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BACKGROUND REPORT

OF PARTNERS IN THE FIELD
OF DEVELOPMENT EWC



Content

Partnership	3
Introduction.....	4
Challenges for development of European works councils	5
Key challenges	5
Recast directive.....	6
European Green Deal and European Works councils.....	9
Further steps	10
Sources	11
References	15

Partnership

Applicant:

Federation of Metal and Steel Production Workers Union (FZZMiH) - Poland

Partners:

Federation of Polish Entrepreneurs (FPP) – Poland

Institute of Public Affairs (IPA) – Poland

Lithuanian Association of Metal Workers Trade Unions - Lithuania

FIEQUIMETAL – Portugal

Council of European Employers of the Metal, Engineering and Technology-based Industries (CEEMET) - Belgium

Association of Trade Unions of the Lviv Region (ATULR) – Ukraine

Associated partners:

IG Metall – Germany

Industrial European Trade Union Association de Fait (IndustriAll) – Belgium

Comisiones Obreras de Industria (CCOO) – Spain

UIMM – France

National Union of Employers - Slovakia

Project duration: 01.11.2023-31.07.2025 (21 months)

Introduction

The main priority of the project “EWC MENTOR: EWC Mentors’ Effective Networking and Training On Cooperation Reinforcement” is to promote actions aimed at developing employees involvement in transnational undertakings with a particular attention paid to the take-up and development of European Works Councils (EWC). More specifically, the project’s goal is to identify and address challenges of involving stakeholders in the metal sector resulting from changes in the world of work in the context of the twin transitions (green and digital).

This background report aims at summarising the key conclusions drawn from the previous EU funded projects related to the European works councils in which the project partners were involved in the recent years. These projects include the following:

- “Start and go! Social partners towards effective processes of establishing and managing EWCs” (2020-2021)
- “Let us participate! Cross-border corporate reorganization and the future of employee involvement in corporate governance” (2020-2022),
- “Let’s get green! Social partners’ joint action to enhance worker involvement in company-level implementation of the European Green Deal” (2021-2022),
- “EWepCe - Effective and well-functioning EWCs in post – Covid era” (2022-2024)

Also the latest developments in terms of the revision of the directive on European Works Councils (EWCD), including the positions of the EU-level social partners, will be referred to in order to update the project partners. At the very moment of drafting the background report, the final revision of the directive is still not known, which poses a challenge for the relevant stakeholders in the context of the end of the term of the European Parliament and the European Commission. At this stage it is difficult to settle whether the proposed changes will be adopted by the EU authorities before the June 2024 European elections.

Both past experiences and recent developments will be the important source for elaboration and conducting of the Mentors’ Online Academy addressed to the members of the EWCs from the project countries. The project will not only be built on past experience, but also it will include innovative actions: creation of network of mentors and development of chatbot advising on EWC issues: how to provide support in setting up new councils, why it is worth having a representative in the EWC, EWC in responding to crises connected with twin transition. Practical orientation of the training and mentoring programme will be the priority in the project.

Challenges for development of European works councils

Key challenges

European Works Councils (EWCs) face several challenges in their development and functioning. Some of these challenges include:

- **Diverse Cultural and Legal Contexts:** The European Union consists of member states with diverse cultural, legal, and industrial relations traditions. Harmonizing these differences to establish effective EWCs can be challenging.
- **Language Barriers:** EWCs often consist of representatives from various countries, leading to potential language barriers. Translation and interpretation services may be necessary to ensure effective communication among members.
- **Varying Levels of Unionization:** The level of unionization varies across European countries, affecting the establishment and functioning of EWCs. In countries with strong union presence, EWCs may have more support and resources. Also the are challenges related to workers' solidarity when it comes to consulting working conditions in company branches from different countries - especially East-West divide is observable in this context.
- **Resistance from Management:** Some employers may be resistant to the establishment of EWCs due to concerns about increased costs, bureaucracy, or potential loss of control over decision-making processes. Overcoming this resistance requires convincing management of the benefits of EWCs in promoting employee participation and mitigating conflicts.
- **Complexity of Decision-Making:** EWCs often deal with complex issues related to cross-border operations and transfers. Achieving consensus among representatives from different countries and balancing interests can be challenging.
- **Changing Business Environments:** Transnational companies operate in dynamic and competitive business environments, where restructuring and reorganization are common strategies for adaptation. EWCs must be flexible and adaptive to changes in the business landscape while continuing to represent the interests of employees effectively.
- **Information Sharing and Transparency:** Ensuring timely and transparent information sharing between management and EWCs is crucial for their effectiveness. However, some companies may be reluctant to share sensitive information, leading to trust issues and hindering the functioning of EWCs.
- **Enforcement and Legal Framework:** While the EU provides a legal framework for the establishment of EWCs through the European Works Council Directive, enforcement mechanisms may vary across member states. Inconsistent implementation and lack of enforcement mechanisms or penalties for non-compliance may undermine the effectiveness of EWCs.
- **Training and Capacity Building:** EWC representatives require training and capacity building to effectively represent the interests of employees across different countries. Providing

adequate resources and support for training can be challenging for both employers and trade unions.

Addressing these challenges requires collaboration between employers, trade unions, and policymakers to ensure the effective functioning of European Works Councils and promote dialogue and cooperation at the transnational level.

Recast directive

In response to the above challenges the European social partners – mostly the European Trade Union Confederation – started to call for second recast of the European Works Councils Directive.

In 2019, the European Parliament has decided to produce two own-initiative reports concerning company-level employee engagement as a means of promoting workplace democracy and, in particular, strengthening the functioning of EWCs. The first non-legislative report on workplace democracy, published in December 2021 (2021/2005 (INI)) referred to information, consultation and participation of workers, trade unions works councils, and some aspects of company law and corporate governance. While the second report is a legislative own-initiative on revising the European Works Councils Directive (2019/2183 (INL)), adopted by the European Parliament on 2 February 2023. It aims to “strengthen EWCs and their capacity to exercise their right to information and consultation and increase the number of EWCs while considering the different industrial relations systems in the Member States”.

On 1 March 2023, in reply to the European Parliament, the European Commission welcomed the European Parliament's resolution based on Article 225 TFEU and committed to presenting a legislative proposal of the EWC Directive. In 2023, The Commission initiated a two-stage consultation in which both the European Trade Union Confederation and the BusinessEurope submitted their position papers (at both staged of the 0063onsultation).

On 24 January 2024, the European Commission presented its proposal for a revision of the directive on European Works Councils¹. The Commission's main proposed changes include:

- Giving equal rights to workers of multinational companies operating in the EU/EEA to request the creation of a new EWC: exemptions from the current Directive will be removed, allowing 5.4 million workers in 320 multinational companies with pre-existing agreements to request the establish

¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_24_147

- ment of an EWC.
- Clarifying the definition of transnational matters: ensuring that EWCs complement and do not overlap with the work of national information and consultation bodies. A clear definition is crucial for determining when EWCs must be consulted and informed.
- Ensuring that workers in multinational companies are consulted in a timely and meaningful way on issues concerning them:
 - EWC members should receive a reasoned response to their opinion before company management adopts a decision on transnational matters.
 - Company management must provide justifications whenever confidentiality is given as a reason for restricting the further sharing of information or not disclosing information on transnational matters.
- Making sure EWCs have the necessary capacity to do their work: EWC agreements must specify the financial and material resources allocated, for instance as regards experts, legal costs, and training.
- Strengthening gender balance: whenever an EWC agreement is (re)negotiated, provisions will have to be put in place for attaining, as far as possible, a gender-balanced composition. This includes a requirement to actively pursue gender balance in special negotiating bodies, which are temporary groups of employee representatives negotiating an EWC agreement with the company.
- Improving access to legal remedies: Member States must notify the Commission of how EWCs can bring judicial and, where applicable, administrative proceedings. Member States are also obliged to put in place effective, dissuasive and proportionate sanctions to enforce the Directive.

Again both ETUC and employers' organisations at the EU level submitted their positions.

Position of the ETUC on the recast EWC Directive (2024) ²

Key improvements include a refined definition of transnationality, strengthened subsidiary requirements, and improved access to justice. However, challenges remain, particularly in enforcement. The ETUC calls for substantial penalties for management infringements and the introduction of injunctive relief to ensure compliance. The ETUC emphasizes that such measures are essential for compliance with information and consultation laws, rejecting any notion of introducing elements of co-determination.

² <https://etuc.org/en/document/democracy-work-matters-european-works-council-directive-delivers-workers>

Additionally, the ETUC urges the obligatory inclusion of trade union experts in EWC proceedings and laments the Commission's omission of franchise companies from the Directive's scope. It underscores the need for contemporary topics, such as subcontracting chains, climate transition plans, and corporate sustainability due diligence, to be incorporated into subsidiary requirements for EWC consultation.

While applauding the elimination of exemptions, the ETUC raises concerns regarding pre-directive agreements and challenges the Commission's view on the automatic application of amended Directive provisions to existing EWC agreements. It insists on maintaining face-to-face meetings over virtual ones and advocates for the establishment of a tripartite monitoring committee to address challenges in transposing Directive provisions into national law.

Joint EU employers' statement on the revision of the EWC Directive (2024) ³

While the proposal for revision by the European Commission has been tabled, companies operating EWCs assert that these councils function well and advocate for improvements based on tangible evidence. Several key recommendations and concerns are highlighted:

1. **Transnational Matters:** The proposed presumption of transnationality raises concerns about overlapping processes and legal uncertainty. A clear definition of transnational matters and avoidance of overlapping responsibilities with national processes are advocated.
2. **Pre-existing Agreements:** Inclusion of voluntary EWC agreements from the original directive and the transition period could disrupt existing well-functioning EWCs. Suggestions are made to allow these agreements to continue without compulsory adherence to the revised Directive.
3. **Confidentiality:** Management's ability to maintain confidentiality without hindering decision-making processes is emphasized. Suggestions include removal of administrative or judicial authorization requirements and gradual establishment of confidentiality arrangements between social partners.
4. **Resources:** Clarity is sought regarding the role and costs of experts. Recommendations include allowing management to decide on experts' mandates and costs, with a focus on supporting social dialogue solutions.
5. **Mediation and Conciliation:** Rather than judicial intervention, alternative dispute resolution mechanisms are proposed to address EWC disputes, aligning with the priority to support social dialogue development.

³ <https://www.business-europe.eu/publications/revision-european-works-councils-directive-joint-eu-employers-statement>

6. Consultation Procedure: Concerns are raised about proposed changes potentially delaying important decisions. Flexibility in decision-making processes and avoidance of unnecessary administrative burdens are advocated.

7. Representation of Employees: EWCs are reaffirmed as bodies for information and consultation with all representatives of employees, including trade union-affiliated members. Suggestions are made to maintain the current formulation of workers' representatives.

8. Right to Request Preliminary Injunction: The provision for a preliminary injunction is deemed detrimental to companies' decision-making processes and governance. Matters related to penalties are recommended to be addressed by Member States.

Overall, the statement emphasizes the need for the revision to respect the current role of EWCs and avoid transforming them into co-decision-making bodies. The recommendations aim to support the development of a trust-based social dialogue culture within companies, essential for economic and social progress.

European Green Deal and European Works councils

Employees in a transnational company with a European Works Council can use this body to co-create green and fair transformation standards within the company, which will be upheld across all parts of the company. European Works Councils:

- can put pressure on management at the highest level to implement appropriate policies in the company,
- Employee representatives can get involved in implementing sustainable policies in the company, for example through health and safety committees or through projects to save energy or reduce emissions; they can strengthen their role in monitoring the company's social and environmental performance, for example by discussing the company's sustainability reports with management and proposing changes.

The company's greening activities need to take into account local conditions, which will vary from country to country. Council members from the company's foreign subsidiaries will be interested in addressing the issue centrally, i.e. in the European Works Council, if it is large enough.

Potential issues to be discussed in European works councils:

- Developing improved processes, products, services, knowledge, new technologies to help reduce emissions in the company,
- Analysing and agreeing on different options for reducing emissions in a company or industry,

- Forecasting the impact of actions taken, finding ways to achieve the best results in reducing emissions and minimising negative impacts on employees and the community,
- Forecasting skills and qualification needs, employment opportunities,
- Designing appropriate training programmes and services.

A transnational company may conclude a transnational company agreement (TCA) with its trade unions so that certain standards apply to all foreign subsidiaries. Usually such agreements cover labour rights issues, but often their scope is wider, covering, for example, restructuring, health and safety, equal opportunities, preparing for change.

Most global agreements are concluded with international union federations, but European agreements are increasingly being concluded with European Works Councils.

Further steps

The intent behind the project “EWC MENTOR: EWC Mentors’ Effective Networking and Training On Cooperation Reinforcement” was to build on past experience in terms of reflecting on how European works council operate in practice and to follow the most recent developments related to the recast of the EWC directive in order to provide high quality support to the EWCs members from the project countries. Therefore, the project will include also innovative actions in follow-up to the background report, namely: creation of network of mentors that will elaborate training material and will provide mentoring to the members of the EWCs. Before the mentoring programme, the mentors will take part in Mentors’ Online Academy conducted by the Institute of Public Affairs in order to prepare mentors from Lithuania, Poland, Portugal and Spain, to conduct their mentoring activities. The Mentors’ Online Academy will consist of two following modules:

- Promoting cooperation and networking between EWC members, raising awareness about the benefits of establishing and operating an EWC, mentoring in the work of the EWC (how to provide support in setting up new councils, why it is worth having a representative in the EWC).
- Resolution of disputes and responding to crises (crisis management) in the event of various forms of restructuring, as required to address challenges brought by the implementation of the European Green Deal and to address challenges brought by the digital transformation of economies, case studies, crisis scenarios, discussion on the documents: Council Recommendation of 16 June 2022 on ensuring a fair transition towards climate neutrality 2022/C 243/04, the role of EWC in responding to crises connected with twin transition (green and digital).

Mentors equipped with the gained knowledge will conduct the mentoring programme in their countries. Trainees in EWC Mentor Academy will become mentors delivering mentoring

programmes to young or less experienced trade union leaders. Each mentor will support and transfer knowledge to 5 workers' representatives – less experienced EWC members or potential EWC members. Mentors will summarize the mentoring process with a report.

Moreover, the end-beneficiaries of the EWC Mentor project will be provided with an IT tool in the form of a chatbot advising on EWC issues ie.: how to provide support in setting up new councils, why it is worth having a representative in the EWC, EWC in responding to crises connected with twin transition. Project experts will prepare the set of answers to the most frequently asked questions. Bot will have the function of sending questions to the experts to which the system failed to answer or in case the reader would find the given answer unsatisfactory. After each month the experts will send report to the service provider on frequently asked questions and the chatbot will be updated. The content of the IT tool will be also updated in reference to the developments in the context of the EWC Directive revision. Chatbot will operate in two languages: Polish and English, however, the most frequent questions will be translated into all languages of participating countries. Chatbot will be designed to reach the wide audience, but also it will support the work of the Mentors.

The last project's event will be the EU policy conference in Spain held in a hybrid form and streamed in social media in order to ensure wide outreach to all interested stakeholders. The aim of the conference is to inform and discuss the project's results on the role of the European works councils in ensuring a fair transition towards climate neutrality, and by the digital transformation of economies. The main conclusions of the project will be summarised in a brief report encompassing recommendations and solutions for strengthening EWC's role on ensuring a fair twin transition and promoting cooperation and networking between EWC members from the perspective of workers' and employers organisations as well as a part referring the most frequently asked questions through chatbot.

Sources

Projects' written outputs (selected)

“Start and go! Social partners towards effective processes of establishing and managing EWCs” (2020-2021) <http://startandgo-ewc.com/>

- Manual
- Comparative report

“Let us participate! Cross-border corporate reorganization and the future of employee involvement in corporate governance” (2020-2022)

- Impulse document – Action plan

“Let’s get green! Social partners’ joint action to enhance worker involvement in company-level implementation of the European Green Deal” (2021-2022)

- Guide

“EWepCe - Effective and well-functioning EWCs in post – Covid era” (2022-2024)

- Summary report

ETUI databases:

<https://www.ewcdb.eu/> EWCDDB - European Works Councils Database

<https://www.ewctraining.eu/> EWC Training

<https://www.etui.org/> The European Trade Union Institute

<https://worker-participation.eu/> Workers’ participation

<https://esddb.eu/en> The European Social Dialogue Database

https://wikilabour.org/index.php?title=Main_Page Wikilabour

List of the relevant EU directives

Council Directive 94/45/EC of 22 September 1994 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 <https://eur-lex.europa.eu/eli/dir/1994/45/oj>

Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31998L0059>

Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the protection of workers' rights in the event of transfer of undertakings, plants or parts of undertakings or plants <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021IP0508>

Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0086>

Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002L0014>

Directive 2003/72/EC supplementing the statute for a European cooperative society with regard to employee involvement. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32003L0072>

Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32005L0056>

Council Directive 2008/94/EC of 22 October 2008 on the protection of employees in the event of the insolvency of their employer <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0094>

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 (Recast) <https://eur-lex.europa.eu/eli/dir/2009/38/oj>

Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32017L1132>

Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L2121>



References

BusinessEurope (2024) Revision of the European Works Councils Directive - Joint EU employers' statement <https://www.buinessurope.eu/publications/revision-european-works-councils-directive-joint-eu-employers-statement>

European Commission (2024) Commission proposes to improve European Works Councils to strengthen transnational social dialogue https://ec.europa.eu/commission/presscorner/detail/en/ip_24_147

ETUC (2024) Democracy at Work matters. For a European Works Council Directive that delivers for workers! <https://etuc.org/en/document/democracy-work-matters-european-works-council-directive-delivers-workers>



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