sector is invited to use and develop the Guidelines according to their specific needs, and to share their experiences with other sectors so that the Guidelines can be improved and developed further. 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 European Works Councils and representative bodies in European Companies (SEs) .

In practice the main focus of UNI Europa’s work is on EWCs, and for convenience the following document refers to EWCs only. Nevertheless, UNI Europa supports other forms of transnational employee representation and participation which meet the objectives described in these Guidelines. (At a later stage, the Guidelines may be extended to include more specific guidance on European Companies, on board level representation and on company policy in general.)

These Guidelines explain how UNI Europa makes use of the possibilities offered by the legislation, how EWCs can help meet trade union goals and benefit the workforce, and how UNI Europa and its affiliates can work together to 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 (SE) 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 EWCs, irrespective of the date of signature of their agreement, fully benefit from the improvements introduced by the new Directive of 2009 (Directive 2009/38/EC).
- Increase employee involvement in the decision-making mechanisms of companies covered by the legislation mentioned above.
- Reinforce cooperation between employees’ representatives across borders.
- Link developments at the company level to more general trade union goals.
- Strengthen trade union alliances in the companies concerned.
- Ensure that companies’ EWCs are representative of the composition of the company workforce, both in terms of gender and in relation to other factors
- Help to develop EWCs into powerful tools of employee participation in companies’ decision making.

- Pro-actively influence EWC agendas to cover more than the standard issues covered by the EWC Directive, so that issues such as Human Resources, Equality, or Health and Safety are also included.
- Give particular support for EWC members from Central and Eastern European countries, to enable them to connect with their trade unions, receive adequate training and participate actively in their EWC.
- Ensure – together with the affiliates concerned – a high unionisation rate within companies.
- Ensure that EWCs are linked effectively to employee representation/participation at other levels (workplace, regional, national or international levels and board level representation).
- Empower EWCs to anticipate changes and to pro-actively offer possible alternative strategies and solutions to management.

In order to put these goals into practice, a strong trade union presence in EWCs is vital.

2. Identification of companies that qualify for an EWC

UNI Europa's sectors should identify the companies within their sphere of responsibility where it is appropriate to work for an EWC. UNI Europa affiliates have a key role to play in this respect, through their national knowledge and through their direct contacts to the workforce and to national works councils, if any.

From UNI Europa's point of view, an EWC is appropriate where :

- the company meets 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 of the company in at least two countries support the creation of an EWC.

UNI Europa acknowledges that the decision as to whether or not to establish an SNB is one which belongs to the employee representatives of a company, in conjunction with the central management of a company. Nevertheless, UNI Europa should evaluate whether or not it is advisable to encourage the establishment of an SNB or whether a different strategy towards the company is more appropriate. If an SNB is to be established, the initiative should 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 employees' interests. There is a need to ensure that trade union members genuinely benefit from the European legal provisions and that companies' managements do not circumvent legitimate trade union representation.

For this reason, the development of trade union alliances is a fundamental element in our work for strong EWCs. The aim is for every SNB and EWC to be embedded in a stable and clearly defined European trade union alliance covering the company concerned. The alliance should link unionised SNB/EWC members, the SNB/EWC coordinator and the representatives of affiliates (trade union officials) organising in the company concerned.

The aim of a trade union alliance is to:

- ensure maximum support for the SNB/EWC.
- secure a common trade union approach to the company concerned.
- gather information to obtain a comprehensive overview of the company.
- ensure a balance between the national interests of affiliates, in order to allow for a truly European/international approach, creating 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, and in the EWC
- protect and promote the interests of employees within multinational companies operating in Europe.

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

UNI Europa sectors should initiate and coordinate trade union alliances for the companies in their sectors, deciding on the structure, the scope and possible rules of procedure and ensuring that this process is transparent.

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 Negotiating Body (SNB)

Academic research as well as practical experience has shown that trade union coordination is important right from the beginning in the formation of Special Negotiating Bodies (SNBs) as well as in the ongoing work of EWCs once established.

There are different ways in which the initiative to set up an SNB may develop. As soon as information about a prospective or newly created SNB reaches UNI Europa, the sector(s) concerned will alert all relevant affiliates. The aim is to secure trade union presence and coordination from the start. To achieve this requires continuous communication.

5.1. Responsibilities of UNI Europa and the affiliates

The decision to start to work towards an EWC, and the necessary implementing steps, should be taken by the relevant UNI Europa sector, in close cooperation with the affiliates concerned, meeting the requirements of European legislation but also working to the principles described in these Guidelines.

It is the responsibility of affiliates concerned to inform the workforce of the company and to monitor SNB and EWC elections in their country.

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 before starting any procedure.

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

This applies equally if the initiative to start an SNB comes from the management side.

5.2. Information to 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 effective transmission of information from companies to the European social partner organisations. The ETUC and BusinessEurope are each responsible for disseminating the information they receive in this way to the competent sectoral social partner organisations. The ETUC has set up the following e-mail address for this aim: ewc@etuc.org.

The ETUC is responsible for forwarding the information it receives as appropriate to UNI Europa and the other European Trade Union Federations. UNI Europa has created an email account ewc@uniglobalunion.org for this purpose. It is the responsibility of UNI Europa to ensure that the necessary contacts are made with the relevant company representatives (employees as well as management). UNI Europa follows the procedures proposed by ETUC in *Rules of Internal Procedure - Information of European Social Partners of the start of EWC negotiation*.

UNI Europa affiliates should monitor in their countries whether the requirement to inform the ETUC and BusinessEurope is being complied with by companies. As an additional safeguard, affiliates should notify UNI Europa when they first become aware of the setting up of an SNB.

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

In case of an outright negative response to a request from the workforce for an SNB, affiliates should inform the UNI Europa sector(s) concerned, so that a decision on coordinated action towards the company can be jointly agreed.

Affiliates should also inform UNI Europa if the company's management agrees to start the procedure for the setting up of an SNB but is obviously trying to avoid or even exclude trade union involvement.. 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 (subject to agreement and capacity) 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

- Enable the different actors to meet and communicate with each other.
- Maximise trade union representation in the SNB (including by supporting affiliates in coordinating elections of SNB members).
- Gather 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.

UNI Europa wants to achieve better provisions than those provided by legislation. These Guidelines include Annex I suggesting several concrete points to be negotiated for in an EWC agreement.

8.2. UNI Europa's role in the negotiating process

UNI Europa will ensure, through the communication and coordination role 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 Annex I 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 demonstrates 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 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 Annexes II and III 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. The coordinator's role is to bring together all members of the trade union alliance to facilitate a common approach, to provide support to EWC members, to ensure that SNB negotiations/EWC proceedings are in line with UNI Europa's policy, and to be the link between the EWC and UNI Europa.

The role of a coordinator is distinct from, and not in competition with, the role of an SNB/EWC chair or president from the employees' side. The latter's duty is to chair the everyday proceedings of the SNB/EWC.

Note that, in addition to the union expert acting as coordinator, each SNB/EWC should have access to other experts that can provide support in financial, economic, legal or any other relevant technical matters.

9.1. The designation of SNB/EWC coordinators

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

The responsibility for designating the SNB/EWC coordinator lies with UNI Europa. UNI Europa will ensure both the transparency of the process of nomination and the acceptability of the nominated person by the EWC.

Affiliates will be included in this process, as the most important players in everyday SNB/EWC operations. Affiliates' role is to ensure that the selected coordinator has the necessary profile and resources, and to inform UNI Europa if he/she is no longer able to continue in this role. In this situation, affiliates can propose another person to take over the role. Any proposed coordinator must be informed of what would be expected from them in the role.

9.2. SNB/EWC coordinator profile

A coordinator should have experience of the workings of SNBs/EWCs, have negotiating and mediation skills, and should speak at least two European languages. They should be familiar with the sector as well as with the company concerned. If they have not been involved in the SNB or EWC from its inception, they should be informed about the specific history and of any potential problems.

9.3. UNI Europa support for SNB/EWC coordinators

UNI Europa and its affiliates are aware that persons selected as coordinators need time and resources to fulfil their role adequately. UNI Europa's support will include the following:

- Ensuring that coordinators are informed regularly on EWC-related matters and other relevant internal UNI Europa or policy issues.
- Providing opportunities for training focused on coordinator's tasks.
- Working to improve cooperation and networking between SNB/EWC coordinators.
- Providing best practice examples.

Where coordinators are officials of a UNI Europa affiliate rather than a UNI staff member, their own union is expected to support them in their work. This support should include:

- Giving him/her the necessary time and resources.
- Providing opportunities for training focused on coordinator's tasks.

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

The EWC Directive 2009/38/EC, officially in force from June 2011, brought some significant improvements to the European legislation on EWCs. Useful changes include the following areas: definitions of information, consultation, transnationality, the involvement of trade unions, and right for training.

UNI Europa sectors should seek to identify existing EWC agreements that could benefit from these improvements and, when appropriate, to take steps to seek to make amendments.

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 provisions on 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 seek to support and facilitate training opportunities for EWC members and EWC coordinators. UNI Europa sectors should aim to provide training seminars, both by using the relevant budget lines of the European Commission and by seeking other sources of funding.

In addition, UNI Europa will 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 used on the basis that UNI Europa defines the concept of the training and decides on the training content. Trainers will report to UNI Europa on the outcome of the training.

Annex I: 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, and the provisions of the applicable national transposition law. In addition, UNI Europa recommends inclusion of the following points:

Meetings:

- The EWC must be able to hold at least two meetings per year.
- The right to extraordinary meetings – whenever the EWC considers it necessary - must be included.
- The agenda for the meeting(s) should be worked out between the Select 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 for EWC meetings must be treated as 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 must not replace information and consultation at full EWC meetings.
- In order to have a strong select committee it is recommended to have provision for elected substitutes.

Composition of members

- EWCs should be representative of the composition of the company workforce, both in terms of gender and in relation to other factors (for example, different types of employees)
- Equality issues (including antidiscrimination, equal pay, women's health, and other relevant issues) should be included within the remit of the EWC
- Only legitimate employee representatives (according to national law) should be members of an EWC. It must be transparent to the entire EWC how each member has been elected or appointed in their country.
- Management not to appoint or nominate employee representative members.

- UNI Europa is in favour of including employee representatives from countries that are not European Union member states or in the European Economic Area. Companies operating in Switzerland should include Swiss employee representatives in their EWC. Other countries “beyond” Europe should have the possibility to be represented in the EWC; if full participation cannot be achieved, representatives should be included as observers.
- In order to have a strong EWC, all members should have substitutes.
- A maximum number of members should be avoided.

Information and consultation:

- The definitions (“information”, “consultation” but also “transnationality” including Recital 16) of the EWC directive 2009/38/EC should 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 should 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 should have access to communication facilities (internet access, local and international phone calls, Fax, e-mail, website, webcam).
- EWC members should have access to translation services in order to communicate and exchange information between meetings.

Training

- Sufficient training for EWC members to fulfil their mandate must be provided.
- New EWC members must be entitled to receive basic training about EWCs and their role.
- Regular possibilities for training and for participation in specialised seminars should be provided to EWC members.
- Trainers and contents of the training should be chosen by EWC members according to their needs.
- Training opportunities 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. This information should be included in the agreement.

Annex II : Role and tasks of SNB coordinators

Liaison, communication, trade union presence

- Represent UNI Europa.
- Act as the liaison person between SNB members, and between SNB members and UNI Europa.
- Make sure that UNI Europa EWC Guidelines are understood and accepted.
- Monitor the SNB members' election process in order to ensure maximum trade union presence in the SNB.
- Keep an updated list of SNB members including their trade union membership.
- Participate in all pre-meetings, meetings with management and de-briefings.
- Inform UNI Europa on the progress made in the negotiations.

Guidance and advice

- Inform SNB members on their rights (EWC directive applicable, relevant national transposition law).
- Prepare SNB members for their role in the negotiating 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 the position that the interests of employees from all countries should be fairly represented and that the composition of the SNB should reflect the composition of the workforce.
- Promote and initiate training possibilities.
- Provide contacts to other experts (financial, economic, legal, etc.) if needed.

Annex III: Role and tasks of EWC coordinators

Liaison, communication, trade union policy

- Represent UNI Europa.
- Act as the liaison person between EWC members, and between EWC members and UNI Europa.
- Stimulate communication between EWC members, or at least between select committee members, between meetings.
- Participate in all pre-meetings, meetings with management and de-briefings.
- Keep an updated 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 explain relevant legislation (EWC directive applicable, relevant national transposition law).
- Guide and assist the EWC members in their work.
- Advise the EWC members on the enforcement of the EWC agreement.
- Know other EWC agreements 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 Annex I)

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.