

EUROPEAN WORK COUNCILS REPORTS AND PERSPECTIVES

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Introduction



European Works Councils (EWC) were created under the initiative of the social partners and management (corporate management and /or European Federations) within large groups of undertakings such as Volkswagen in Germany (in 1990) or Elf Aquitaine in France (in 1991). they aimed at establishing transnational information and consultation procedures for salaried employees.

European social partners (UNICE-CES-CEEP at the time) met to try negotiating an extension of the scope of these initiatives. As they did not reach an agreement, the EU Commission issued a Directive (EEC 94/45) dealing with the issue. The Directive was approved on 22nd September 1994 after consultation with all social partners (including the CEC).

As with all Directives, it had to be enacted in the national legal system of each member country. Under the terms of the Directive, agreements not complying with the Directive but signed before the date of effect of national enactment laws (French Law 96-985 dated 12th November 1996) are deemed applicable if they meet the object of the Directive: promoting European social dialogue in the company by means of exchanges of views between management and labour representatives. The CEC and its European federations are signatories to a large number of these agreements.

Directive 94/45 also provided for possible revision after a five year period (mandatory deadline for setting up a European Works Council before implementation of the legal minimum requirements: 22nd September 1999).

In preparation for possible revision, the CFE-CGC, French organisation representative of management, initiated a review of the experience gained within the five years following the directive.

A questionnaire was designed and sent to over one hundred Works Councils members from French groups of undertakings. The results of this survey are given below. A seminar with over fifty European and French delegates was organised with the support of the Commission (DG employment, industrial relations and social affairs).

The seminar was organised by Claude Cambus, Vice-President of the CFE-CGC, with the assistance of Serge Lanteaume, national delegate and Patrick Formosa, head of the international department. The seminar was attended by European representatives from Germany (ULA), Belgium (CNC), Spain (CC) and Italy (CIDA).

Internal survey

At the end of 1999, the CFE-CGC surveyed over one hundred of its delegates in Works Councils or European groups. The results of the survey were released on 17th February by Serge LANTEAUME at the opening of the seminar:

The setting up of EWCs and the role they play

With regard to set-up conditions, the survey showed that

- in 90% of cases, the EWC was set up under the terms of an agreement.

With regard to the actual nature and scope of the dialogue within EWCs, the survey showed that:

- 45 % play a purely informative role
- 34 % play an advisory role
- 21 % appear to facilitate more effective social dialogue

Regrettably the C.F.E.-CGC notes that nearly half of the companies surveyed limit themselves to the minimum legal requirement i.e. providing information only.

Frequency and duration of meetings

In answer to the question as to whether companies go beyond the minimum legal requirements in terms of frequency of meetings, it appears that:

- 59 % of companies call a meeting of the Works Council once a year (plenary session)
- 28 % organise two meetings per year (one committee meeting and one plenary session)
- 13 % organise more than two meetings per year (including committees and work groups)

Generally speaking, when the Works Council is purely informative, there is only one meeting per year. The C.F.E.-CGC considers that the implementation of committees or working groups should enable this structure to fulfil its role efficiently.

As far as the duration of the meetings is concerned, the survey shows that those companies which organise the greatest number of meetings are also those which grant the most time to the meetings themselves. Therefore:

- 21 % of EWCs hold a half day session
- 68 % hold a full day session
- 11 % over more than one day

Resources deployed for EWC operations

With regard to resources deployed, it appears that the minimum costs covered include travelling, hotel and translation expenses. However, some companies do more:

- 27 % of EWCs are provided with dedicated equipment
- 17 % are provided with dedicated premises
- 33 % use external consultants
- 7 % have a training budget
- 10% have their own budget.

EWC operational budgets range from 1,500 to 3,000 Euros. A few exceptions have been noted with budgets reaching 20,000 Euros per annum.

Concerning hours made available for EWC work, the survey showed that :

- In 30% of cases council members have no delegation hours granted for exercise of their mandate
- In 50% of cases hours are granted for EWC work either to the executive committee members or to the secretary only

20% of the questionnaires were returned without any clear answer to the question.

The survey also asked the delegates to provide suggestions and ideas on how to improve the operations of the EWCs. Answers expressed various expectations concerning resources with an emphasis on means needed to reinforce links between members and the European scope of the councils' actions:

- Allocation of hours for EWC works based on the number of EWC members and granting of a budget based on a percentage of the payroll
- Appointment of representatives for each country where the company has branch operations even with a minimum number of salaried employees
- Going beyond a mere exchange of information and points of view (more commitment in the decision making process of groups of undertakings)
- Setting aside one representative mandate for one "Manager" per country
- Separating the functions of Elected Members and Union Representatives
- Giving by right a seat to each European federation
- Improving communication between members by setting aside a translation budget
- Creating a European trade unionist status

Works groups summary

Groupe 1 ■ Report from Serge Lanteaume and the University Dean Henri Labayle

Methodology used by the ad hoc work groups involved reviewing how the Works Councils in question were set up and who took the initiative, defining their scope of action, describing their operational practises.

Before proceeding any further it was necessary to overview Directive 94/45 to enable debate to take place in light of the wide differences in the situation of participants vis-à-vis this document. The guest speaker, dean Henri Labayle, went over a few basic principles pertaining to informing, consulting and involving company workers on European Union matters.

The problems raised by the Directive are shared by all. The Directive meets a long-standing need for social dialogue and the search for solutions to new issues notably with regard to the planned new European corporate status within which the question of information and participation will invariably be raised. Unanimous approval of this European Union approach was in itself one of the first practical lessons to be learned when faced with concerns voiced regarding the weakening of strength and influence of major trade unions on the European scene and, above all, fears about the emergence of a European society dominated by globalisation and a free market.

Discussions revealed an overriding feeling of concern in view of the deterioration of the current situation. Guarantees put forward in the Directive are seen as defensive, allowing, for example, at least to be informed of restructuring or decentralisation risks, much more than being the premises to a European social democracy, prefiguring to a certain extent a

European model for social relations based on information and dialogue within a European-scale company.

An extremely varied range of situations is observed, where the spirit of the Directive is not necessarily found. The distinction between "article 13" councils and ordinary councils is clear; a sub-distinction then comes into play between companies which have decided to play the procedural game and those which had anticipated it in order to avoid its demands. Also observed throughout the working party was a permanent feeling of the diversity of union cultures and national dialogue practises within companies. The company's dominant national culture is the defining element for harmonious operations, or not, for European Works Councils.

A round table discussion within the work group also confirmed the lines identified in the CFE-CGC questionnaire, i.e. the vast majority of Works Councils have been set up further to agreements reached, and not on a unilateral basis. From this point of view, it was unquestionably the case that pressure brought by the date on which directive 94/45 came into force was the principle factor leading to the setting up of Works Councils, in order to anticipate the effects of future regulations. Clearly, unionists' perception of this procedure is more pragmatic and less dominated by legal considerations. A long discussion was required on the theme of setting up a Works Council, particularly in case of restructuring or merger.

It was also underlined that the process of grouping companies or their reorganisation had been widely used abusively by employers to delay or defer the setting up of these Works Councils.

The theme of representativeness was seen as a major problem, taking priority over other criteria. It appeared that the fact of being represented, even on a minority basis, was vital, taking precedence over every other consideration. Thus, the question of staff numbers in the entities concerned was accepted as a possible weighting criterion but not as a determining criterion.

1. Composition of EWCs

The composition of Works Councils also received a great deal of attention, dealing with differences of perception between two concepts, firstly where the structure is exclusively made up of staff representatives and secondly where both staff and management representatives co-exist. This approach, which is familiar to the French working world, did not shock the meeting but three points were specifically raised :

- *the desire for representation by job category, even allowing for a certain number of seats being reserved for people from outside the company,*

- *the absolute necessity of belonging to a trade union and being entitled as EWC member on an elective basis*
- *the need to regulate the status of the elected representatives within the Works Council so as to ensure that there is no obligation to be a member of a national Works Council too.*

2. Scope of intervention defined in the agreements

The report dealt with the scope of intervention defined in the agreements for setting up EWCs and resulted in the following chart:

- *group's economic and financial situation and investment policy*
- *group's strategy*
- *jobs*
- *group's organisation and structure*
- *health and safety within the company*
- *training*
- *professional equality*
- *new technology and working techniques*
- *investments and orientations towards non-European countries*
- *the environment and the development of the sector of activity covered*

3. Functions recognised for the Works Council

vary according to the experience of participants. They reflect the difference between the dominant concepts in Europe regarding prerogatives acknowledged for staff representative bodies.

For a majority of the delegates, Directive 94/45 barely improves the state of existing law and the role EWC can play is a truly minimal role, in decline where compared with French national law.

The three major functions of EWCs are

- *information: what is important here is to ensure the content of information for employees (see IV) and the distribution of information made available.*
- *consultation: today seen to have been deviated from its true significance (giving an opinion) and now closer to information. On one hand it should precede the event instead of accompanying it or even following it, and on the other one it should have an effect. In some serious cases, inspiration should be taken from the laws of some members States in order to demand an opinion in line with legislation.*
- *negotiation: unanimously seen as the poor relation under current provisions. There would be benefit, however, from making EWCs a real melting pot between trade union organisations present in the various member States.*

4. Functioning resources :

The compared solutions carried out in the different EWCs represented in the working group leads to the following observations and criticisms .

Works Council Structure: the existence of an executive committee or a restricted committee may make admissible the rarity of Works Council meetings. The committee may be authorised to deal with urgent matters and it must also have an administrative role, convene meetings, establish agendas, manage, investigate, monitor and transmit information, manage the budget, select consultants. The committee must be representative of the various categories of employees (a seat for managerial staff).

Frequency of meetings: the best schedule for correct operation of an EWC includes:

- ordinary meetings with preparatory session, lasting one day and a half and held twice a year (times of publication of accounts and forecasts would appear to be the most favourable dates)*
- extraordinary meetings, when circumstances demand or when the parties involved so decide.*

Organisation

if internal regulations are in play the following may be suitable:

- rotating or jointly held chairmanship*
- establishment of the agenda by the executive committee*
- set time for distribution of information (3 weeks)*
- obligation and importance of (joint) reports with deadline for submission*
- translations which are clearly important and linked to the composition of the group in question*
- distribution of information is obligatory at least to union representatives and/or to all staff (company newsletter).*

Resources

An examination of this question revealed situations which vary greatly between companies, with costs covered by management and appearing generally to be negotiable. They must include:

- budgets*
- delegation hours grant*
- language training and technical knowledge of the group*
- expert assessments*
- interpretation and translations for all meetings and not only for plenary sessions.*

Groupe 2 ■ **Prospects by François Vincent (Chairman of the FECCIA)**

1. Promoting the European Works Council

All companies are concerned by the European Directive have not yet got themselves a European Works Council (650 agreements).

Those which do have one enjoy a competitive advantage which they should be able to exploit, such as receiving ethical funds, which reward companies which have a real social policy.

Social dialogue at European level is all the more useful because single market is increasing the speed of development in sectors working in a competitive environment.

2. Development of social dialogue: the results are positive - can we go still further?

After at most a few years of functioning, the European Work Councils are to be considered as a social dialogue component which provides the different staff representatives in Europe with a common basis.

Is there a European company model which is shared by all members of the European Community?

Most of the 650 agreements have provided for a European Works Council an annual session, which proves

- *that is the most common method of social dialogue*
- *that corresponds to a practise shared by all member States of the European Community*
- *that is not a specific French practise but an European one indeed*

Can we go still further?

- *According to the principle of autonomy amongst social partners, nothing keeps those EWCs' social partners from doing more than just exchanging of view.*
- *Some committees demonstrate a will to communicate results of discussions.*
- *Others overlap onto the prerogative of the French group's Work council or the company Works Council.*

3. Content of social dialogue: improvement of practises

Ways of functioning and the quality of "exchanges of views" between Management and staff representatives vary vastly from one European Works Council to another, as the consequence of the corporate culture, and the nationality of the head office or industrial sector concerned.

The most constant trade unions claims turn on that issue.

The question of jobs and restructuring is at the heart of employee concerns and at the centre of the whole industrial and social policy.

- *What are the guarantees for employment contracts in the future?*
- *How will employee representatives be able to take action on this?*

The frequency of meetings and the resources made available to members of the executive committee are insufficient to respond to emergency or strategic situations (public offer of exchange, mass redundancies)

4. Importance and utility of the European Works Council: the role played by managerial staff.

Within the context of European construction, transnational Groups cannot limit themselves to taking advantage of the internal market which increases their international competitiveness: they also have true social responsibility. Information and consultation of staff representatives within the context of the European Works Council plays a useful role. The principle of the useful effect is part of Vilvorde case law.

Managers and managerial staff in general are the driving force behind adaptation of their company to the European consumer. They acquire a European culture in working meetings held between Europeans, well before other employees. What potential for the company to make this experience available to labour relations in Europe!

The CFE-CGC asks

- that managerial staff in companies become more involved in the process of reviewing the Directive and existing agreements*
- that their presence in EWCs is better guaranteed, in view of their professional experience and their ability to speak foreign languages*
- that experts from European federations, particularly those from the CEC, be involved in the functioning of European Councils and in the review of existing agreements, in order to ensure transfer of experience and a guarantee of quality.*

5. Improvements to good practise: a network of correspondents

European Works Councils are a practical example of European social dialogue at corporate level. A summary of "good practises" is indispensable in order to make progress with social dialogue in the direction of even greater efficiency. This is not a matter of drawing up "pensée unique", but of undertaking transfers of experience between the members of European Works Councils within the context of permanent innovation.

In this perspective, the European Works Council is a field of experiences for the construction of European social dialogue.

6. Improvement of consultation: does the EWC give its opinion?

The answer to this question is in the summary of EWC debates: what is making progress? How can one publicise what is positive and what is negative? Statements of conclusions would be, in this respect, significant of a real European social dialogue, resulting in concrete action.

An exchange of views by E-mail or Web sites to communicate the results of a meeting would permit better communication.

7. Can one head towards negotiation after consultation?

HR Directors will also have to become aware of their role in Europe and take responsibility for social policy in their various European subsidiaries (temporary / part time / fixed term employment contracts, workers' job security, vocational training, job descriptions, job filled, sub-contracting, hiring, retirement, transfer conditions, incentives, profit-sharing, employee savings-schemes).

One of the problems encountered is the lack of a negotiation mandate, both on the part of the Management and on the part of staff representatives.

8. What does the future hold for European sectoral negotiation?

Sectors of activity (industries, services) may take advantage of these "experiments" to ensure that labour relations practises develop at European level. Two pitfalls:

- *Definition of a mandate within the context of an agreement to be sought*
- *The European Commission keeps the initiative of issuing European Directives which do or do not overlap the sectoral framework.*

9. How will staff be represented in the European Company ?

In France, managerial staff have, where corporate articles of association so authorise, a representative in the decision-making bodies of the Company. At European level, the set-up procedure will include lessons learned from that of European Works Councils.

The CFE-CGC requests that a place be reserved for managerial staff in decision-making bodies of the European Company.

Round table closing discussion on review of the directive



Speech by Fernando Vasquez –European Commission–

Consultation on review of Directive 94/45 EC was to start on 22nd September 1999, i.e. three years after the deadline for enactment of the latter into the legal system of each Member State (article 15).

The conference held from 28th to 30th April 1999 in Brussels was intended to collect feed-back from application of the Directive from members of existing European Works Councils.

The document submitted to the liaison forum on 7th December 1999, is entitled "report from the European Community on the state of application of Directive 94/45 EC".

The European Commission considers a review of the Directive premature, for four reasons:

- The Directive has provided for new mechanisms of negotiation, whence a lack of practical experience. Specifically, the annexe has never been applied. Implementations have occurred via joint agreements in companies.
- Types of application problems are such that they are the result of implementation of the agreement. The Directive has been rather well enacted. Of the 650 agreements, there are few disputes: one appeal to the European Court of Justice, seven or eight cases in France, linked to matters of representativeness and one identical case in Ireland.
- The review has its own limits, as a result of the social partners autonomy. Existing agreements will not be again questioned during their period of application. It is at the time of their review that a change may take place, which limits the scope of a review of the Directive.
- The general political context means that there are other priorities: information and consultation at national level arouse reticence in certain Member States and the European Commission must continue with the action initiated. Mechanisms of the draft Directive on workers involvement in the European Company are based on the same principle of negotiation of Directive 94/45 which is therefore backed up.

Consultation will continue on :

- Redefining the objective sought: social dialogue between the company manager and the employees of the various European branches, to ensure that decisions take account of employees' opinions.
- Improving functioning, specifying: the role of experts, conditions of training for members.

- *Specifying legal aspects:*
 - *the notion of control in joint-ventures (control without ownership of the capital)*
 - *adaptation of EWC to changes in “perimeters” of Groups : defining rules in the absence of an agreement.*
- *The employer is subject to external restrictions, he is not free to make his own decisions:*
 - *in case of a takeover bid or public offer of exchange, stock market fluctuations will influence his decisions*
 - *discussing confidential economic and strategic information (such information cannot be made public)*
 - *gradual sliding of the notion of information - consultation towards the notion of participation.*
- *Consultation of the European Commission (Directorate-General for competition policy – Competition regulations) in case of merger could enter the information - consultation process of staff representatives (example of Total Fina Elf) :*
 - *Joint involvement DG IV – DG V ;*
 - *labour rights – competition rights*

Report from work groups

Serge Lanteaume (national delegate with responsibility for European matters) and François Vincent (Chairman of the FECCIA) reported on the work done by groups as indicated respectively in the preceding chapter.

Speech by Emmanuel Julien -MEDEF-



The general tone of work done by the two groups would appear pessimistic compared with what can be observed from the actual situation. For MEDEF and UNICE, the fact that 600 agreements have been signed from a potential of between 1,200 and 1,500 demonstrates that implementation of the Directive has not ended in failure.

- The French enactment law of November 1996 regarding consultation, i.e. the exchange of points of view and dialogue. Reporters from both groups asked that more be done in the field of social dialogue, but this law has not been made to promote social dialogue in general.
- In terms of functioning and means made available to European Work Councils, he believes that exaggerated importance should not be placed on the figures because, in the survey undertaken, the fact that there is a budget does not mean that there is a large-scale activity and, on the contrary, the lack of a budget could mean that a great deal of travelling and translation expenses are in fact covered directly. Therefore, this point alone is not sufficiently pertinent. It is preferable to consider the "useful effect" of a functioning budget rather than the amount of that budget.

It is not because there is a particular case of an EWC with insufficient resources to function correctly that a general measure should be sought.

- Transferability of experience gained by managerial staff is an important question but which partners involved don't seem to grant a sufficient motivation to, both on employers side and on trade union side.
- The question of information is important: who should carry it out, the trade union organisations or the Human Resources Department?
- Concerning the prospect of European sectoral negotiations stated by one of the two groups in its conclusions, MEDEF does not believe in it. It is a "political" view to imagine such a new scheme of negotiation. Current experience does not lead to believe in the possibility of transnational negotiations.
- Finally, concerning the necessity of internal regulations, this is a typically French approach. A great deal of flexibility should be left to these committees instead of trying to make functioning more rigid by means of texts and regulations.

More generally speaking, the Commission report on the state of enactment of the directive does not take into account the richness of the debates at the conference held from 28th to 30th April 1999 in Brussels.

As things stand, the Directive should not be reviewed:

- The annexe has never been applied: negotiations have taken place within companies to reach an agreement (Note: companies which did not want an agreement did not start negotiations at all)
- Case law (Renault Vilvoorde) is sufficient to ensure that agreements are applied.
- Right to training: NO
- Lowering of thresholds: NO

Questions raised during the debate

Directive enactment laws show disparities and gaps, which risks leading to divergences between countries. A review is desirable and should cover the following points:

- *Clarification of the presence of experts (the most involved European federations)*
- *All the company's employees must be involved in the process of review of the Directive and of existing agreements*
- *Development of an existing agreement in case of merger or restructuring*
- *Lowering of threshold of staff numbers*
- *Equal opportunities for men-women*
- *Collection of good practises and selection of the countries concerned*
- *Representatives from third countries (Switzerland, etc.)*
- *Impact on the status of the European Company*

Representation of managerial staff is not ensured by current texts. Where there is a European council with one representative per establishment, it is rarely a manager, whereas everyone agrees in recognition of the importance of this group of employees vis-à-vis complex strategies of mergers, sales and acquisitions. This question is raised by CEC only at European debate level ; the previous ones are shared between managerial staff and the general trade union organisations represented by CES.

Conclusion

by Jean-Luc CAZETTES

The President of CFE-CGC, Jean-Luc Cazettes, explained the reasons which led him to organise this European seminar on European Works Councils:

β it is one of CFE-CGC's principles that at every decision-making level in the company or group there should be a place for discussion, information and consultation, to use the terminology habitually used in European social dialogue

β the context of European and worldwide restructuring of companies, including decision-making centres is no longer merely national and this makes our French social dialogue system insufficient and unable of respond alone to the changes of dimension observed in companies.

β the situation created in France by the will of the social partners to discuss modernisation of the social dialogue between themselves at all levels, opens up the way for dialogue in the European group.

β the fact that this new body, the EWC, has now been in existence for several years and that it is natural to take stock of that experience

β the importance of the experience get in the functioning of EWC to define the method for staff representation in the articles of the European Company

β the commitment made by the whole of the managerial team to reposition the confederation in a permanent, resolutely European perspective

β the constitution of the network of Europeans for CFE-CGC to ensure that delegates within companies are properly "equipped" for this level of work

β and finally, to demonstrate to those interested in our organisation that managers' and managerial staff's trade unions are not only a typically French idea, since representatives of German, Belgian, Spanish and Italian organisations who CFE-CGC's has closest relations with have been invited to participate to this seminar.

The President was pleased with the results of the work the richness of which has been demonstrated at the morning round table discussion. He believes that the role played by these European bodies will be reinforced in the future. Companies should not fear to consult salaried on the important matters affecting them. In this process, the presence of managerial staff or executives, at European level, is indispensable insofar as it is enriching and leads to a more moderate approach.

One must merely hope that employers will understand this and that in this way the European social model will include a strong aspect of social dialogue and reciprocal responsibility of companies and salaried without which European groups will not succeed in being at the cutting edge of technology, innovation and knowledge.

The Chairman thanked the guest speakers, the European Commission which has granted its support to this seminar, participants from other Member States and all delegates present. He confirmed that this initiative will be followed up by meetings for representatives in EWCs.