European Works Councils

INFORMATION FROM THE SWEDISH UNIONS WITHIN INDUSTRY

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European Works Councils, EWC

The Swedish Unions within Industry (FI) has produced this document to provide information about the rules for European Works Councils

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European Works Councils, EWC

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Business is becoming more international in nature and so it is also increasingly natural for trade unions to seek new and deeper forms of cooperation across international borders.

THE SWEDISH UNIONS WITHIN INDUSTRY (FI), comprising GS (The Swedish Union of Forestry, Wood and Graphical Workers), The Industrial and Metal Workers' Union (IF Metall), The Food Workers' Union (LIVS), the Swedish Paper Workers' Union (Pappers), The Swedish Association of Graduate Engineers (Sveriges Ingenjörer) and Unionen, has produced this document to provide information about the rules for European Works Councils.

Introduction

On 22 September 1994, the European Union adopted a directive establishing European Works Councils (EWC). This directive was revised and in 2009 the EU adopted a new directive: 2009/38/EC. This entered into force on 6 June 2011 in the Member States and in the countries covered by the EEA Agreement. In Sweden, the government has chosen to draft a completely new law and this handbook refers to the new law.

Directives that are adopted by the EU are binding on the Member States, which must transpose the directives into national law, so that they can also be adapted to conditions and traditions nationally. This means that the laws may appear different in some respects, but the fundamental rules remain the same. The Directive on European Works Councils applies in all EU countries and in those countries that have signed the EEA Agreement, in other words Norway, Iceland and Liechtenstein.

The Swedish Act on European Works Councils is applied by representatives of the employees forming a multinational special negotiating body, the task of which is to negotiate an agreement on information and consultation with the employer on transnational matters. The agreement must also regulate the structure and activities of the works council. Many larger companies already had agreements on European Works Councils in place when the law came into force. The law does not apply to these companies, with a couple of exceptions that are described later.

The Swedish Unions within Industry is of the opinion that European Works Councils should be formed at all companies that are covered by the legislation. As all employee categories are affected, close local cooperation between the trade unions involved at the company is vital if the works council is to function in the best possible manner.

Why European Works Councils?

Cooperation is intensifying among the countries of Europe; economically, politically, socially and in terms of trade unions. Companies are increasingly operating and competing on equal terms and within the same regulatory system.

Business is becoming more international in nature and so it is also increasingly natural for trade unions to seek new and deeper forms of cooperation across international borders.

Such development is also supported by the countries of the EU, partly through the creation of legal rights to operate across borders – the Directive is one example of this, as is the directive on employee involvement in European companies – and partly through the provision of financial support to develop an international trade union cooperation.

There is an obvious need to increase cooperation between trade unions in different countries. European Works Councils have created opportunities to achieve this. The trade unions in different countries have common interests, but may have different views on how to safeguard them. It is therefore important to be able to meet and learn from one another, to establish trust, to respect different opinions, to develop common positions, etc. This is the only way we can build up the cooperation we need and avoid companies playing off the trade unions against one another.

Operations must be developed into a genuine group trade union cooperation at European level. The ambition must be for the employees' representatives to be guaranteed independent operation, with their own meetings and opportunities for ongoing contact in tandem with the rights to continuously meet the company management at European level for information, consultation and discussion.

For companies to be able to work successfully with colleagues from other countries, it is vital that close cooperation between the trade unions is developed. The trade unions within industry are members of various European industry federations, such as Industri All European Trade Union. The trade unions cooperate within these federations on issues such as those relating to the development of European Works Councils.

Industri All Europe has drawn up common guidelines for works councils in order to establish uniformity and ensure that the agreements on European Works Councils and their activities satisfy a given minimum level of quality. These guidelines are reproduced in this document. Similar guidelines are also available at other industry federations.

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Rules in brief

The aim of European Works Councils is to improve workers' rights to information and consultation on issues that are of a European nature and concern more than one country. Note that the Directive grants the rights to the workers and not to the trade unions, as we are used to in Sweden. This means that unorganised workers can be represented on the works councils.

The purpose of the Swedish Act on European Works Councils is for the company to give the employees' representatives the opportunity for information and consultation on transnational matters (Section 1). The information shall be given at such time and with such content as enables the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the company management. The consultation shall take the form of a dia-

logue and exchange of views between the employees' representatives and the company management, at such time and in such fashion as enables the employees' representatives to express opinions about the proposed measures so that these can be taken into account in the decision-making process (Section 2).

European Works Councils shall be formed at companies with at least 1,000 employees within the EEA. Of these, there must be at least 150 employees in each of at least two countries (Section 4). Formation of the works council takes place through negotiations between the company management and a special negotiating body. These negotiations shall lead to an agreement on the composition, activities and working methods of the works council (Section 33).

The special negotiating body shall consist of representatives of employees from all countries where the company operates (Section 23).

The initiative for negotiations can be taken by the company management or through a written request from at least 100 employees or their representatives in at least two countries (Sections 17 and 19).

If the company management refuses to commence negotiations within six months of submission of the request for negotiations, or if the negotiations have not led to an agreement within three years, the 'minimum rules' enter into force (Sections 35–53). *A signed agreement is always valid, however, even where this would be worse than the minimum rules (Section 23).*

Under Swedish law, the works councils have the right to meet separately, without the company management being present, at least twice a year and the right to meet with the company management for information and consultation at least once a year (Sections 47 and 50).

A select committee must also be formed that can work between these meetings and maintain ongoing contact with the management. The select committee should consist of members from different countries and have responsibility for planning and carrying out the internal meetings and – together with company management – also planning and taking responsibility for the joint meetings (Section 43).

Under Swedish law, the works councils have the right to meet separately, without the company management being present, at least twice a year and the right to meet with the company management for information and consultation at least once a year.

The European Works Council has the right to be assisted by trade union experts as a support and aid both in negotiations and when operations are under way (Section 49).

The Swedish members are appointed by the trade unions. As a general rule, the unions should agree on their representation. It is important to stress that the person or persons appointed represent all employees irrespective of the union to which the representatives belong. If agreement cannot be reached on which member is to be appointed, the member shall be appointed by the union with the most members. Where several members are to be appointed, the rules of the Swedish Board Representation Act shall apply (Section 39).

FAQ on European Works Councils

Which countries are covered by the agreement?

Legally, the Directive applies to all EU countries, as well as to Norway, Iceland and Liechtenstein. As trade unions, we believe that Switzerland, as well as those countries that are seeking membership of the EU, should be included in agreements on the establishment of works councils, even if they are not members of the EU or are not covered by the EEA Agreement.

Cf. Section 4 of the Swedish Act on European Works Councils and the guidelines of Industri All Europe.

Which companies and entities should be involved?
By law, a company has an obligation to provide the representatives of the employees with a complete list of all companies over which the company has a dominant influence. This includes the addresses of the various entities, the number of employees and any shareholding, where this may be relevant.

The new law has taken into account the rulings of the Court of Justice of the European Union and has further tightened the legal provisions in this respect; see also Section 18 of the Swedish Act on European Works Councils.

The issue of the obligation to provide information to employees about the structure of the company has been examined by the Court of Justice of the European Union on several occasions. Regarding the issue of the obligation for a company that is part of a group of companies to provide information to the employees, this obligation exists nationally. *Case C-62/99*

Sometimes the local management in one country does not receive details of the number of employees or information from the management in another country and this is consequently a reason why negotiations are not commenced on the establishment of a European Works Council. In such situations, the Member States have an obligation to order the company to provide the information requested by the other company. *Case C-349/01, Case C-440/00 and AD 2007/41.*

The new law has taken into account the rulings of the Court of Justice of the European Union and has further tightened the legal provisions in this respect; see also Section 18 of the Swedish Act on European Works Councils.

Are there companies that are not covered by the Act, even though they have more than 1,000 employees?

When the Directive was introduced in 1994, it was possible for companies to come to voluntary agreements regarding information and consultation across national borders, known as Article 13 agreements. These are not covered by the Act, except, for example, in the event of a merger with another company that involves the restructuring of the business, when there should be a renegotiation.

Companies that renegotiated their agreements during the period 6 June 2009 to 5 June 2011 are also not covered by the new law and the old law continues to apply to these companies.

Cf. Section 8 of the Swedish Act on European Works Councils.

One problem that may arise with joint ventures is that a 50/50 relationship is not necessarily covered by the Act. The latter is only true when an owner has a decisive majority shareholding or, because of the extent of their ownership, appoints more than half of the Board of Directors and/or exerts a decisive influence over the company. This can be decided on a case-by-case basis. Otherwise, joint venture companies may also form their own European Works Council if they meet the criteria to do so.

Cf. Sections 13–15 of the Swedish Act on European Works Councils.

If the company is a European company, employee involvement is regulated in a separate directive; these companies are therefore not covered by the Swedish Act on European Works Councils, nor are European cooperative societies and companies with activities of a non-profit nature or with opinion-creating goals.

Cf. Sections 9–11 of the Swedish Act on European Works Councils.

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How is the group structured?

The Swedish Act on European Works Councils only covers the group as a whole. On the other hand, it may be beneficial to establish works councils for several individual business areas at companies that operate in a wide range of business sectors. Such a solution enables a better exchange of information. This is nevertheless an issue that can be addressed on a case-by-case basis, as many groups are highly centrally controlled and such a solution does not always enable the European Works Council to meet with the central group management.

If several works councils are formed within a group, they should ensure they have the opportunity to come together to form a combined general works council in order to coordinate their activities.

Cf. Section 3 of the Swedish Act on European Works Councils.

Who represents us?

The principles of representativeness and proportionality must be observed. This means that the countries must be represented in reasonable proportion to the number of employees in each country. The Act sets out rules on proportionality where no other agreement is made on allocation and the Swedish Board Representation Act regulates how they are to be appointed.

A works council normally has 15–30. In many cases, it is not possible for all sites to be represented. It is therefore important that national, informal and formal contact is established between different sites. After all, European cooperation begins at home.

Given the constant buying and selling of companies, an adjustment clause is recommended. It must be possible to add new countries and to adjust the number of members as a result. Cf. Sections 37–40 of the Swedish Act on European Works Councils and Section 11 of the Development Agreement.

Who can be a member of the European Works Council and the special negotiating body?

Under Sections 23–35 of the Swedish Act on European Works Councils, only employed representatives can be ordinary members of a statutory European Works Council. People in management positions at the company do not have the right to represent the employees. Some European legislation states, however, that the meeting with the European Works Council must always be the chaired by the company's CEO, or another person they have appointed, while at other companies the Council itself appoints the chair.

A European Works Council that is based on an agreement can also include trade union representatives, where this is agreed. This is sometimes the case in the United Kingdom, where it is also common for trade union officials to handle all the negotiating work with the companies.

How are the members appointed/elected in the various countries?

In some agreements, the parties have chosen to describe the election process, including the criteria which candidates are required to meet, such as not being a temporary employee, having worked for the company for several years, etc.

Women and immigrant groups are usually underrepresented on European Works Councils. A clause should therefore be considered that is designed to include underrepresented groups of employees in the activities.

Under Swedish legislation, such agreements are invalid in relation to the latter part, as a counterparty cannot stipulate requirements for who should represent the other party under the MBL (Employment (Co-determination in the Workplace) Act). We believe it is better to apply the model prescribed by national legislation or collective bargaining to these elections in all agreements, because most members will then be familiar with the rules.

The question of representation has also been examined specifically by the Italian courts in 2014. The background to this was Fiat splitting its operations in 2010, with an agreement reached at the newly formed company with two of the three Italian trade unions on new collective agreements. In Italy, as in Sweden, only the trade unions that have collective agreements have the right to participate in negotiations with the company. Fiom-Cicl, which also usually signs agreements with companies in Italy, was therefore without a collective agreement with the company and as a result was denied a place in the special negotiating body when a new EWC agreement was to be negotiated. The company's decision was declared invalid by the Italian court.

Women and immigrant groups are usually underrepresented on European Works Councils. A clause should therefore be considered that is designed to include underrepresented groups of employees in the activities, by requiring a country with more representatives to ensure there is a balance between men and women, for example. There may also be national legislation here that aims to achieve the same outcome.

The term of office applies in principle only for the period specified at national level, irrespective of the standard term of office of the European

Works Council. It may be useful to know that the terms of office vary between countries; in Sweden and France it is two years, in Germany four years and in Luxembourg it is five years.

Cf. Sections 37–40 of the Swedish Act on European Works Councils and Section 8 MBL.

What function do experts/coordinators provide?

In many countries, local trade union negotiation work is often handled by representatives. In the Nordic tradition, it is uncommon for full-time union officials to take part in the local negotiation work at the companies.

The revised Directive states that European Works Councils have the right to expert assistance from competent and recognised employees' organisations at Community level. Such experts may attend meetings and negotiations with the employer at the request of the employees' representatives.

This change means that those trade unions which are members of any European industry federation are competent to perform this role. In the Swedish legislation, the definition of competent and recognised employees' organisations has been removed, but this does not mean that the rule also applies to Swedish companies.

One of the binding requirements stipulated by Industri All Europe is that there must be an expert clause included in the agreement and at least one such expert involved in the activities. The expert usually comes from the country where the company is based and the expert's task is to provide the employees' representatives with the best-possible advice in connection with establishing a works council agreement and to assist with the activities of the works council.

An expert from an Industri All Europe union has a duty to represent all affiliates in the assistance provided.

An expert from an Industri All Europe union has a duty to represent all affiliates in the assistance provided. This is a necessary arrangement because the national trade unions do not have the resources to provide representation in every single case.

Industri All Europe also trains experts and coordinates the activities.

Cf. Sections 30 and 49 of the Swedish Act on European Works Councils and Section 12 of the Development Agreement, as well as Industri All Europe's guidelines.

How many ordinary meetings should be held per year?

At least one ordinary meeting should be held per year, as stipulated by the Directive. The vast majority of the agreements signed so far stipulate one meeting, usually following the presentation of the annual financial statements. Many groups also have more important activities under way, which may be of interest in connection with planning the budget and future annual production.

The opportunity to hold extraordinary meetings with the works council must be specifically regulated in the agreement.

Swedish and Norwegian legislation also prescribe the right of the employees' representatives to a further separate meeting each year. It is not uncommon for the agreement to include an additional ordinary meeting per year with the company management instead of a separate meeting in agreements that are based on Swedish and Norwegian legislation.

It is absolutely vital that there are separate meetings for the employees. They must be given the opportunity to hold a pre-meeting and a debriefing meeting for themselves. Experience has so far shown that around half to a full day is necessary for the pre-meeting, depending on how many representatives there are on the works council.

The debriefing meeting requires one to three hours. It may be useful for the works council to hold its meetings in different countries and to visit one of the company's sites in the host country on the occasion of the meeting – in order to increase its knowledge of the company's activities.

Cf. Sections 47 and 50 of the Swedish Act on European Works Councils and the guidelines of Industri All Europe.

What are the conditions for extraordinary meetings?

The opportunity to hold extraordinary meetings with the works council must be specifically regulated in the agreement. Issues that may arise include the circumstances under which such extraordinary meetings can be called, who is to make the final decision on an extraordinary meeting and who is to attend it.

Extraordinary meetings should be held when anything occurs that has significant consequences for the interests of employees. This may be, for example, a relocation, the closure of a company or mass redundancies. The employer, the select committee and/or a majority of the members of the works council should all be able to request an extraordinary meeting.

Until now, it has rarely been possible for the employees' side alone to have the right to decide on an extraordinary meeting in the agreements. Under no circumstances must the decision on extraordinary meetings be the employer's alone, however. The company must be compelled to convene extraordinary meetings in exceptional circumstances.

The issue of the company's obligation to convene extraordinary meetings in connection with restructuring has been examined on a number of occasions, principally in the French courts. The case of Renault's closure of the factory in Belgium in 1997 was an event that made companies realise they now had a new aspect to take into account in such situations. This case, together with those of Alcatel, S.A. Beiersdorf and Gaz de France are described in the section on case law.

As a result of the new regulations on information and consultation, an attempt should be made to agree on an arrangement that involves the company continuously informing the select committee of the works council about the development of the business and about envisaged measures.

Having received the information, the select committee must have the opportunity to meet with the central management, together with the representatives of the works council from the countries involved, and also to meet with the employees' representatives from the workplaces involved if they do not have ordinary members on the works council.

The wording selected should provide sufficient flexibility. It must also be possible to invite experts to the meetings.

Cf. Industri All Europe's guidelines.

Who from the company management attends the joint meetings and who chairs the proceedings?

Alongside those responsible for HR issues at the company/group, the key decision-makers at the company should also attend the meetings. For example, the CEO, the Chair of the Board of Directors and the European Manager for different sections and business areas. The particular persons who are relevant in each individual case will depend on the company's internal decision-making and responsibility structure.

Alongside those responsible for HR issues at the company/ group, the key decision-makers at the company should also attend the meetings.

The required attendees may also depend on the agenda of each meeting; for specific issues, the select committee should agree this with the company management in advance.

The appointment of the chair of the meeting should be addressed at the same time. Under German legislation, works councils consist only of representatives of the employees and the chair is always an employee representative. Even at meetings with the company management, the representative of the employees still acts as chair. At meetings with the company management in France, it is always the employer who chairs proceedings, while in the Netherlands the chair rotates from meeting to meeting.

These national traditions are contained in the agreements on European Works Councils, which are based on the situation in the country in which the company is registered. Experience has so far shown that the quality of the meetings does not suffer because of this, provided that cohesive national rules are followed; in France, for example, the stipulation that the employer acts as chair is linked to certain rules guaranteeing that the rights of the employees' representatives are not restricted. If the employer acts as chair, this can only apply to the joint meeting, however. It is therefore important for the employees' side to have a good internal structure; see below.

On which matters should information be provided and consultations take place?

With regard to the matters on which companies are required to inform and consult with the employees' representatives, the list of topics included in the Act can be considered indicative. It may be supplemented, however, with matters such as occupational safety and work environment, external environmental issues, equal opportunities and skills development,

for example. It is important to ensure that the list is not drawn up to be exhaustive, but that the topics stated in the agreement must always be considered as examples.

In principle, information must be provided on all matters that concern employees in at least two countries. This already makes it clear that the European Works Council cannot deal with matters relating to collective bargaining negotiations. The information must be provided in good time, so that the opinion of the works council can be taken into account before a decision is made.

It may also be agreed that the company management will submit a written report on the key issues to the representatives in good time before the meeting, as this may facilitate preparations ahead of the meeting.

It may be appropriate to agree that a written report on certain financial details should be provided on an ongoing basis every quarter or every six months.

Cf. Sections 33 and 44–45 of the Swedish Act on European Works Councils and the guidelines of Industri All Europe.

How should communication be structured and coordinated?

The employees' side of the European Works Council should not only have a chair/spokesperson and a secretary, but also a select committee. Such a structure is also prescribed for the statutory European Works Council.

The tasks of the select committee include:
- prepare meetings, possibly together with the employer's side (the agenda, for example) – clarify organisational matters
- provisionally adopt the minutes
- coordinate the ongoing work
- act as a contact, both for the employees' representatives and for the company management.

The members must be given access to important documents in advance, whether this is a report or individual items on the agenda.

The precise tasks of the select committee can also be specified in Rules of Procedure. In order to perform these tasks, the committee must also be able to meet on occasions other than in connection with the ordinary works council meetings. Interpretation may be required on these occasions because a committee should consist of representatives of the employees in different countries. To give the select committee the flexibility and ability to act that it needs, it should have no more than 3–5 members.

The select committee should be able to meet at least 2–3 times a year, in addition to the works council meetings. It is important that the select committee meets often in order to have a regular discussion on whether the work structure adopted by the committee is also effective.

The members must be given access to important documents in advance, whether this is a report or individual items on the agenda. These documents must be translated into the relevant languages in order for the meetings to be prepared properly in the different countries. Under no circumstances can the agenda be set by the employer's side alone. Deadlines can be stipulated for when proposals for the agenda need to be received by the select committee, in Rules of Procedure for example.

It is also important for the internal organisation that the members nationally have the opportunity to meet before and after the meeting (to report on the meeting to the national representatives of the employees for example).

Members of the European Works Council must have access to means of communication so they can remain in contact with one another during the year. General consideration must be given to the infrastructure needed to enable the select committee and the European Works Council to maintain continuous communication.

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This is also where, as well as the support of the respective trade unions, there must be agreement from the employer's side so that the costs arising from the activities are covered. The agreement or the Rules of Procedure must therefore describe the basic structure of the member's work and stipulate that it is the employer's duty to ensure that appropriate equipment is available for this.

In addition to the select committee, it may also be appropriate to establish other standing or temporary committees. These may include sub-area committees or committees for handling a specific issue (such as skills development). Committees should nevertheless not be established permanently, but rather as necessary. The wording of the agreement should indicate such possibilities.

Cf. Sections 43 and 48 of the Swedish Act on European Works Councils and the guidelines of Industri All Europe.

What must be considered when preparing for the meetings?

Ordinary meetings of the works council, which generally take place annually, extraordinary meetings (in the event of transnational measures that have a significant impact on employees in several countries) and meetings of the select committee are effective only if they are prepared for appropriately.

The time and venue for the meetings should be determined as far in advance as possible. There must be clarity on who is to make this decision. Generally speaking, it should be the select committee in consultation with the employer's side.

The agenda must also be definitively established in consultation between the select committee and the employer's side. It is not acceptable for the

employees' side to be able only to make proposals for the agenda and for the final decision to then lie with the employer's side. It is necessary here to consider which topics come under the general information to be provided by the central management, which topics should form the main subject of the meeting and what additional information is required, from experts for example.

If the agenda is set by consensus, there must be a conflict resolution mechanism specified in the agreement (see section on How should disputes be resolved?). The agreement, or preferably the Rules of Procedure, should specify a deadline by which members must notify the select committee of the matters they wish to place on the agenda for an upcoming meeting.

Once the agenda has been definitively set (this should take place around four weeks before ordinary meetings), it should also be clarified which documents (meeting documents on individual agenda points, reports, financial details, etc.) are to be sent to the members along with the final agenda.

When the agreement is being drawn up, it must be clearly established who has organisational responsibility for the meetings, who is responsible for convening and preparing the meetings, as well as the issue of advance information.

The same basic structure applies to extraordinary meetings and the meetings of the select committee. Shorter deadlines will inevitably apply in these cases. Extraordinary meetings with the entire works council nevertheless require detailed documentation in the members' own languages on the matters to be discussed.

Cf. Sections 33, 44–48 of the Swedish Act on European Works Councils.

With regard to the joint meetings, it is absolutely vital to also organise pre-meetings for the employees' side, with the opportunity also to meet after the joint meetings.

Pre-meetings and debriefing work for the employees' representatives

With regard to the joint meetings, it is absolutely vital to also organise pre-meetings for the employees' side, with the opportunity also to meet after the joint meetings.

The Act only provides for a pre-meeting to prepare for the joint information meeting with the central management. Experience among European employees' representatives has shown, however, that it is just as important to have a "debrief". This involves being able to discuss together and possibly adopt a position on the information received from the central management. This enables clarity to be achieved in terms of what needs to be done in light of the information and what information the select committee, for example, needs to obtain in the near future.

All those who attend the internal meetings and who may receive confidential information are subject to corresponding confidentiality rules. The fact that those attending the internal meetings include persons in addition to those who attend the joint meetings does not result in any limitation to the

obligation of the central management to provide information. The purpose of the internal meetings is to provide the employees' representatives with an opportunity to freely discuss the issues within their own circle.

It is sufficient to state in the agreement that the employees' representatives have the right to hold internal meetings that are not attended by the company management (timed to be in connection with the joint information meetings). It then follows naturally that the employees have the right to determine their own rules for the internal meetings. It should be established how much time may be set aside for these internal meetings and where they are to take place, as well as what infrastructure the company needs to provide for these meetings (simultaneous interpretation is an absolutely necessity and documents must be translated).

Cf. Section 50 of the Swedish Act on European Works Councils.

Do the members of the European Works Council have the right to pass on information to national employee representatives?

The agreement must regulate the right to pass on information that the employees' representatives on the European Works Council have received to national representatives of the employees.

The right of national employee representatives/employees to turn to the members of the European Works Council or the works council as such (or the select committee) must also be regulated in the agreement.

This also applies to the matter of the form in which the information received should be communicated and by whom to the employees (or their representatives) in countries or at entities that do not have their own member on the European Works Council.

The meeting minutes prepared by the European Works Council together with the central management can be used to provide basic information. The information must nevertheless not be limited to this under any circumstances.

The members must have the right to submit a report in person on pre-meetings and debriefing work. An extended duty of confidentiality may apply in relation to the information provided to the employees themselves. Reference should be made here, however, to the relevant national legal provisions.

Cf. Section 54 of the Swedish Act on European Works Councils and Section 11 of the Development Agreement. 3.

The meeting minutes prepared by the European Works Council together with the central management can be used to provide basic information.

What needs to be considered in relation to translation/ interpretation?

A European information and consultation procedure only has any meaning if all those involved understand what it concerns, in other words what information is being provided and on which matter. There must also be no uncertainty with regard to this, as there may be important details.

It is therefore in no way adequate to simply give the employees' representatives language lessons. Simultaneous interpretation must be provided at the joint meetings and at internal employee meetings and the meetings of the select committee, unless the employees' representatives really have excellent knowledge of the foreign language and decline interpretation of their own volition.

The language issue should also be considered when appointing the select committee. This body requires continuous communication, making language skills even more important than for the European Works Council itself. It is best to have a common language (usually English). Unless individual employee representatives already have the necessary skills, therefore, intensive language lessons are required in order to support continuous communication.

It is also important that all documents discussed at the meetings are translated into the respective languages. The cost of interpretation and translation is usually the single biggest expense for the companies in relation to the activities of European Works Councils. As a result, various compromises are often sought with the members in order to limit the number of languages at the meetings. A Swede understands around 23% of what a Dane says and it can therefore be a major disadvantage for the members on such occasions if interpretation is provided for only one Scandinavian language.

Cf. Section 28 of the Swedish Act on European Works Councils and the guidelines of Industri All Europe.

Where should the meetings be held?

The Act says nothing about where the meetings should be held, so it is up to the parties to the agreement to decide this. Where possible, we recommend that the meetings be held at different locations where the company operates.

We recommend that the parties state in the agreement that the meetings take place at the various locations of the company in Europe.

The benefit of this is that the employees' representatives are able to familiarise themselves with the different sites, production processes, working conditions and other circumstances. In such cases, the agreement should also regulate the right of the foreign employees' representatives to have access to the respective companies. Forming an opinion with your own eyes is completely different to being given a description of the working conditions in other countries by someone else.

We recommend that the parties state in the agreement that the meetings take place at the various locations of the company in Europe. This means that the select committee and the employer must also agree on where the meetings are to be held.

What training needs are there?

Even taking into account the fact that the employees' representatives on European Works Councils can turn to trade union experts for advice, they must still receive training for their new duties. This includes, among other things, knowledge of a common language, as previously indicated. The works council must agree on the language to be used (this is usually the group language, which in most cases is English).

The main aim of language skills is to enable the employees' representatives to communicate outside the official meetings. It is particularly important for the members of the select committee to acquire language skills. In the short term, however, language lessons cannot under any circumstances replace simultaneous interpretation, but should act as a complement to it.

Training is also required in other areas. Among other things, the members should have knowledge of the negotiating procedure and how the employees' interests are represented at the workplace and within the company in those countries that form part of the European Works Council.

It is important for the right to training to be stipulated in the agreement on European Works Councils. The provisions of different national regulations may also influence this. In some countries, there are regulations which mean the conditions for study leave are worse if you ask for training yourself rather than the company offering it.

This circumstance has been specifically noted in the new, revised Directive. This now stipulates that the employees' representatives must be given the training necessary. From a trade union perspective, we believe that education is an individual and collective right with regard to time and scope.

The Swedish Unions within Industry (FI) organises annual training for Swedish members of European Works Councils and we charge the companies a course fee for this training.

Cf. Section 57 of the Swedish Act on European Works Councils and the guidelines of Industri All Europe.

Who pays?

It must be stipulated that the company is to bear all the costs associated with the work of the European Works Council, not just those costs associated with meetings. In more detail, these may be:

– the costs of experts, travel and training
– the cost of the employees' representatives being able to communicate with one another and with the central management

The Swedish Unions within Industry (FI) organises annual training for Swedish members of European Works Councils and we charge the companies a course fee for this training.

– material resources for the necessary infrastructure human resources for the works council secretariat means of communication, etc.

Cf. Sections 32 and 52 of the Swedish Act on European Works Councils.

How are the members protected against unfair treatment?

The agreement must contain a clause assuring the employees' representatives on the European Works Council of protection against unfair treatment, discrimination, etc. Such provisions do already exist in the Swedish Act on European Works Councils, but these do not apply to employees' representatives from countries in which the Directive has not been transposed (such as Switzerland and other non-EEA countries). Such a provision is therefore in no way superfluous.

We recommend that a provision be introduced that gives the members at least the same protection as they would receive as national employees' representatives. If no such protection is provided at national level, general protection against unfair treatment must be explicitly enshrined in the agreement, which can then be directly invoked in the event of discrimination. Where possible, they should receive the same protection as the employees in the country where the central management of the company or the European Works Council is based.

Cf. Section 56 of the Swedish Act on European Works Councils.

Which information is subject to the duty of confidentiality?

Employers generally put a lot of effort into drawing up rules on confidentiality and secrecy. In some cases, they also want to be able to punish those who do not comply with the rules.

Great care should be taken to ensure that no such clauses appear in the agreements signed. With regard to the duty of confidentiality, it is sufficient for the agreement to refer to the national rules on the duty of confidentiality and state that the matter is to be handled in line with the case law in the country from which the member comes, as it can be difficult to interpret where the boundaries lie in relation to the duty of confidentiality in the legislation of other countries. Under no circumstances should it be agreed to list information that is generally to be considered secret or confidential.

Cf. Section 58 of the Swedish Act on European Works Councils.

How long does the agreement apply for?

The agreement should stipulate its duration or the notice period that applies.

The agreement should stipulate its duration or the notice period that applies. Several implementing regulations expressly state the importance of being able to adjust the agreements during their validity period. If the parties decide to include such a clause, they must also decide on the procedure that is to apply. There are different approaches available for the basic structure of the duration and option to adjust the agreement. Some agreements are made for an indefinite period, where the parties are able to give notice to terminate the agreement, and some agreements are valid for a set period.

It is fundamentally important to ensure that a situation without an agreement (without a works council) does not arise, either after an agreement for an indefinite period has been terminated or when an agreement with a defined term expires. In both cases, it can be stipulated that the agreements continue to apply until a new agreement has been reached. This period can last up to three years (the longest that negotiations can last under the Directive). If no new agreement has been reached by this time, the statutory European Works Council provisions apply automatically. It can be agreed, however, that the legal provisions come into force earlier if the parties are unable to reach agreement in the negotiations.

It is not necessary to specify who should negotiate a new agreement, as this is stipulated in the law and the implementing regulations. A trade union expert should always be involved in these negotiations.

Cf. Sections 33, 51 and 55 of the Swedish Act on European Works Councils and the guidelines of Industri All Europe.

How should disputes be resolved?

The agreement must also specify the procedure for handling disputes. As a quick resolution is vital, the legal proceedings that generally apply can be too cumbersome, such as in the following cases:

- the need for information in connection with important decisions within the company
- the need for expert assistance
- decision on the agenda for a meeting
- convening of extraordinary meetings
- invitation of guests, observers and representatives of the company to the meetings of the European Works Council
- distribution and translation of documents
- question of secrecy/duty of confidentiality with regard to certain information
- the design of common protocols
- the necessary adaptation to a modified company structure
- lack of a consultation procedure.

Swedish legislation states that the Swedish Labour Court is the court of last instance for disputes relating to laws and agreements on European Works Councils. Proceedings can be initiated by either the European Works Council or the company and this must be done within eight months. The Swedish Act on European Works Councils states that the Swedish Judicial Procedure (Labour Disputes) Act applies.

This law stipulates that local and central negotiations must have taken place before a case can be decided finally by the Swedish Labour Court. As there is no central employees' organisation that is party to the European Works Council agreement at the company, there can therefore be no central negotiations on the dispute. Proceedings must therefore be initi-

Many agreements contain an arbitration procedure for this kind of dispute. This is also a common system for labour market disputes in many other countries.

ated following negotiations between the works council and the company, if no agreement has been reached.

Many agreements contain an arbitration procedure for this kind of dispute. This is also a common system for labour market disputes in many other countries.

In Sweden, arbitration is used in only a few cases on the labour market, such as disputes relating to the Development Agreement or labour market insurance policies. The system is quite expensive as each party bears its own costs. (In Sweden, such a dispute costs SEK 100,000–175,000, while the equivalent cost in Denmark is approximately SEK 15,000). It is therefore appropriate for the parties to agree on an internal company settlement procedure (a committee composed from the parties with a neutral chair).

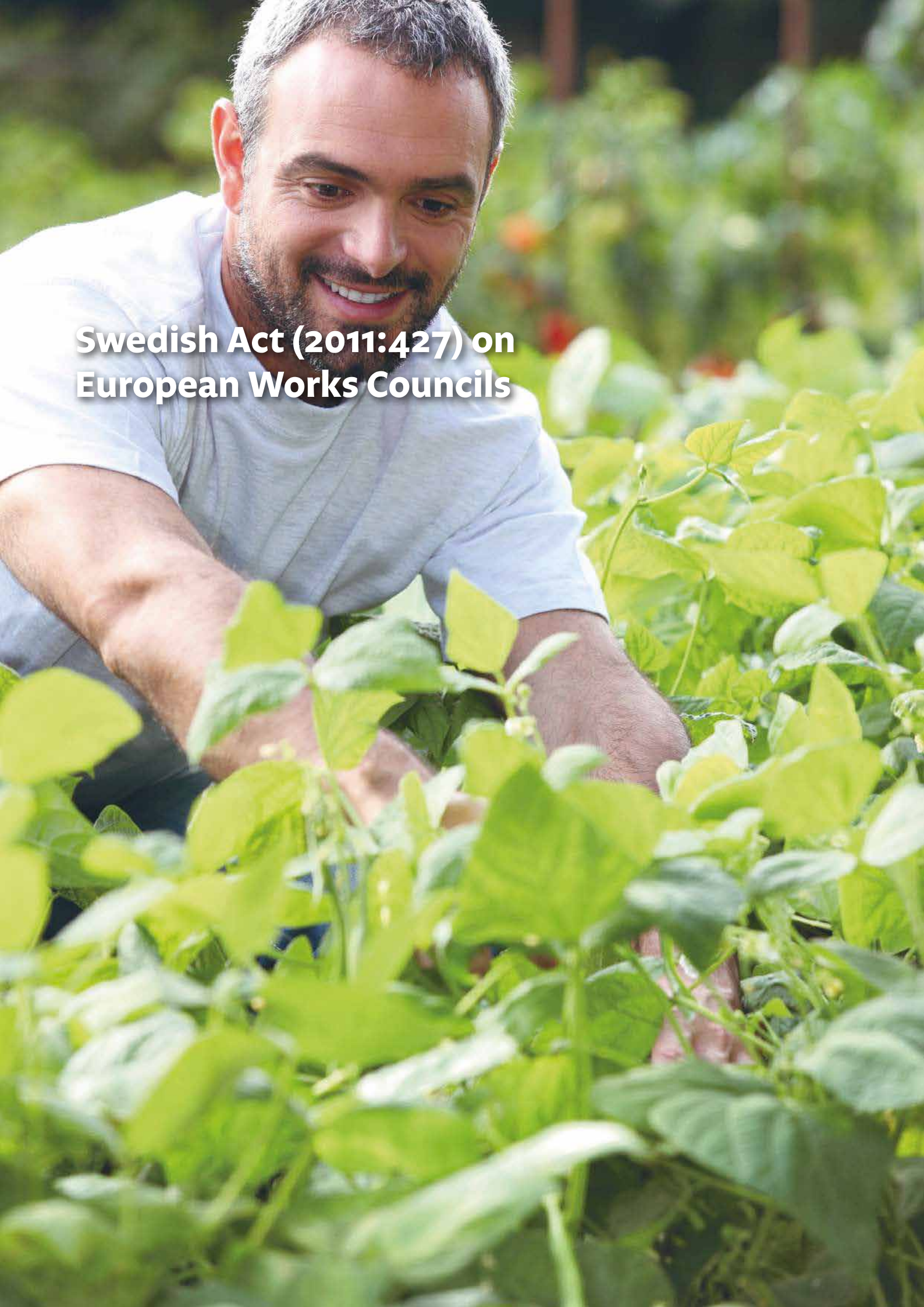
The law stipulates that the company must bear the costs of the activities of the European Works Council, therefore under no circumstances are we to enter into agreements that can never be subject to legal examination for cost reasons.

In the event of a dispute, it is also important that the members of the works council provide power of attorney to enable a legal representative to act for them in the legal process. The power of attorney should be prepared immediately on the decision to initiate legal proceedings.

If there is no European Works Council or any special negotiating body for the employees who can initiate proceedings under this law, the Community-scale undertaking or the controlling undertaking in a group of undertakings is liable for damages to the employee organisations concerned.

Cf. Sections 52, 53 and 59–62 of the Swedish Act on European Works Councils and Sections 64, 65 and 68 MBL.

In 2015, British trade union Unite the Union and French trade union CGT brought a case against the oil company Total, saying that the company had failed to fulfil its obligations under the legislation on information and consultation in relation to a major restructuring. The French court rejected a judicial review of the case as neither trade union was a party to the EWC agreement at the company.



Swedish Act (2011:427) on European Works Councils

Content and purpose of the Act

Section 1

This Act contains provisions for the establishment of European Works Councils comprising employees' representatives, or the introduction of another procedure for informing and consulting employees on transnational questions in Community-scale undertakings and groups of undertakings which operate in at least two EEA Member States.

Section 2

The procedure for informing and consulting employees shall be fit for purpose and shall be conduced in such a way that Community-scale undertakings and groups of undertakings can take decisions in an effective manner. Therefore:

1. information shall be given at such time, in such fashion and with such content as enables employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the Community-scale undertaking or group of undertakings; and
2. consultation shall involve the establishment of a dialogue and exchange of views between employees' representatives and the Community-scale undertaking or group of undertakings, at such time, in such fashion and with such content as enables employees' representatives to express opinions, on the basis of the information provided, about the proposed measures within a reasonable time, so that these can be taken into account in the decision-making process by the Community-scale undertaking or group of undertakings.

Definitions

Section 3

For the purposes of this Act

1. – *'EEA Member States'* means the States of the European Union and the other States covered by the Treaty on the European Economic Area;
2. – 'undertaking' means an economic activity under private or public management which is conducted by a natural or legal person;
3. – 'Community-scale undertaking' means any undertaking operating in at least two EEA Member States;
4. – 'controlling undertaking' means an undertaking which exercises a dominant influence over another undertaking;
5. – 'controlled undertaking' means an undertaking over which another undertaking exercises a dominant influence;
6. – 'Community-scale group of undertakings' means a group of undertakings which possesses undertakings in at least two EEA Member States, comprising a controlling undertaking and at least one controlled undertaking, and
7. – 'transnational question' means a question that affects the whole Community-scale undertaking or group of undertakings or at least two of its operations in different EEA Member States.

Sections 7 and 13–16 contain special provisions on controlling undertakings.

Scope of the Act

Section 4

This Act shall apply to the following:

1. Community-scale undertakings with
   1. – at least 1,000 employees within the EEA Member States, of which
   2. – at least 150 employees in each of at least two EEA Member States;
2. Community-scale groups of undertakings with
   1. – at least 1,000 employees within the EEA Member States, of which
   2. – at least 150 employees in at least one of their undertakings in one EEA Member State and at least 150 employees in at least one of their undertakings in another EEA Member State.

The number of employees in Sweden shall be calculated as the average number of employees during the previous two financial years of the business.

Section 5

This Act shall apply where the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings has its registered office in Sweden.

Where the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings does not have its registered office in an EEA Member State, the Act shall apply when

1. the Community-scale undertaking or the controlling undertaking has designated a branch office or undertaking in Sweden to be responsible for the obligations pursuant to Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (1), or
2. no operation or undertaking in an EEA Member State has been designated to take responsibility for the obligations pursuant to Directive 2009/38/EC, and the branch office or the controlled undertaking that has the most employees within the EEA is located in Sweden.

The provisions laid down in Section 18 on the duty of branch offices and controlled undertakings in Sweden to provide information, Sections 24, 25 and 38–40 on how employee representatives from Sweden should be appointed, and Section 56 on the protection of employee representatives, shall apply regardless of where the Community-scale undertaking or the controlling undertaking in a group of Community-scale undertakings has its registered office.

Section 6

In cases covered by Section 5(2), the provisions of this Act with respect to Community-scale undertakings or controlling undertakings in a group of Community-scale undertakings shall apply to the branch office or undertaking that renders the Act applicable according to the said provision.

Section 7
If a Community-scale undertaking or an undertaking in a group of Community-scale undertakings is controlled by another undertaking in an EEA Member State, the provisions on Community-scale undertakings or controlling undertakings in a group of Community-scale undertakings shall not apply to the controlled undertaking.

Exception for certain Community-scale undertakings or groups of undertakings
Section 8
For the following Community-scale undertakings or groups of undertakings, only that set out in Sections 59–62 regarding damages and litigation shall apply:

1. Community-scale undertakings or groups of undertakings that have had a valid agreement since 22 September 1996 on transnational information and consultation of employees covering all the operations of the Community-scale undertaking or group of undertakings in EEA Member States with the exception of the United Kingdom of Great Britain and Northern Ireland. If the undertaking or group of undertakings also had an operation in the United Kingdom on 1 July 2000, the agreement must also have covered that operation from that date at the latest.
2. Community-scale undertakings or groups of undertakings that fell within the scope of the Act (1996:359) on European Works Councils after 1 March 2000 only because the scope of the Act was extended to cover operations in the United Kingdom of Great Britain and Northern Ireland, and which had a valid agreement at that date on transnational information and consultation of employees if the agreement covered all the employees of the Community-scale undertaking or group of undertakings in EEA Member States.
3. Community-scale undertakings or groups of undertakings which concluded or extended a valid agreement pursuant to Section 21 or 22 of the Act on European Works Councils in the period from 5 June 2009 to 5 June 2011 inclusive.

In the case of significant restructuring of Community-scale undertakings or groups of undertakings covered by the first paragraph, Sections 1, 4–7, 9–19, 21–36, 53(1), 55, 56 and 58 shall however apply.

If an agreement referred to in the first paragraph has expired or expires, the Act shall apply in its entirety to the Community-scale undertaking or group of undertakings. However, if the agreement has been or is extended, the Act shall continue to apply according to the first paragraph only.

European companies
Section 9
If a Community-scale undertaking or a controlling undertaking in a group of Community-scale undertakings is a European company in the meaning of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (2), this Act shall not apply to the European company or its subsidiaries.

The Act shall however apply to a European company and its subsidiaries if the special negotiating body pursuant to Section 21 of the Act (2004:559) on employee involvement in European companies has decided not to initiate negotiations on an agreement on employee co-determination in the European company or to break off any such ongoing negotiations.

If a Community-scale undertaking or a controlling undertaking in a group of Community-scale undertakings becomes a subsidiary of a European company after its formation, this Act shall apply to the subsidiary if it is not covered by co-determination according to the Act on employee involvement in European companies.

European cooperative societies
Section 10
If a Community-scale undertaking or a controlling undertaking in a group of Community-scale undertakings is a European cooperative society in the meaning of Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) (3), this Act shall not apply to the European cooperative society or its subsidiaries.

The Act shall however apply to a European cooperative society and its subsidiaries if the negotiating delegation pursuant to Section 24 of the Act (2006:477) on employee involvement in European cooperative societies has decided not to initiate negotiations on an agreement on employee involvement in the European cooperative society or to break off any such ongoing negotiations.

If a Community-scale undertaking or a controlling undertaking in a group of Community-scale undertakings becomes a subsidiary of a European cooperative society after its formation, this Act shall apply to the subsidiary if it is not covered by co-determination according to the Act on employee involvement in European cooperative societies.

Activities of a non-profit nature or with opinion-creating goals
Section 11
Activities which are of a religious, scientific, artistic, or other non-profit nature, or which have co-operative, union, political or other opinion-creating goals, shall be excluded from the scope of application of this Act with respect to the goals and direction of activities.

Derogations through collective bargaining agreements

Section 12

Derogations from the provisions of this Act may be made through collective bargaining agreements concluded or approved by a central employees' organisation.

Derogations may not however be made if the agreement means that less favourable rules will apply to the employees than those set forth in Council Directive 2009/38/EC.

Controlling undertakings

Section 13

Unless otherwise shown, an undertaking shall be deemed to exercise a dominant influence over another undertaking where, in its own name or on behalf of another, it:

1. is entitled to appoint more than half of the members of the other undertaking's board of directors or corresponding management body;
2. controls more than half of the votes attached to the shares or interests of that undertaking; or
3. owns more than half of the shares or interests in the undertaking.

Section 14

Where several undertakings within a Community-scale group of undertakings may be deemed to exercise a dominant influence over another undertaking, such an undertaking as referred to in Section 13(1) shall, in the first instance, be deemed to be the controlling undertaking, and thereafter the undertaking referred to in Section 13(2).

The first paragraph shall only apply where it is not shown that another undertaking exercises a dominant influence.

Section 15

An investment company as referred to in Article 3(5)(a) or (c) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (4) shall not be deemed to be a controlling undertaking in relation to other undertakings in which it holds shares or interests.

Section 16

In the application of this Act, a receiver, an administrator in a company reorganisation or a liquidator shall not be deemed to exercise a dominant influence over an undertaking.

The responsibility of the undertaking

Obligation to work actively for a European Works Council

Section 17

The Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings shall actively take steps for the establishment of a European Works Council or the introduction of another employee information and consultation procedure.

Provision of information prior to negotiations

Section 18

The Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings shall provide employees with the information required to initiate negotiations pursuant to Section 27. Such information shall be provided by a different undertaking within the Community-scale group of undertakings or an operation within the Community-scale undertaking if the employees request this.

Controlled undertakings in a Community-scale group of undertakings and branch offices of a Community-scale undertaking shall provide the controlling undertaking in a Community-scale group of undertakings or a Community-scale undertaking within the EEA with the information needed for the controlling undertaking and the Community-scale undertaking to meet their obligation to provide information to employees.

Initiation of negotiations

Section 19

The initiative for negotiations for the establishment of a European Works Council, or for the establishment of another employee information and consultation procedure, or for renewed negotiations of this kind shall be taken

1. by the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings, or
2. in writing by at least 100 employees or their authorised representatives in at least two operations or undertakings in at least two EEA Member States.

Section 20

Where the Community-scale undertaking or group of undertakings as defined in Sections 4–11 is covered by the scope of this Act and initiative has been taken pursuant to Section 19, the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings shall initiate negotiations on the establishment of a European Works Council or the introduction of another employee information and consultation procedure.

Paragraph 1 shall not apply where there is an agreement on information and consultation on transnational questions covering all employees in the Community-scale undertaking or group of undertakings and entered into pursuant to the Act (1996:359) on European Works Councils or where Sections 24–35 this Act have been applied.

Section 21

In the case of significant restructuring in the Community-scale undertaking or group of undertakings, and where initiative has been taken pursuant to Section 19, the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings shall initiate new negotiations on the establishment of a European Works Council or the introduction of another employee information and consultation procedure. Paragraph 1 shall not apply where an agreement on information and consultation on transnational questions covering all employees within the EEA in the Community-scale undertaking or the group of undertakings regulates what should apply in the case of significant restructuring.

Employees' special negotiating body

Establishment of the special negotiating body

Section 22

When negotiations are to be initiated pursuant to Section 20 or 21, an employees' special negotiating body shall be established in accordance with Sections 23–25.

The special negotiating body shall represent the employees in the Community-scale undertaking or group of undertakings in negotiations on an agreement on a European Works Council or another employee information and consultation procedure.

Composition

Section 23

The employees in the Community-scale undertaking or group of undertakings in each EEA Member State shall be allocated one place in the employees' special negotiating body for each tenth share or part thereof of all employees in the Community-scale undertaking or group of undertakings in all EEA Member States.

Where new negotiations are to be initiated in the case of significant restructuring, every existing European Works Council in the Community-scale undertaking or group of undertakings shall be allocated three places in the special negotiating body over and above the places allocated in accordance with the first paragraph. Members to fill these three places shall be appointed from within the respective Works Councils.

Section 24
Members from Sweden in employees' special negotiating bodies shall be appointed by the local employees' organisation or organisations in Sweden which is or are bound by collective bargaining agreements in relation to the Community-scale undertaking or one or more undertakings in a Community-scale group of undertakings.

Where several local employees' organisations are bound by collective bargaining agreements and they do not agree otherwise, the following order for the appointment of one or more members shall apply. In respect of the appointment of one member, this member shall be appointed by the local employees' organisation which represents the largest number of employees in Sweden bound by collective bargaining agreements with the Community-scale undertaking or group of undertakings. In respect of the appointment of several members, the order for the appointment of employees' representatives set forth in Section 8(2) and (3) of the Board Representation (Private Sector Employees) Act (1987:1245) shall apply.

Local employees' organisations which belong to the same central organisation shall be deemed to be one organisation.

Section 25
Where the employer is not bound by a collective bargaining agreement in relation to any employees' organisation, the members from Sweden in employees' special negotiating bodies shall be appointed by the local employees' organisation in Sweden which represents the greatest number of employees in relation to the Community-scale undertaking or group of undertakings. This shall apply, however, only where local employees' organisations have not agreed otherwise.

Local employees' organisations which belong to the same central organisation shall be deemed to be one organisation.

Section 26
When an employees' special negotiating body has been established, it shall inform the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings of its composition.

Negotiations

Negotiating meetings
Section 27
The Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings shall request negotiations on the establishment of a European Works Council or the introduction of another employee information and consultation procedure.

The undertaking shall inform affected operations or controlled undertakings in the Community-scale group of undertakings of the composition of the employees' special negotiating body and when the negotiations are to take place.

The undertaking shall also inform competent European employees' and employers' organisations of the composition of the special negotiating body and when the negotiations are to be initiated.

Separate meetings
Section 28
The employees' special negotiating body shall be entitled to meet separately before and after each meeting with the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings. At such meetings, the special negotiating body shall have access to any interpreters and technical equipment needed to conduct the meeting.

Refraining from and withdrawing from negotiations
Section 29
The employees' special negotiating body may decide to refrain from initiating negotiations on an agreement on a European Works Council or other employee information and consultation procedure, or to withdraw from such ongoing negotiations.

In cases covered by the first paragraph, a party may not make a fresh request for negotiations pursuant to Section 19 for two years, unless the parties have agreed or agree to a shorter time.

Experts
Section 30
The employees' special negotiating body may be assisted by experts of its choice. At the request of the special negotiating body, the experts may be present during the negotiations in an advisory capacity.

Voting rules
Section 31
A decision to refrain from initiating negotiations or to withdraw from ongoing negotiations pursuant to Section 29 shall require the votes of at least two-thirds of the members of the employees' special negotiating body. In order for the special negotiating body to enter into an agreement on a European Works Council or another employee information and consultation procedure, more than half of the members must agree to this.

Expenses

Section 32

All expenses to enable the employees' special negotiating body to be formed and carry out its activities shall be borne by the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings, to the extent required for the special negotiating body to discharge its tasks in an appropriate manner.

Agreement

Section 33

An agreement on a European Works Council shall be in writing and shall cover all operations carried out by the Community-scale undertaking or group of undertakings within the EEA.

The agreement shall determine

1. the undertakings or operations which are covered by the agreement;
2. the composition of the European Works Council, which shall be balanced with respect to the business activities within the Community-scale undertaking or group of undertakings and to the gender and job roles of the employees;
3. the term of office of the European Works Council;
4. the functions and the procedure for information and consultation of the European Works Council, and the relationship between this procedure and the corresponding procedure at national level;
5. the venue, frequency, and duration of meetings of the European Works Council;
6. the financial and material resources to be allocated to the European Works Council; and
7. the duration of the agreement and the procedure for amending or terminating it and, where it is to be renegotiated, when and how this should happen.

If the agreement contains provisions on a select committee, the composition, functions and rules of procedure for this committee shall also be addressed in the agreement.

Section 34

In lieu of an agreement on a European Works Council, the parties may agree upon another employee information and consultation procedure. Such an agreement shall be made in writing and shall cover all operations carried out by the Community-scale undertaking or group of undertakings within the EEA; it shall contain guidelines for the information and consultation procedure and shall stipulate the right of the employees' representatives to information, in particular in relation to questions which significantly affect employees' interests.

The agreement shall also stipulate the right of the employees' representatives to meet to discuss the information conveyed to them.

Applicable provisions in the absence of an agreement

When the rules shall apply

Section 35

A European Works Council covering all operations carried out by a Community-scale undertaking or group of undertakings within the EEA shall be established in accordance with Sections 37–52 where

1. the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings and the employees' special negotiating body agree thereon,
2. the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings declines to commence negotiations with the employees' special negotiating body within six months of the employees requesting negotiations in accordance with Section 19; or
3. the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings and the special negotiating body have not concluded an agreement on a European Works Council or another information and consultation procedure within three years of the date on which any of the parties took the initiative for negotiations in accordance with Section 19.

Section 36

The provisions laid down in Sections 37–52 shall not apply where the employees' special negotiating body has decided in accordance with Section 29(1) to refrain from initiating negotiations on an agreement pursuant to this Act or to withdraw from negotiations on such an agreement.

Composition of the European Works Council

Section 37

Employees in the Community-scale undertaking or group of undertakings in each EEA Member State shall be allocated one place in the European Works Council for each tenth share or part thereof of all employees in the Community-scale undertaking or group of undertakings in all EEA Member States.

Unless agreed otherwise, the European Works Council shall, every second year, examine whether changes in the operations of the Community-scale undertaking or group of undertakings should result in a new composition of the European Works Council. Upon such examination, the provisions of the first paragraph shall apply.

The Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings shall provide the information required for the examination referred to in the second paragraph.

Section 38
The members from Sweden in the European Works Council shall be appointed from amongst the employees in Sweden of the Community-scale undertaking or group of undertakings.

Section 39
The members from Sweden in the European Works Council shall be appointed by the local employees' organisation or organisations in Sweden which is or are bound by collective bargaining agreements in relation to the Community-scale undertaking or one or more undertakings in a Community-scale group of undertakings.

Where several local employees' organisations are bound by collective bargaining agreements and they do not agree otherwise, the following order for the appointment of one or more members shall apply. In respect of the appointment of one member, this member shall be appointed by the local employees' organisation which represents the largest number of employees in Sweden bound by collective bargaining agreements with the Community-scale undertaking or group of undertakings. In respect of the appointment of several members, the order for the appointment of employees' representatives set forth in Section 8(2) and (3) of the Board Representation (Private Sector Employees) Act (1987:1245) shall apply.

Local employees' organisations which belong to the same central organisation shall be deemed to be one organisation.

Section 40
Where the employer is not bound by a collective bargaining agreement with any employees' organisation, the members from Sweden of the European Works Council shall be appointed by the local employees' organisation in Sweden which represents the greatest number of employees in relation to the Community-scale undertaking or group of undertakings. This shall apply, however, only where local employees' organisations have not agreed otherwise.

Local employees' organisations which belong to the same central organisation shall be deemed to be one organisation.

Section 41
The European Works Council shall notify the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings of its composition.

Rules of Procedure
Section 42
The European Works Council shall determine its own rules of procedure.

Select committee

Section 43

The European Works Council shall elect a select committee from amongst its members, comprising at most five members.

The select committee shall be able to conduct its activities at all times.

Right of information and consultation

Section 44

Information provided to the European Works Council shall particularly concern

1. the structure of the Community-scale undertaking or group of undertakings,
2. the economic and financial situation of the Community-scale undertaking or group of undertakings; and
3. the expected development of the business and of production and sales of the Community-scale undertaking or group of undertakings.

Section 45

Information provided to and consultation with the European Works Council shall particularly concern

1. the situation and probable trend of employment;
2. investments;
3. substantial changes concerning organisation;
4. introduction of new working methods or production processes;
5. transfers of production;
6. mergers;
7. closures of operations or significant cut-backs to operations; and
8. collective redundancies.

Section 46

Consultation shall take place in a way that enables the employees' representatives to meet with the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings and obtain reasoned answers to any comments.

Section 47

The European Works Council shall be entitled to at least one meeting a year with the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings for information and consultation in respect of the progress of the business of the Community-scale undertaking or group of undertakings and its prospects.

Prior to the meeting, the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings shall provide the European Works Council with a written report concerning the matters to be discussed at the meeting.

Section 48

The Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings shall, as soon as possible and well in advance of a decision, inform the select committee of any exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of operations or collective redundancies.

Where the select committee so requests, the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings shall meet with the select committee in order to inform and consult with the latter regarding such exceptional circumstances as referred to in the first paragraph. Those members of the European Works Council who represent the employees at the operations or undertakings which are directly affected by the circumstances in question shall also be entitled to participate in such meetings. Prior to the meeting, the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings shall provide the select committee with a written report on the matters to be discussed at the meeting. The select committee shall be entitled to deliver an opinion on the report.

In the absence of a select committee, the provisions in this section regarding the select committee shall be deemed to refer to the European Works Council.

Experts

Section 49

The European Works Council and the select committee may be assisted by experts of their choice.

Separate meetings

Section 50

The European Works Council or the select committee shall be entitled to meet separately prior to meetings with the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings.

In addition, the European Works Council shall be entitled to meet separately once a year.

New negotiations
Section 51
Four years after the European Works Council is established, it shall examine whether to open negotiations for the conclusion of an agreement as referred to in Sections 33 or 34, or whether Sections 37–52 shall continue to apply.

Agreements pursuant to Sections 33 or 34 shall be concluded by the European Works Council and require the support of a majority of members of the Works Council.

If negotiations are not initiated within six months or do not result in any agreement within three years of when the Community-scale undertaking requested negotiations in accordance with the first paragraph, Sections 37–52 shall continue to apply.

Expenses
Section 52
The expenses of the European Works Council and the select committee shall be borne by the Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings, to the extent required for the European Works Council to discharge its tasks in an appropriate manner.

Miscellaneous provisions

Legal competence
Section 53
Employees' special negotiating bodies and a European Works Council may acquire rights and assume obligations and pursue claims before courts and other public authorities.

Upon the commencement of the activities of a European Works Council, it shall assume all rights and duties of the special negotiating body and shall become a party to the agreement on a European Works Council.

Information to employees
Section 54
The European Works Council shall inform representatives of the employees in the Community-scale undertaking or group of undertakings of the content and outcome of the information and consultation procedure, with any restrictions that may arise from the fact that the employees' representatives are subject to a duty of confidentiality pursuant to Section 58. If there are no employees' representatives, all employees shall be informed.

Information and consultation during negotiations on a new agreement
Section 55
While negotiations are in progress on the establishment of a European Works Council or the introduction of another employee information and consultation procedure arising from significant restructuring in the Community-scale undertaking or group of undertakings, agreements or other arrangements for information and consultation shall continue to apply with any modifications agreed by the parties.

Protection for employees' representatives
Section 56
The provisions of Section 3(1), Section 4 and Sections 6–8 of the Trade Union Representatives (Status at the Workplace) Act (1974:358) shall apply correspondingly to employees' representatives who usually perform their work in Sweden and fulfil functions in accordance with this Act.

Training
Section 57
The Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings shall provide the members of the employees' special negotiating body and the European Works Council with any training required for them to carry out their tasks.

Duty of confidentiality
Section 58
The Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings may prescribe a duty of confidentiality for employees' representatives and experts who fulfil duties pursuant to this Act, where such is required in the best interests of the undertaking. A person who under paragraph 1 has received information subject to confidentiality may, notwithstanding the duty of confidentiality, transmit such information to other employee representatives or experts in the same body. The right to transmit information shall only apply where the provider of the information notifies the recipient of the duty of confidentiality. In such cases, the duty of confidentiality shall also apply to the recipient.

The duty of confidentiality shall continue to apply for as long as it is needed, even after the work as an employee representative or expert has ceased.

Damages
Section 59
Whoever breaches this Act or an agreement under this Act or confidentiality as set out in this Act shall pay compensation for damage arising in accordance with the provisions of Sections 55, 56, 57(2), 60(1), 61 and 62 of the Employment (Co-Determination in the Workplace) Act (1976:580).

In applying the Employment (Co-Determination in the Workplace) Act, references to employers shall also apply to Community-scale undertakings or a controlling undertaking in a Community-scale group of undertakings, and references to employees' organisations shall also apply to European Works Councils, employees' special negotiating bodies or other bodies for information and consultation with employees.

An employee or an employees' organisation may not, however, claim damages on the basis of this Act from another employee or employee organisation. An employees' organisation shall also mean a Works Council, a special negotiating body or any other body for employee information and consultation.

Section 60

In the absence of a European Works Council or an employees' special negotiating body which is able to pursue claims in accordance with this Act, the provisions on damages shall instead apply to the employees' organisation affected.

Litigation

Section 61

Cases on the application of this Act, where the dispute concerns the relationship between employer and employee, shall be conducted in accordance with the provisions of the Judicial Procedure (Labour Disputes) Act (1974:371). Such cases shall be dealt with by the Labour Court as a court of first instance.

In the application of the Judicial Procedure (Labour Disputes) Act, references to employers shall also apply to Community-scale undertakings or a controlling undertaking in a Community-scale group of undertakings, and references to employees' organisations shall also apply to European Works Councils, employees' special negotiating bodies or other bodies for information and consultation with employees. References to collective bargaining agreements shall also apply to such agreements as are referred to in this Act.

Cases concerning the applicability of the duty of confidentiality shall be dealt with promptly.

Section 62

Where a party wishes to claim damages in accordance with this Act, the provisions of Sections 64, 65 and 68 of the Employment (Co-Determination in the Workplace) Act (1976:580) shall apply correspondingly. In the application of Section 64, a Community-scale undertaking, a controlling undertaking in a Community-scale group of undertakings, a European Works Council, an employees' special negotiating body and any other body for information and consultation with employees shall be deemed to have a right to negotiate in accordance with Section 10 of the Act on co-determination in the workplace. The period of time within which claims must be brought pursuant to Section 65 shall be eight months.

Transitional provisions

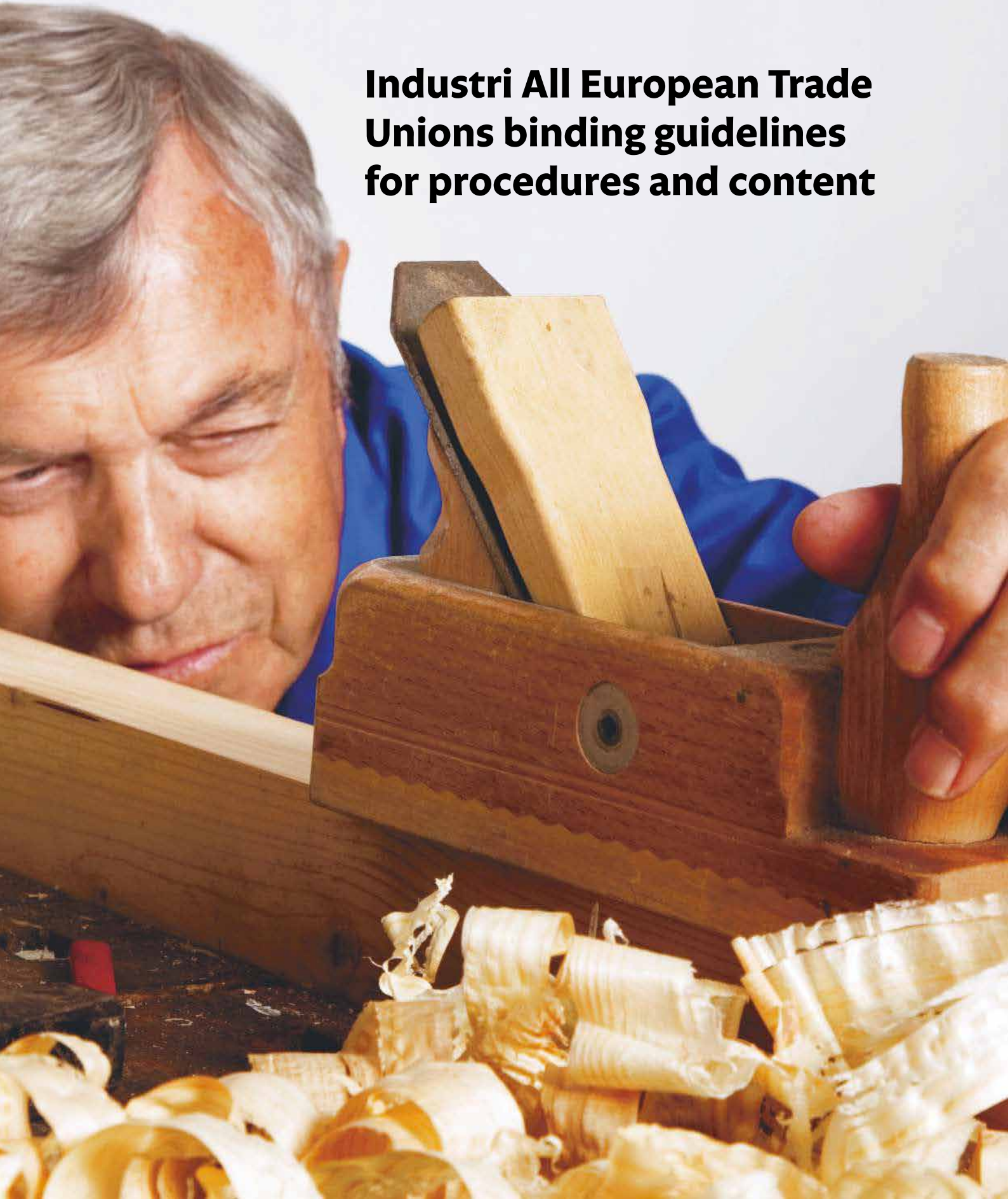
2011:427

1. This Act shall enter into force on 6 June 2011, when the Act (1996:359) on European Works Councils shall cease to apply.
2. The repealed Act shall however continue to apply, with the exception of Sections 39–41, to Community-scale undertakings and groups of undertakings where valid agreements pursuant to Sections 21 and 22 of this Act have been entered into or renewed during the period from 5 June 2009 to 5 June 2011 inclusive and where such an agreement is later renewed.
3. If an employees' special negotiating body has started negotiations under the repealed Act, the negotiations shall continue under the new Act.
4. For a Community-scale undertaking or group of undertakings governed by Sections 24–35 of the repealed Act, Sections 37–52 of the new Act shall apply.
5. In cases covered by point 4, a European Works Council established under Section 24 of the repealed Act shall continue its activities under the new Act until the Works Council has reviewed its composition in accordance with Section 37(2) of the new Act.

Footnotes

1 OJ L 122, 16.5.2009, p. 28 (Celex 32009L0038).
2 OJ L 294, 10.11.2001, p. 1 (Celex 32001R2157).
3 OJ L 207, 18.8.2003, p. 1 (Celex 32003R1435).
4 OJ L 24, 29.1.2004, p. 1 (Celex 32004R0139).

Industri All European Trade Unions binding guidelines for procedures and content



The binding guidelines and recommendations aim to ensure that we achieve the best quality and influence in our everyday trade union work.

European Works Councils are an important pillar of Industri All Europe's company policy because they play a key role in promoting information and consultation rights at transnational level in Europe and in fostering a mutual commitment to work together in order to defend workers' interests in companies at cross-border level.

Following the adoption of the first directive in 1994, Industri All Europe has developed a comprehensive strategy aimed at promoting and supporting EWC negotiations with as many companies within industry as possible and ensuring the quality of the agreements signed.

This proactive approach has proved successful and has led to the conclusion of more than 550 EWC agreements within the industrial sector. Industri All Europe has also been very active in taking steps to strengthen the revised Directive on European Works Councils.

The new EWC Directive adopted on 6 May 2009 creates opportunities to strengthen the powers and the effectiveness of European Works Councils. It offers workers and their representatives a real prospect of playing a more active role in multinational companies.

The binding guidelines and recommendations aim to ensure that we achieve the best quality and influence in our everyday trade union work.

For all new and renegotiated agreements to be in line with the content of the new Directive.

For all existing agreements to benefit from the Directive's improvements.

These are to be regarded as policy guidelines for Industri All Europe and affiliates.

Legal background

As of 6 June 2011, the new rights and provisions of EU Directive 2009/38/EC apply to:

Any negotiations and/or agreements concluded as from that date,

All Article 6 agreements that have not been signed or revised during the legal transposition period (June 2009 to June 2011).

In such cases, there is no need to wait for the renegotiation of these agreements in order to apply the new rights and provisions. These apply automatically. For instance, the new definitions of information and consultation, as well as the new provision on training, automatically apply to any Article 6 agreement as long as it has not been negotiated or renegotiated between June 2009 and June 2011.

Certain provisions of the new EWC Directive also apply to the so-called Article 13 agreements (i.e. those signed before 22 September 1996).

Despite the fact that many provisions of the new EWC Directive may not apply directly to all EWC agreements, Industri All Europe and its affiliated organisations can and will work politically with the new standards and rights for all European Works Councils.

How to establish an EWC

Negotiations with a view to concluding an agreement establishing an EWC must be carried out between central management and a special negotiating body. The special negotiating body represents the interests of the employees of the company as a whole and is set up for the specific purpose of negotiating an EWC agreement.

Industri All Europe's strategy and agreed procedure is to take steps to initiate EWC agreement negotiations:

1. Industri All Europe affiliates or trade union representatives formally approach management to open negotiations by requesting the establishment of a special negotiating body for the formation of an EWC.

2. National affiliates must inform the Secretariat of Industri All Europe of this. The Secretariat will coordinate the involvement of all countries concerned and the nomination of delegates to the special negotiating body.

   The Secretariat will clarify with other European trade union federations the question of who will take the lead in case a company is covered by several union federations.

3. It is the obligation of local management to provide all the necessary information needed to open negotiations, in particular regarding the structure of the company, the size of the workforce and its distribution across Europe (Article 4 of Directive 38/2009).

   It is also the obligation of management to notify the European Trade Union Confederation of the composition of the special negotiating body and when negotiations are expected to begin. The special negotiating body should make sure that the central management fulfils this obligation (Article 5 2.(c) of Directive 38/2009).

4. The special negotiating body should request assistance from a trade union expert. The new Directive explicitly recognises the special role the European trade unions have played in supporting negotiations by providing assistance to the special negotiating body. It is made clear that representatives of competent European trade unions have the right to participate in the negotiations, at the request of the special negotiating body and in an advisory capacity. (Article 5 4. of Directive 38/2009).

   As a rule, Industri All Europe's expert comes from the country of the company headquarters. His/ her designation will be approved and supported by Industri All Europe's Company Policy Committee (CPC).

Industri All Europe's strategy and agreed procedure is to take steps to initiate EWC agreement negotiations.

It will be communicated to the affiliates, whose responsibility is to inform the members of the special negotiating body of the nomination of the trade union expert.

The expert will inform Industri All Europe's Secretariat on progress throughout the negotiation process.

The tasks and profile of the trade union expert are to:

- guide and assist the members of the special negotiating body in the negotiation process.
- make sure that Industri All Europe's guidelines are understood and accepted.
- inform Industri All Europe's company policy committee on the progress made.
- act as the contact person for all SNB members and trade unions in the company.
- be able to play a leading role.
- be able to act as a spokesperson if requested by the special negotiating body.
- be able to present a draft agreement.
- be able to inform and prepare the members of the special negotiating body in their role and the members of the European Works Council in their role.
- take part in pre-meeting and negotiations as well as sessions with management.

It is the responsibility of the affiliated unions to assist/support the experts so that they can fulfil their task.

5. The special negotiating body is entitled to separate preparatory and debriefing meetings with interpretation if required (article in Directive 38/2009).

6. Affiliates must ensure that the delegates in the special negotiating body understand and accept Industri All Europe's guidelines.

7. Industri All Europe will offer guidance and, in the case of particular difficulties, arbitration and mediation.

8. Ratification
   - An agreement that does not meet Industri All Europe's guidelines should not be signed.
   - Industri All Europe's Secretariat can make a recommendation where the situation requires this, especially if the draft agreement is below the requirements of Industri All Europe or if the agreed procedure has not been followed.
   - It is highly recommended that Industri All Europe be a party to the agreement and that the expert sign the agreement.
   - Industri All Europe's expert will ensure that a copy of the agreement is sent to the Secretariat.

- It must be possible to identify an Industri All Europe coordinator for the European Works Council immediately after the conclusion of the agreement. S/he will be the point of contact between Industri All Europe and the European Works Council. S/he will be designated in accordance with the rules laid down within Industri All Europe.

Content of an EWC agreement

The new Directive sets out a number of principles and obligations that must be followed by companies with European Works Councils negotiated under the provisions of Article 6 of the Directive, irrespective of the actual content and outcome of the negotiations. However, even if the wording of the agreement differs from that of the Directive, the rights stemming from those principles (definitions of information and consultation, for instance) will be secured. Their integrity is enshrined in the law.

During the negotiations, it may therefore be easier to break down these principles into basic information and integrate the full wording of the Directive as an appendix. We have provided you with an example below.

In summary, the new Directive considerably strengthens the general principles of transnational information and consultation. At the same time, the new EWC Directive makes it clearer that the most important role of the negotiating parties is to define the practical arrangements for the implementation of the rules contained in the Directive. The EWC Directive therefore provides a welcome opportunity to define highly specific structures and processes that are tailored to suit each individual company, while respecting basic principles.

New definitions

Several basic principles are defined in the new Directive.

From 6 June 2011, they govern any negotiations and/or agreements concluded as of that date. They also directly apply to any existing Article 6 agreements that have not been signed or revised during the legal transposition period (June 2009 to June 2011).

Broken down into its key components, the new definition of information means:
– The transmission of information
– at such a point in time,
– in such a way, and
– with such content
– to enable the EWC to
– become acquainted with the subject matter and examine it,
– undertake an in-depth assessment of the possible impact
– and prepare for consultations.

Broken down into its key components, the new definition of consultation means:
– An exchange of views and the establishment of a dialogue between representatives of management and the employees' representatives
– at such a point in time,
– in such a way, and
– with such content
– that the European Works Council is in a position to express an opinion on the proposed measures that can be taken into account in the management's decision-making process.

Transnational matters (Article 1 4.)

As a general principle, a matter becomes transnational and therefore subject to the involvement of the EWC whenever it exceeds the competences of the local/national management. The underlying idea is that the European Works Council is meant to act as a bridge between national information and consultation, in particular regarding issues or measures which are beyond the reach of information and consultation procedures at local or national level.

As a working definition, transnational matters are therefore matters that concern the undertaking as a whole or at least two establishments situated in two different Member States. However, when it comes down to it, it is not so much the number of countries formally concerned which counts but rather the transnational impact that is important.

The full definition is contained in the appendix to these guidelines. EMF recommends that the original text of the EWC Directive be included in an appendix to EWC agreements in order to ensure full clarity about these principles.

Article 6 specifies what special negotiating bodies have to negotiate in an EWC Agreement. The arrangements to be negotiated by the parties are:
- The scope of the EWC agreement:
  which countries are covered by the agreement; however Industri All attaches great importance to the inclusion of workers' representatives from Switzerland, as well as representatives from accession countries, as full members. If full participation cannot be achieved, it is recommended that they be included as observers.
- EWC composition/distribution of seats across countries, parts of the company, etc. The aim is also to reflect the balance of the workforce (e.g. in terms of gender, category, job type) whenever possible.
- The venue, frequency and duration of EWC meetings, including both meetings with management as well as internal meetings of the employee representatives on the EWC and the Select Committee.
- Select committee: the agreement must define how it is composed, its functions, its rules of procedure, and its means of working (including resources for travel, interpretation, etc).

- Duration and renegotiation: beginning and duration of the agreement, arrangements for amending or terminating the agreement, and the procedure for renegotiation.
- The financial and material resources to be allocated to the European Works Council.
- Arrangements for linking information and consultation procedures at national and European levels.

The content of an EWC agreement: Industri All Europe's minimum standards and recommendations

As noted above, the new EWC Directive defines certain fundamental principles that govern the work of European Works Councils negotiated under the provisions of Article 6. Beyond that, it is the task of the special negotiating body to define the actual workings of the European Works Council for their specific company.

Over the past two decades, Industri All Europe has amassed valuable experience about the kinds of rules and standards which European Works Councils need in order to work effectively. In the following section, some minimum standards are defined and some further recommendations are laid out as references for EWC agreements (relating to minimum standards).

Topics to be dealt with by the EWC

Industri All Europe recommends that the list of issues to be dealt with by the EWC be extended to include the following:

– Health and Safety
– Environmental issues
– Training policy
– Corporate Social Responsibility
– Equal opportunities

Ordinary meetings

The EWC must be able to hold at least one ordinary meeting per year. The agenda for the meeting is worked out between the Select Committee and the management representatives. The official EWC meeting with management should last at least one day.

However it is our recommendation to hold two ordinary meetings of the EWC per year in order to ensure as much continuity as possible in the work of the EWC.

Pre-meeting and debriefing meeting

Workers' representatives must be entitled to an adequate pre-meeting the day before the plenary meeting of the EWC with management and a debriefing meeting after the plenary meeting.

Exceptional circumstances and extraordinary meetings

Where there are exceptional circumstances or envisaged measures potentially affecting the employees' interests to a considerable extent,

particularly in the event of relocation, the closure of establishments or undertakings or collective redundancies, the Select Committee or, where no such committee exists, the European Works Council shall have the right to be informed and consulted.

The Select Committee shall have the right to meet the central management, at its request, so as to be informed and consulted in the sense of the new definitions. Those members of the European Works Council who have been elected or appointed by the establishments and/or undertakings and/or representatives of the workplaces directly concerned by the circumstances or envisaged measures shall have the right to participate where a meeting is organised with the Select Committee.

The information meeting shall take place at the earliest possible moment on the basis of a written report drawn up by the central management. The information provided must enable workers' representatives to conduct an in-depth assessment of the envisaged measures. At this meeting, the consultation procedure is agreed.

On the basis of the agreed timing, the consultation meeting shall take place with a view to allowing the workers' representatives to engage in discussions with management and deliver their opinion on the envisaged measures.

The Directive stipulates that consultation shall take place within a reasonable period of time; however, Industri All Europe recommends not defining a fixed time limit applicable to all consultation processes. Instead, it should be specified that the time available for consultation is to be decided on a case-by-case basis depending on the scale of the envisaged measures. The guiding principles are flexibility and viability of the process. Consultation is not to be understood as an obstacle to the decision-making process but as a contribution to effective company decision-making. (This objective is clearly stipulated by Article 1 of Directive 2009/38/EC.)

Select Committee

The workers' representatives within the European Works Council must have the right to elect a Select Committee, with a requirement for the chair of the workers' group in the EWC to be a member. The Select Committee is responsible for the day-to-day business of the EWC between meetings. Simultaneous interpretation must be available for Select Committee meetings and the Select Committee must have the right to hold meetings fully or partly without management being present.

The EWC agreement must define the powers and responsibilities of the Select Committee so that it at least contains the following rules:

- It discusses and agrees with management on the agenda and structure of the plenary meeting with the European Works Council.
- In cooperation 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.
- The Select Committee must be informed and consulted by management in good time, especially in the period between official meetings, if and when extraordinary transnational issues arise.
- The composition of the Select Committee shall preferably represent the different countries and the different activities of the company.

Rules of procedure and the need to define a legal mandate

An EWC agreement should provide for the right of the EWC to define its own autonomous rules of procedure. These Rules of Procedure should be a separate document adopted by the EWC in which the EWC members define the ways in which they intend to work together, and the precise powers and responsibilities of the Select Committee. The Rules of Procedure should also define the ways in which the EWC takes collective decisions, for example by majority vote. They should also provide for a clear method of mandating a person to take legal steps on behalf of the EWC should this ever become necessary.

Linking national and European levels of information and consultation processes

An EWC agreement should ensure that national and European levels of information and consultation are more effectively linked and coordinated with each other. National and European levels of information and consultation bodies have to play complementary and effective roles. In other words, information and consultation processes shall take place at the relevant level of decision-making without compromising the autonomy of any level.

More precisely, the agreement should make clear that depending on the nature of the proposed measures, the EWC will be informed earlier or at the same time as the national bodies; national consultation processes should not be initiated before the process has been completed at EWC level; information and consultation processes should be concluded at both levels and the new obligation under the Directive must not be used to undermine existing national rights.

Understandably, this enhanced role of the European information and decision-making processes may give rise to some concern, since it will inevitably impact on the ways in which information, consultation and negotiations are conducted nationally. Our experience has shown however, that even if it can be quite challenging, it is in the interests of the whole European workforce to pursue a genuinely European approach which is firmly anchored in the relevant national systems.

In today's interlinked and highly integrated company processes, each level benefits from the information and consultation processes conducted at all the other levels. The fact that the trade unions at national level can apply the information gained at European level in order to strengthen their bargaining position at local level represents a step forward. The European

level can never replace national-level information and consultation, but it provides an ideal forum in which to coordinate union strategies, pool the strengths and balance the weaknesses of each site affected by a measure, and thereby contribute to generating a solution which is fair for all. In other words, it is not a zero-sum game: when each level plays its appropriate role, nobody loses and everybody wins.

It is our recommendation to clarify this link in the agreement. However, if the agreement fails to provide any provisions in this respect, the mechanism foreseen by the Directive and transposed in national laws will apply (Article 12 of Directive 2009/38/EC).

Interpretation

Simultaneous interpretation from and into all relevant languages must be provided as necessary for the official EWC meeting as well as for the internal pre-meeting and debriefing meeting and the meetings of the Select Committee. The provision of language training cannot be used to restrict simultaneous interpretation and translation where these are necessary.

Experts

The EWC and the Select Committee must have the right to invite experts of their own choice to all meetings. Management should be informed of this. It is not acceptable, however, for experts to be invited to be present only for certain pre-determined items on the agenda. An EWC agreement must ensure that management covers the cost of at least one expert.

Rules of confidentiality

The rules of 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. Breaches of the rules of confidentiality can only trigger sanctions on the basis of the respective national laws, rules and traditions.

Expenses

All necessary expenses in connection with the work of the European Works Council must be met by management.

Working facilities

EWC members shall have access to communication facilities (telephone, fax, e-mail)

The new Directive establishes the obligation for the EWC members to report to the employees' representatives, or in the absence of appropriate structures, to the workforce as a whole, about the work of the EWC.

This means that the management has to provide EWC members with the appropriate means to communicate with the workforce at national level, including giving access to visit the affected sites as necessary.

Training

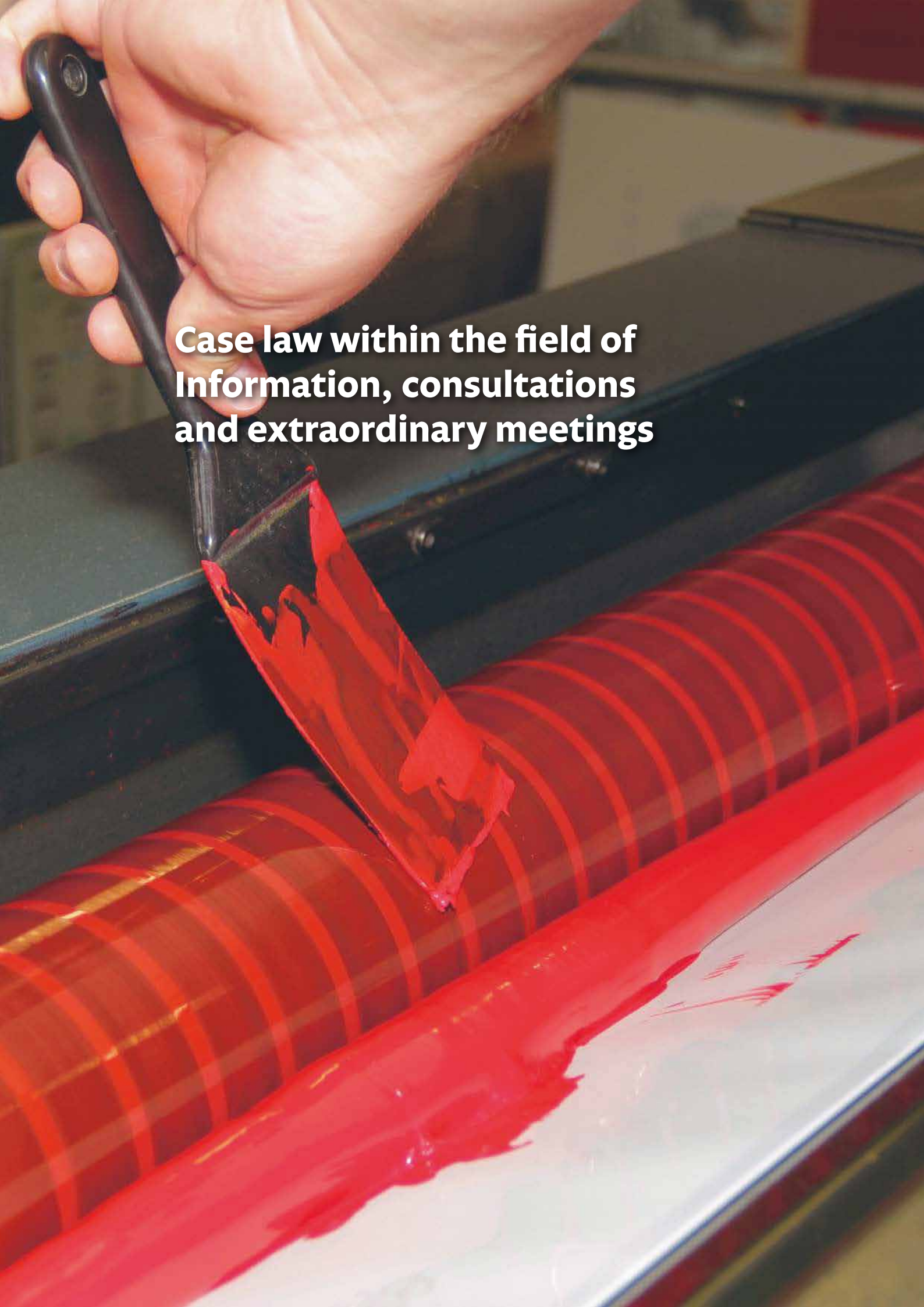
EWC members shall have the right to receive appropriate training and be released from work in order to participate in training. Training and related costs (including interpretation) shall be borne by the company. EWC members must have the right to determine the content of the training and choose the trainers themselves.

Our recommendations include ensuring that a provision is made in the agreement for both individual and collective training for EWC members (workers' representatives only) at least once per term of office.

Duration of the agreement and renegotiation procedure

Agreements should generally not have a fixed term. It has been shown to be good practice to agree that an agreement cannot be terminated during the first four years, but that it can be terminated by either side thereafter with a reasonable notice period. The rules governing renegotiations should specify the following: Who has the right to terminate the agreement, and the notice period required. When the European Works Council has the right to begin negotiations.

Rules governing renewal must ensure the validity of the existing agreement during negotiations. A time limit for the completion of renewal negotiations should be included, after which date – in the event of failure to agree on a new agreement – the rules of the Directive enter into force.



Case law within the field of Information, consultations and extraordinary meetings

These issues have rarely been examined by the Court of Justice of the European Union, as they usually concern short-term measures and a legal process at this level usually takes several years. The Renualt Vilvoorde case also took a long time, although it was examined in the Belgian and French courts. By the time the courts made their final rulings, the company had already implemented its restructuring measures. The summaries below have been translated from various documents and they therefore have slightly different structures, but they provide a good idea of how the application of legislation can be developed in different EWC contexts through case law.

The closure of Renault – Vilvoorde

Summary:

Renault did not inform its EWC of the timing of the changes being made within the company. Both courts considered Renault's process for closing the factory in Vilvoorde to be a violation of Community law, in particular the obligation under Directive 94/95/EC for consultation with and provision of information to EWCs.

I. COURSE OF EVENTS

Announcement of the closure

Renault manufactures cars at 30 factories in five EU countries: France, Spain, Portugal, Belgium and Slovenia. On Thursday 27 February 1997, Renault announced the closure of its factory in Vilvoorde in the Flanders region of Belgium, north of Brussels. The Belgian factory in Vilvoorde had a long tradition and was founded in 1925. The decision meant the loss of 3,100 jobs in Belgium.

Official reactions in Belgium

The closure itself was part of a restructuring project, which also included 2,800 jobs in France. It was the closure of the factory in Vilvoorde that attracted public attention, however. Chairman and CEO of Renault, Louis Schweitzer, issued a press release announcing the plan to close the factory in July 1997. Belgian Prime Minister Jean-Luc Dehaene even visited Paris for talks with the French government, which held 47% of the shares in the company. The Belgian Federal Government and the Flemish government agreed to take legal action against Renault. They found support at EU level. Karel Van Miert, European Commissioner for Competition, shared the view that Renault's management was in breach of legislation on collective redundancies and on European Works Councils.

Reactions of the Belgian trade unions

Following the announcement of the job cuts, the Belgian trade unions decided immediately to take the Vilvoorde factory out on strike. The protest was supported by the Federation of Enterprises in Belgium (FEB) and the Flemish Business Association (VEV). It was not just the workers who showed their discontent with the management's decision, which had been made with complete disregard for business ethics. The Renault closure brought 50,000 demonstrators out onto the streets. The demonstration was organised by the General Labour Federation of Belgium (ABVV/FGTB) and the Confederation of Christian Trade Unions (ACV/CSC).

International solidarity

The Spanish and French trade unions called for a one-hour strike on 7 March at all of the group's factories in the EU. This strike had symbolic significance because it was called the European strike. This kind of international solidarity is rarely seen these days. Management makes comparisons between its different manufacturing sites in order to exert pressure on those plants within the Group that do not achieve the required standards. Further acts of solidarity were expressed by both Renault's car dealers and sales departments. The European Trade Union Confederation and the European Metalworkers' Federation supported all measures.

The European Trade Union Confederation called for a demonstration on 16 March in support of European social policy and employment solidarity in Europe.

II. RELEVANT LEGAL ISSUES IN THE CASE

Breach of legislation on collective redundancies and on European Works Councils

Shortly after the news broke of the closure of Vilvoorde, the Commissioner for Employment, Social Affairs, Skills and Labour Mobility (Padraig Flynn's spokesperson) announced intentions to prepare legal proceedings against Renault.

Legal aspects

On 3 April 1997, the Belgian Labour Court in Brussels ruled that Renault was in breach of the legal proceedings for collective redundancies. The obligation to consult with and inform the works council had also not been respected. In a 'Praetorian ruling', the President of the Labour Court overturned the decision to close the factory until the information and consultation procedures were in compliance with the Directive. The court also urged the parties to reconsider the closure.

The case should not be taken as a general example

On 4 April 1997, the Court of Nanterre (Tribunal de Grande Instance) in France ordered Renault to suspend the implementation of the closure of Vilvoorde until the management had fulfilled its obligations to the European Works Council. This judgment was upheld by the Court of Appeal in Versailles on 7 May 1997.[1] The Court of Versailles, contrary to the arguments submitted by the judge in Nanterre, took the view that the obligation to inform and consult with the European Works Council was not a general decision. This obligation needs to be assessed on a case-by-case basis, giving consideration to whether such a procedure can be deemed beneficial.

Conciliation between the two sides

On 6 March 1998, an amendment was adopted by the French, Belgian and Spanish trade unions and the management of Renault. The agreement took into account the court rulings made against Renault following the closure of the Vilvoorde factory.

This amendment determined the following: "... in the event of a planned exceptional decision which has transnational consequences and is of such a nature that it affects the interests of employees in a significant way, the European group committee shall hold an extraordinary meeting. In such a case, the European group committee shall be consulted in accordance with Article 2 of the Directive on European Works Councils (EWC) of 22 September 1994 – i.e. a dialogue and an exchange of views shall be achieved at an appropriate time, so that the points of discussion can still be taken into account in the decision-making process."
1 see court ruling in: ArbuR 1977, 299 ff.

Gaz de France

Case no. 781 at the Paris Court of Appeal, 9006 339
Date of ruling: 21 November 2006
Case no. 07-10.597 at the Court of Cassation

Date of ruling: 16 January 2008

Report: The court pushed back the timetable for the merger between Gaz de France and Suez. The case stresses that documents relating to a merger must be sent to the European Works Council (EWC) and translated in good time. The requested information needs to be comprehensive, especially in regard to the employment consequences of the merger.

The intention to merge Gaz de France with Suez was made public in February 2006. On 31 May 2006, the EWC at Gaz de France requested all the information and documentation about the merger from the management. Unfortunately, the documents were only sent on 3 November 2006, in French.

On 15 November 2006, the EWC requested that the court:
- Confirm that the EWC does not have sufficient information to provide an information-based opinion on the content of the planned merger.
- Pronounce that the merger procedure is to be stopped.
- Decree that a new consultation meeting with the EWC may take place only once all written and translated answers to the questions posed to management, the expert reports and precise documentation on the impact on employment have been received in good time.
- Decree that the planned Board meeting of Gaz de France on 22 November 2006 be postponed and prevent the company from making any decisions on the planned merger until the EWC has been informed and consulted in a valid and official manner.

Management arguments:
- The EWC's stance shows that it completely rejects the project and the EWC's sole aim is to obstruct the merger process.
- The consultation initiated by the company is by its nature complete and transparent.
- Since 2 November 2006, the EWC members have had the same information as the French elected representatives and an ongoing information

process means they are already aware of all the information that is considered to be lacking.
– The EWC's refusal to provide an opinion cannot be allowed to obstruct the merger process.

Summary judgment pronounced on 21 November 2006 by the Supreme Court in Paris

Given the European dimension of the project, the information provided to the EWC cannot be exactly identical to the information provided to the French central committee. In order to provide a valid opinion, the EWC must have access to the expert reports.

The procedure for informing and consulting with the EWC on the planned merger was not implemented in accordance with the committee's rights. For the dispute to be resolved, the planned Board meeting of Gaz de France must be postponed until the EWC has delivered its opinion. Gaz de France will also be ordered not to make any decisions about the project until the opinion of the EWC has been received.

The procedure for informing and consulting with the EWC on the planned merger has not been completed. An extraordinary meeting must therefore be held within ten days of submission of the expert report, at which the EWC will provide its opinion. The company must provide the EWC with all the documents that the EWC requires.

The Board meeting must be postponed, on pain of a fine of EUR 100,000. No decision on the planned mergers may be made, on pain of a fine of EUR 100,000.

Gaz de France is ordered to pay the legal expenses and to pay EUR 7,500 to the EWC under the Code of Civil Procedure.

The management decided to appeal against this decision.

Ruling of the Court of Cassation on 16 January 2008
The procedure for informing and consulting with the EWC remains valid and can continue as long as the decision is not irreversible and therefore, in the event of a merger, until the date on which the General Meeting provides an opinion.

The Court drew the correct conclusion from the provisions in the agreement relating to the EWC, according to which "should a one-off event occur that is likely to have a major impact on the interests of the workers in the group of undertakings, the committee must meet and consult sufficiently well in advance to ensure that the details of the discussions or the opinion can be included in the decision-making process", that the deadline must be such that the parties involved are able to provide an opinion before the Board meeting.

No legal standard states that the information provided to the EWC in the event of a planned merger must be more exhaustive than that provided to the French central committee.

The procedures for consultation with the French committee and with the EWC do not have the same purpose or scope. The information provided at the EWC meeting does not necessarily need to constitute all the information.

On these grounds, the appeal is rejected and Gaz de France is to bear all costs and is ordered to pay EUR 2,500 to the EWC.

Bofrost

Case no. ECJ C-62/99
Date of the court's judicial ruling: 26 September 2000, Judgment of the Court 29 March 2001
Report: Particular reference is made in this case to the system of ownership and control that links different undertakings belonging to a group of undertakings within the EU. Each undertaking within a group of undertakings (not just the controlling undertaking) had an obligation to comply with the requests of the employees' representatives for information about the structure or organisation of the group of undertakings.

The very first case examined by the European Court of Justice in relation to Directive 94/45/EC involved a German works council at the Bofrost company.

Bofrost was founded in 1966 by Josef H Boquoi in Issum, Germany, and its business is in frozen food and ice cream. In April 1977, it decided to establish equality between the European subsidiaries in the group of undertakings. None of the companies was to be superior to any other. The agreement regulated the central management in Europe. From this point onwards, the group of undertakings had no controlling committee. Instead a *Shareholders' Advisory Council* was formed under the chairmanship of Josef H Boquois, the agreement of which was required for the approval of certain business decisions.

The German works council at Bofrost Josef H Boquoi Deutschland West GmbH & Co. KG made several requests for information about the structure of the company and the number of employees, with the intention of establishing an EWC. In a letter dated 9 January 1997, the German company definitively refused to provide such information.

In March 1998, the German works council applied for a court order at the local labour court for the requested information to be provided. The company claimed that neither Josef H Boquoi nor any other undertaking within the European group of undertakings exercised legal or actual control over Bofrost and it was therefore not covered by EWC legislation. The labour court granted the request of the works council, however.

Following appeal proceedings, the case was finally referred to the European Court of Justice for the interpretation of Directive 94/45/EC of September 1994 on the establishment of a European Works Council.

Judgment of the European Court of Justice of 29 March 2001

An undertaking which is part of a group of undertakings is required to supply information to the internal workers' representative bodies, even where it has not yet been established that the management to which the workers' request is addressed is the management of a controlling undertaking within a group of undertakings.

Where information relating to the structure or organisation of a group of undertakings forms part of the information which is essential to the opening of negotiations for the setting-up of a European Works Council or for the transnational information and consultation of employees, an undertaking within the group is required to supply the information which it possesses or is able to obtain to the internal workers' representative bodies requesting it.

Communication of documents clarifying and explaining the information which is indispensable for that purpose may also be required, in so far as that communication is necessary in order that the employees concerned or their representatives may gain access to information enabling them to determine whether or not they are entitled to request the opening of negotiations.

S.A. Beiersdorf France

Case no. 06/00357 Tribunal de Grande Instance in Melun
Date of ruling: 13 October 2006
Report: The European Works Council (EWC) claimed that it had not been properly consulted on the plan to reorganise Beiersdorf in Europe.

Beiersdorf is a global group of undertakings that manufactures cosmetic products and has eleven production facilities and 30 logistics sites in Europe. The French site is in Savigny le Temple.

On 5 September 2006, the management of Beiersdorf in France convened an extraordinary meeting of the local works council in relation to a project on the reorganisation of industrial activities, logistics, commercial activities and marketing activities, as well as central services in France. At the meeting on 12 September 2006, the works council asked for the information and consultation process to be postponed until the EWC had been given the opportunity to provide an opinion on the reorganisation. Nevertheless, an extraordinary meeting for the EWC was convened on 19 October, while the local works council was due to hold a new meeting on 10 October.

The French works council went to court for the following reasons:
- To declare that there had been no preliminary consultation with the EWC, which undermines the entire importance of the consultation with the EWC and the local works council.
- To declare that the local works council must be able to examine the opinion of the EWC before expressing its own position.

– To request that the procedure be postponed until the EWC has been fully informed and consulted.
– To request the cancellation of the implementation of the project.

Management arguments:
– There is no document that forces them to consult with the EWC before consulting with the works council.
– The project is not transnational in nature.
– As the EWC was established on 29 March 1995 under French law and has no bearing on Directive 94/45/EC, this latter does not apply in this case.

Ruling of the court Tribunal de Grande Instance in Melun, 13 October 2006

The company cannot seriously claim that the reorganisation is not transnational, as the document sent to the French works council states that the strategy of the group of undertakings has already led to the closure of factories in Sweden, the Netherlands and Germany and the relocation of these activities to other sites in Europe. The document also summarises that the group of undertakings does not intend to retain Sevigny le Temple as a future European site for any of its technology.

The Directive of 11 March 2002 on information and consultation stipulates that these must take place at such a point in time, in such a way and with such a content that the employees' representatives have the conditions to perform a proper review and prepare consultations. This means that the local works council cannot be consulted in a meaningful way unless it has been able to examine the observations and opinions of the EWC.

The company must agree not to consult the committee at the factory about the reorganisation before the committee has received the opinion of the EWC.

The company is required to pay EUR 1,500 to the works council under the Code of Civil Procedure and for the expenses that have arisen.

Alcatel

Case no. 903565 in the French courts
Date of ruling: 27 April 2007
Report: This case makes reference to the right of European Works Councils (EWC) to be informed and consulted.

On 1 December 2006, the two major companies Alcatel and Lucent Technologies merged. As a result of this merger, the management announced a restructuring plan that involved cutting 12,500 jobs worldwide over the following two years. The plan was presented at a consultation meeting of the Alcatel ECID (*European Committee for Information and Dialogue*) on 23 February 2007. The committee considered the information to be incomplete and so new presentations were given in English on 6 March and in French on 9 March. The committee nevertheless considered that the pres-

entation still did not meet their expectations and that they were not able to provide an opinion. On 15 March, the ECID decided to convene a meeting of Alcatel Lucent and the French central labour committees.

Management arguments:
– Although the agreement does not contain such provision, the ECID was assisted by an expert.
– The elected representatives had received several reports.
– The expert was given all the documents he requested.
– What the ECID is asking for is provided only to the French representative bodies.
– The information requested must be given to these local bodies by the national undertakings.
– The agreement to establish the ECID is dated 17 June 1996 and is therefore an older agreement which is covered neither by the Directives nor by the transposition law.
– The management has fulfilled all of its obligations under the agreement and is not compelled to provide documents.
– Consultation should be understood as "an exchange of views and the establishment of a dialogue"; the Directive does not say anything about an "opinion".

Summary judgment pronounced on 27 April 2007 by the Tribunal de Grande Instance (Supreme Court) in Paris

The court sitting in the first instance, after hearing the arguments from both sides, hereby pronounces the following judgment, which has been issued to the registrar:
– Alcatel Lucent is ordered to provide the ECID members with English and French versions of the following European information:
– a precise cost estimate showing why certain business sectors should be discontinued, transferred or merged
– a precise cost estimate showing how and on what basis the calculations of the claimed redundancy were made
– the number of jobs that are planned to be cut, broken down into each division, country and employee category
– a precise cost estimate that forms the basis of the distribution of job cuts
– a provisional timetable for the planned job cuts.

The court rules that the European committee must not be reconvened for consultation on the planned restructuring of the Alcatel Lucent Group with regard to the impact on jobs fewer than 15 working days after it has received the above information.

The court orders Alcatel Lucent to pay EUR 5,000 to the ECID under the Code of Civil Procedure.

The court orders Alcatel Lucent to pay all costs.

European Works Councils and negotiations

Section 36 of the Swedish legislation allows the European Works Council to acquire and assume obligations and bring legal proceedings before the courts and more.

Background

Safeguarding interests and developing employment terms and conditions at the workplace are part of the core business of a trade union. The origin and the activities of the European Works Council derive from the continental system and the information, consultation and negotiation model it uses. We have also had a similar model in Sweden in the past in the form of the Works Council Agreement. It is therefore only natural for us to find ourselves quite quickly in discussions of a collective bargaining nature in the European Works Council.

There are many examples where European Works Councils have reached so-called policy agreements on soft issues such as training, equal opportunities, skills development and work environment. There are also examples, however, of agreements on remuneration and other terms for employees on the breaking up/takeover of undertakings in which the European Works Councils are involved.

From a purely trade union perspective, is this a problem? Should unorganised members from other countries in a works council negotiate terms of a collective bargaining nature on behalf of those who are organised in a union in another country? As trade unions, we say no to this.

Can we negotiate in the European Works Council?

Section 36 of the Swedish legislation allows the European Works Council to acquire and assume obligations and bring legal proceedings before the courts and more. Industri All Europe has adopted procedures to ensure from an organisational perspective that there is a trade union mandate in such contexts where transnational negotiations are initiated at the undertaking.

An agreement can therefore be negotiated and reached in accordance with Swedish legislation by the works council, but such an agreement is only binding on the operations in Sweden. In order for this to become binding in other countries, a similar agreement must be reached nationally.

For EMF procedures to apply, there must be a clear intention and commitment from both parties to reach an agreement on a particular issue or issues. It is therefore not possible to have a standing negotiating group at the undertaking and this must instead be appointed on a case-by-case basis. The entire process is coordinated through Industri All Europe's Secretariat to the relevant national trade unions, as described below.

How do we deal with transnational corporate restructuring?

As part of companies' efforts to obtain the cheapest possible production conditions for their employees, it is not uncommon for 'beauty pageants' to take place between undertakings in the same group. The approach taken by GM with regard to Saab in Trollhättan and Opel in Rüsselsheim in 2005 was an example of this.

Here, the European Works Council, the trade union representatives at the company and the unions in Germany and Sweden launched an extensive collaboration together with EMF (the then European Metalworkers' Federation), which also led the coordinated collaboration. This extensive collaboration resulted in the continued existence of both factories. We had to adjust slightly to the local conditions at the company in both Germany and Sweden, but overall there were no major changes to the employment terms, which was something we feared with nearly 6,000 jobs at stake.

Industri All Europe is able to convene trade union coordination meetings in such contexts in connection with restructuring. The purpose of the coordination meeting is to try to have an exchange of information at trade union level together with the European Works Council and also to try to develop a common trade union approach, where this is possible in the current situation. These meetings are attended by the EWC members as well as other local trade union representatives and representatives from the trade unions involved.

Internal Industri All Europé Trade Union procedure for negotiations at multinational company level

Collective bargaining negotiations are a core competence of national trade unions and their local representatives and are based on national legislation and practices that vary from country to country.

Industri All Europe and other European trade union federations have adopted rules on how to negotiate at multinational level. These rules are intended to ensure that any agreements at European level have a trade union mandate and are accepted by the affected affiliates in the federations. The procedure adopted by industri All Europé is described below.

Introduction

Collective bargaining negotiations are a core competence of national trade unions and their local representatives and are based on national legislation and practices that vary from country to country. The negotiating mandate lies with the trade unions and the European Works Councils (EWC) therefore do not have a mandate for collective bargaining negotiations and should not become the counterparties of company management on such issues. The area covered by collective bargaining negotiations is not clearly defined, however. It is in the interests of Industri All Europe and its affiliates to ensure that the trade unions are fully involved in any and all collective bargaining negotiations, including at European level.

There may be cases where an agreement between the company management and the trade unions at European level may appear to be the most practical solution. In such cases, the trade unions at the company/group can decide to become involved, with Industri All Europe as the coordinator. This situation differs from the statutory provisions, under which the Executive Committee can decide, by a two-thirds majority, whether to grant Industri All Europe a mandate for negotiating a European framework agreement.

European company agreements present us with three major difficulties:

- There is, as yet, no framework for European company agreements, which means that an agreement must be negotiated and implemented at national level in accordance with national systems and traditions.
- The trade unions do not have any guaranteed role at European level.
- There are no internal procedures for granting a mandate and evaluating such agreements at Industri All Europe.

Although there is not currently any legal framework at European level for the participation of the trade unions in negotiations at European company level, Industri All Europe can promote and encourage the involvement of the trade unions in practice. Industri All Europe must therefore provide its own internal instructions and procedures for those cases where the federation is involved in the process. These instructions must provide information on how such European company negotiations are to be organised and should take into account the different national practices and the fact that no two companies/groups are identical, as well as the problem of implementation.

The procedure will therefore always be one that operates on a case-by-case basis and should take into consideration a number of general elements. It is important to note that an agreement at European company level should in all cases include a non-regression clause.

Procedure for negotiations at multinational company level

Industri All Europe establishes the following procedure only for those cases where the federation is involved and where there is a clear intention and commitment of both parties to reach an agreement. This does not apply to the existing consultation processes already taking place at EWC level.

The procedure in fact consists solely of models and procedures to be followed and does not indicate which topics or content are to be the subject of negotiations. When a company indicates its intention to begin negotiations, or the EWC or the trade unions in the company/group express such a wish, the following procedure must be observed:

1. Preliminary information and consultation procedure
   a. A complete information and consultation round shall be organised, involving the trade unions concerned in the company/group, Industri All Europe's coordinator, the EWC's Select Committee and the EWC. The trade unions involved should agree to start the negotiations. They should do this preferably in a unanimous way.

      If unanimity cannot be reached, then the decision should be taken by at least a two-thirds majority in each country involved. Nevertheless, a country that represents 5% or less of the total European workforce cannot block a decision to start negotiations.

      The decision shall be made following their national practices and traditions (but Industri All Europe asks affiliated trade unions to clarify the methods used in each country to reach such a decision and inform Industri All Europe of this method).

   b. At the same time, the coordinator shall inform the Secretariat that this process has begun and of the topics and elements concerned.

2. The mandate for these negotiations will be decided on a case-by-case basis. The mandate shall be given by the trade unions involved, and should preferably be unanimous. If unanimity cannot be reached, then the decision (following their own national practices and traditions) should be made by at least a two-thirds majority in each country involved. Nevertheless, a country that represents 5% or less of the total European workforce cannot block a decision to start negotiations.

   The mandate may include:
   a. The specific topics, viewpoints, policies; i.e. the mandate position paper.
   b. Details of how the negotiation process will take place and the composition of the complete negotiating/monitoring group.

      There must be a concrete proposal as to the negotiating team, which will meet with the management on behalf of the entire negotiating

group. This negotiating team must include at least one representative from Industri All Europe and/or a coordinator and/or representatives of the trade unions involved, one of whom will lead the negotiations. The negotiating team can also include trade union members of the EWC and/or members of the EWC Select Committee. The mandate shall be sent to the Secretariat in order to ensure that it is in line with current Industri All Europe policy.

3. The Secretariat shall keep the Executive Committee and the relevant policy committees informed about the negotiations and the negotiation process.

4. The negotiating team will present the draft agreement to the complete negotiation group for evaluation. This draft agreement shall be approved by the trade unions involved. Approval requires at least a two-thirds majority in each country involved. The decision-making process will again follow national practices and traditions.

5. Industri All Europe, represented by the General Secretary or Deputy General Secretary, or another person mandated by them, shall sign the agreement on behalf of the trade unions that are at the company/group at the time of signing.

6. All trade unions involved shall agree to implement the signed agreement. The agreement shall be implemented in accordance with the national practices of the countries involved. Implementation must respect the legal framework and the collective agreement system of these countries.

7. Complete information about every signed agreement shall be given to the Executive Committee and all relevant policy committees.

Useful websites with regard to EWCs

www.fackeninomindustrin.se

www.gsfacket.se

www.livs.se

www.pappers.se

www.ifmetall.se

www.unionen.se

www.sverigesingenjorer.se

www.nordic-in.org

www.riksdagen.se

www.industriall-europe.eu

www.efbww.org European Federation of Building and Woodworkers

www.effat.org European Federation of Food, Agriculture and Tourism Trade Unions

www.uni-europa.org Union Network International

www.brysselkontoret.se LO-TCO-SACO Brussels office

www.etuc.org European Trade Union Confederation (ETUC)

www.etui.org European Trade Union Institute

www.worker-participation.eu Special information site about influence and co-determination issues in Europe

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