

GUIDE

EUROPEAN WORKS COUNCILS

BASED ON EXPERIENCE OF
THE EWCs OF DEUTSCHE BAHN AG
AND DEUTSCHE POST DHL GROUP



With financial support
from the European Union



IMPRINT

This document was prepared within the framework of the project “European Works Councils and the national and local level”. The project received financial support from the European Union under the budget heading “Information, consultation and participation of representatives of undertakings”. The information and views set out in this report reflect those of the authors. The European Commission is not responsible for any use that may be made of the information contained therein.

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Deutsche Bahn EWC, Deutsche Post DHL EWC, Hellmut Gohde

© November 2019

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PREFACE

Dear Reader,

The Deutsche Bahn AG European Works Council was created in summer 2005. This move was triggered by the purchase of the logistics company Schenker with its subsidiaries in almost every European country. In 2010, Schenker was joined in the DB Group by the British public transport provider Arriva. The number of representatives in our EWC rose to its current status of 41 members from 18 countries.

In the 14 years that have passed since the European Works Council was founded, we have implemented a multitude of projects and training activities. Every one of these measures has both closed the gaps in our knowledge and helped us, as EWC members, to get to know and understand each other better and better.

The cultural differences between our countries and the different systems of employee representation have been a big challenge to our work together in the EWC from the outset. Over the years, our European Works Council has developed into a powerful forum. The agreements we conclude with the DB Group apply right across Europe and go far beyond the rights to information and consultation.

These successes motivate us to continue our efforts. One of our aims is to integrate European Works Council members with employee representation better at the national and local level in individual countries. Cooperation has fallen short here, mainly due to a lack of information and awareness about the options and rights available to EWC members.

The joint project has affirmed our approach.

We have also had the opportunity to become more familiar with the structure and working methods of the European Works Council of Deutsche Post DHL and to gain some new ideas for our work in the DB AG EWC.

I would like to join Elmar Kallfelz in thanking everyone who participated in this project, and I am delighted that both European Works Councils were able to gain further experience from this collaboration, especially in the joint workshops.

This has brought us another step closer to our common objective of a social Europe with strong employee representation at the European level.



Jörg Hensel

*Chairman of the European Works Council
Deutsche Bahn AG*

Dear Reader,

The Deutsche Bahn AG European Works Council (EWC) captured my attention when it received the renowned German Works Council Award for 2016. Afterwards I contacted the chair of the EWC, Jörg Hensel, to share and reflect on our experiences.

During our conversation, a number of things quickly became clear, including how little we knew about the flow of information between the EWC and the local level. We were also unsure as to how EWC members were communicating with employees in the countries, if at all – particularly in those countries with employee representative bodies that were structured inadequately, if they existed at all. We realised we also lacked adequate information about how, of even if, information was gathered locally from those EWC members that are of trans-national importance and thus of great significance for our work as the EWC. Here, another key point was mentioned. To perform their duties, EWC members have the right to share and exchange information with employees and their representative bodies within their country. At the same time, this right implies a responsibility.

Out of these considerations, an idea was born to develop a project that would analyse the current situation and find solutions for optimising both the flow of information and communications between EWC members and EWC senior management, and networking among members. The project would also aim at improving the sharing of information with employees as well as the interactions with local employee representative bodies on the one hand and representatives of the local employer on the other.

Since the three primary players in the information and communications process are the EWC members themselves, the employer and the employee representative bodies, the project plan included a documents analysis, a survey of all EWC members from both companies and more than 40 partially structured interviews. The interim results were discussed in detail in three workshops with EWC members, trade union representatives and employer representatives.

This manual is the result of our two-year project. We hope it proves useful, not only to the two European Works Councils involved in the project but to all other European Works Councils as well – may it be a go-to reference for their daily EWC work!

My thanks go to the EU Commission and the cooperation partners for their support, to the EVA-Akademie for conducting the project, and to everyone who contributed to its success by taking part in interviews and making contributions during the workshops.



Elmar Kallfelz

*EWC Chairman
Deutsche Post DHL Group*

THE ROLE AND PURPOSE OF EUROPEAN WORKS COUNCILS

Since the launch of the European Single Market by the Maastricht Treaty in 1993, the European Union has been guaranteeing the free movement of goods, capital, services, and labour – the “four freedoms” – across the entire territory of all EU Member States. The common market boosted the European economy tremendously and opened remarkable growth opportunities for private business. Consequently, the footprint of thousands of companies became increasingly international. By way of illustration: in the years between 1986 and 1995 alone, the number of cross-border mergers and acquisitions in the EU tripled from some 500 to 1,650 per year.

The advent of the single market caught most workers’ representatives – whether trade unions or works councils – rather unprepared to face the challenges rising from the Europeanisation and emerging globalisation of the economy. Although most labour organisations welcomed the European integration in principle, it became obvious that employee representation relying solely on local laws and protection would become hopelessly inferior to globally connected business leaders.



EWC members of Deutsche Post DHL campaigning against nationalism in upcoming EU elections.

Some of the following trends were experienced by countless employee representatives of multinational companies at the time the single market was established:

- Company goals and objectives were increasingly dominated from abroad and designed in international headquarters with local managers executing major decisions rather than taking them. Thus, social dialogue within the countries often became immaterial for future growth and employment. Key decisions on future prospects and investments were often taken outside the country.
- Increased investment competition accelerated relocation of production towards EU low-cost countries. The new opportunities of moving factories and services around the continent and beyond created a spiral of social dumping. Employee representatives felt compelled to agree on arrangements with less advantageous terms of contract to counter the threat of potential plant closures and job losses.
- The incomplete European integration invited multinationals to increase their efforts at tax avoidance. Generated earnings from many countries were shifted to low-tax countries such as the Netherlands, Luxembourg or Ireland via interest, royalties and other intra-group payments.
- New ownership and the internationalisation of management led to an erosion of collaborative cultures of trustful cooperation between employee representatives and management. Well-reputed leaders were replaced by a new generation of uniformed business technicians, often trained by large consultancy firms to pursue management agendas such as shareholder value, with employees being perceived as cost factors rather than human beings.

In his analysis of the situation, Jacques Delors, President of the European Commission (1985–1995), argued that the internal market would not be enough, but that there would also be a need to create a **Social Europe**. In his famous speech to the Trade Union Congress (TUC) in the United Kingdom Mr. Delors concluded:

»We are concerned about the confusion and irritation of workers who have had to endure painful decisions without receiving any information – as a minimum of respect would require – about the problems and plans of companies, without being given any opportunity to express their views, still less a chance to prepare for a change in their circumstances... This is the Achilles heel of a Community that is misunderstood, that lacks grassroot support. The social dimension is, quite simply, an integral part of the European venture.«

European Works Councils had been on the agenda of the European Union for a long time. In 1994, after more than a decade of controversial debate, the European Union opted for an EU Directive facilitating the creation of EWCs. The recitals of the Directive set out the primary purpose of EWCs:

»Whereas appropriate provisions must be adopted to ensure that the employees of Community-scale undertakings are properly informed and consulted when decisions which affect them are taken in a Member State other than that in which they are employed.« (Directive 1994/45/EC)

European Pioneers: the Gillette EWC

One of the very first EWCs was founded by the employees of the Gillette company, headquartered in the US, which nowadays belongs to the Procter&Gamble empire. In the late 1990s, the managing director of the Berlin factory had an easy job. When he wanted to get the employees to work regularly on Saturdays so that new, expensive machines would be utilised better, he resorted to a simple trick: he announced to the workforce that colleagues from the other three European Gillette factories had already agreed to extend their working hours. In Berlin, the works council members were to agree to this step as well to secure their jobs. And they did it. However, they had no idea that Gillette did not produce razor blades on Saturdays in any of their other sites in Spain, France or the UK. Management had tricked the workforce. The reason for its success: the communication and influence of works councils and trade unions ended at the factory gates or, at the very latest, at the national borders. The corporate management, on the other

hand, pursued transnational corporate strategies. Yet, after too many concessions had been made, the works council members became suspicious and reached out to their colleagues in the other countries. Through their contacts they learned that the management had fooled the other countries with similar arguments. It did not take long for Gillette works council members from Spain, France and Germany to meet during their leave under the hospitality of the Catholic Church. In a spectacular performance, Gillette workers climbed Europe's highest mountain, the Mont Blanc, and rolled out a banner against social dumping.

Although the management was not amused at first and initially declined any support or funding, they could not turn back the wheel of history. One of the first EWCs had been born. It must not be forgotten that the legal rights of EWCs were not a given but are based upon the bravery of early pioneers like the Gillette works council members.



EWC members of Deutsche Bahn at the EU Parliament in Brussels with MEPs: The United Kingdom must "REMAIN" in the EU and at least in the EWC.

What a European Works Council can do

As defined by law, the role and purpose of an EWC are first and foremost to be informed and consulted by management on transnational matters. In practice, the role may even go beyond the legal minimum and often expand to the following activities:

Information

Knowledge is power! By having regular contact with the most senior managers of a company, EWC members can hear it straight from the horse's mouth and receive first-hand information on the business. Depending on the quality of the information, the EWC can serve

as an early warning system in anticipation of change. Proactive employee representatives are much better prepared in their talks with management in their countries since they are well-informed – and sometimes even better than their local managers.

Unfiltered feedback

A mature EWC does not limit its role to just asking questions. Members provide opinions, advice, statements and recommendations to management. The EWC cannot impose its views on management but it can urge management to listen. Senior managers with a collaborative leadership style even appreciate the opportunity to reflect on issues coming up from the shop floor. Middle management may hesitate to speak their mind in meet-

ings with their superiors, but EWCs can address difficult and sensitive issues freely. They can call on business leaders to review or even change their plans to avoid detriment from the employees and the entire company. Some managers report that the obligation of presenting their plans to the employees has even improved the project itself and increased the diligence required to arrive at justifiable decisions.

Networking

EWC membership becomes a fantastic opportunity to learn more about Europe and the company the EWC members work for. Many challenges at the local level may be the same, and problem-solving techniques from one country may be worth testing in other countries as well. There is no need to re-invent the wheel. By learning

from each other, EWC members can become more effective at representing their colleagues at the local level. Even if not part of the official agenda, EWC members can use their knowledge and contacts to maintain and improve the terms of contract of the employees they represent locally.

Enhancing social standards

Social legislation in Europe is a prerogative of the national governments and parliaments and will remain so to a large extent. In the absence of binding European legislative frameworks, it will be a long and arduous journey to harmonise social standards at company level. However, the huge differences in social protection, for example in the case of collective redundancies across Europe, are not justifiable and raise ethical questions. EWCs can

bring these issues to the attention of management and can promote awareness regarding adherence to certain minimum rules of dignity and respect across the company. A number of EWCs have contributed to the Corporate Social Responsibility of their company and even signed framework agreements in cooperation with other social partners.



Communication is key! Public showcase of the Deutsche Bahn EWC

Verifying rumours

Employee representatives often have the impression that they are kept in the dark, and experience a lack of transparency. On the other hand, they need to cross-check whether the news and messages floating around are factually correct and reliable information. The EWC offers the opportunity to cross-check and ascertain the truth behind rumours: is it really true that a certain site

is going to be closed? Will investments be made in new technologies? Was our national manager really instructed by headquarters to be less generous with salaries or was it his own decision? Some members even praise their EWC as being a kind of lie detector to distinguish the facts from deliberate misreporting.

Escalating local conflicts

Although the EWC is a body for transnational information and consultation by law, they offer opportunities to address local matters if necessary, as long as they are of a certain magnitude. These issues can be addressed off to the side, outside the formal EWC agenda. There are good examples in practice where EWCs served as a

kind of whistle-blowing channel, particularly in the case of local infringements of labour laws or company codes of conduct. In the event of alleged infringements, EWC members can ideally raise the issue with the EWC chairperson in confidence to explore which form of support can be obtained.

Solidarity

“United we stand – divided we fall.” EWC members can support each other and their colleagues at home in difficult times. EWCs have supported fellow workers in countries outside the European Union in their battle for human rights, decent wages and recognition of their

trade unions on multiple occasions. For example, at one of their meetings with the CEO, the EWC of Deutsche Post DHL addressed the miserable living and working conditions of DHL employees in India and urged for cooperation with their trade union.

What a European Works Council is not for

Despite all the advantages mentioned above, EWCs are subject to certain limitations. These constraints should be honestly acknowledged and explained to employees in order to avoid false expectations and hopes regarding the “power” of EWCs.

Co-determination

In a few European countries, local works councils or trade unions are given the legal power to veto certain management decisions. Management would have to negotiate and agree with employee representatives before

plans are put into practice. Compared to this model, EWCs are relatively weak as their role is limited to information and consultation only. Final decision-making will remain a prerogative of Central Management.

Collective bargaining

There is no doubt that the negotiation of wages and salaries will remain an issue for local employee representatives and/or individual employees for years to come. By law, EWCs have no competence to negotiate on pay. Even if permitted by law, the diversity of social and economic standards in Europe would cause major

hurdles for setting jointly agreed goals and objectives. It must also be considered that the EWC would have little legal leverage (e.g. no right to strike) for persuading management in the course of any potential negotiation or bargaining.

Replacing local consultation

An EWC may occasionally play a supportive role in resolving or mediating in conflicts locally. However, it cannot generally compensate for the absence or weaknesses of employee representation within the countries. Many important matters affecting the employees will remain subject to local management decision-making. If those subjects are raised at EWC meetings, colleagues

from other countries may offer their guidance, comfort and encouragement, but the EWC cannot generally interfere in these matters. EWC members who feel wholeheartedly dedicated to the well-being of the colleagues in their country would, therefore, always explore ways in which local employee representation could be established or strengthened.

Individual grievances

An EWC is a body which represents the *collective* interests of the employees. Those issues need to have a certain magnitude regarding the number of people affected. There is no set threshold for the minimum number of employees to be impacted, as employee headcounts

vary from country to country. However, cases only affecting individuals do not qualify for EWC discussions as such unless they serve the purpose of illustrating a problem related to a larger population of employees.

Promote the careers of individuals

It is a phenomenon that is occasionally observed that candidates run for EWC elections because they aspire to expand their own personal network across the company or increase their own job opportunities. There is also evidence that some EWC members are instructed by their

line managers to join the EWC for professional reasons. It goes without saying that this approach would be an abuse of EWC membership and would cause a genuine conflict of interest for the EWC member concerned.

LEGAL BACKGROUND

The EWC Directive

EWCs are legally based upon the European Works Council Directive (Directive 2009/38/EC¹). The Directive applies to each of the current 28 European Union Member States but also extends to the members of the European Economic Area (EEA), which – at the time of this publication – are Norway, Iceland and Liechtenstein. The EWC Directive does not apply to Switzerland. The EWC participation of further countries outside the EU and/or EEA is only permissible by agreement at company level. When the Deutsche Post DHL EWC was established in 2003, for example, the parties agreed on the participation of eight Central and Eastern European countries although these countries were not yet members of the EU at the time. The parties also agreed to consider the

voluntary involvement of Switzerland if such a request were made by the Swiss employees. So far, no such request has been received.

Each EU/EEA Member State had to transpose the EWC Directive into their own legislation, which allowed the countries some flexibility. Depending on the local culture and tradition, the Directive was transposed either by amendments to the particular country's labour law, by national collective agreements of the social partners or by a genuine EWC law.² It must be emphasized that the national EWC laws are distinct from those local laws regulating the work of employee representatives at the local level.

EWC agreements set the rules of the game

The adoption of the EWC Directive in 1994 marked the preliminary end of a long and controversial debate on the legal framework for European Works Councils. For over 20 years the European Union had aimed to overcome the diversity of the ways in which employees are represented by works councils and/or trade unions within the different countries. During this debate it became obvious that there was no common ground for agreement on the culture of one country to serve as a role model for the operation of EWCs. Eventually, the EU Member States reached a compromise by permitting each multinational company in the scope of the Directive to create their own specific company arrangements for the operation of their EWC. These rules must be laid down in a legally binding contract (EWC Agreement) negotiated by Central

Management and the employee representatives who are part of a special negotiating body (SNB). European law provides relatively little guidance on the content of such EWC agreements but sets out the rules and procedures according to which a valid agreement must be negotiated. In principle, almost any end result of the negotiations is considered to be legally compliant with the Directive as long as the two parties – management and employee representatives – have endorsed the outcome of the negotiations.

To reach a satisfactory agreement, the knowledge and negotiating skills of employee representatives play an important role.

1 For the full text of the Directive see: <https://eur-lex.europa.eu/legal-content/de/TXT/?uri=CELEX:32009L0038>

2 All transposition laws of the EWC Directive can be found here: <https://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPagId=211>

Particularly in the early years of the Directive, management and their lawyers were often much better prepared and had more resources to steer negotiations towards EWC agreements which did not include any meaningful rights for the employees. Many agreements were dysfunctional as regards an effective representation of employees and caused significant frustration among the EWC members. Some of these legacy agreements are still in operation today and cause major obstacles for renegotiating termination.

EWC LEGAL BACKGROUND

EWC Directive 22/09/1994	Recast Directive 06/05/2009
Transposition into national laws 22/09/1996	Extended to a total of 31 countries Country laws revised in 2009 – 2011 Directive applicable in all Member States
Company Agreements	Or Subsidiary Requirements

Only one EWC per company

At the request of the employees, each multinational company of significant size has the legal obligation to create an EWC at the level of the “Controlling Undertaking” which is normally considered to be the parent company. Even in large and diversified corporations, there is no legal right to have multiple EWCs along the

lines of the business divisions. To illustrate, following the acquisition of Exel by Deutsche Post DHL and Arriva by Deutsche Bahn, the two previous Exel and Arriva EWCs were absorbed by the existing EWC structures of the acquiring companies.

Focus on the domestic EWC law of the company

Each company establishing an EWC must observe the laws of the country in which the Central Management (normally the headquarters) of the company is located. As a result, the EWCs of Deutsche Bahn and Deutsche Post DHL operate under the German EWC law named “European Works Council Law” (“Europäisches Betriebsrätegesetz”)³. Each EWC observes the domestic EWC law of the country where the company is registered. Arriva, for example, applied the UK EWC law until the EWC became part of the Deutsche Bahn EWC in the course of the acquisition in 2010. Likewise, the former

independent logistics company Exel operated their EWC under UK law until Deutsche Post DHL bought the company in 2005. Although there may be significant differences in the national laws for EWCs, those specifics relate primarily to the procedures in which a EWC is to be established and the way a legal dispute between the EWC and management needs to be addressed. For the day-to-day activities of the EWC members, the national law is basically less relevant than the EWC agreement itself.

³ The English version of the German European Works Council Act can be found here: https://www1.deutschebahn.com/ewc-en/regulatory_framework/ebr-1645878

If no EWC agreement is reached, apply “subsidiary requirements”

As explained above, the European Works Council Directive puts great emphasis on company agreements to regulate the rights and obligations of EWC members. But what happens if management and the employee representatives fail to reach an agreement or if a company refuses to engage in any negotiations? For this purpose, the European Directive provides for a fall-back scenario called “subsidiary requirements”. These provisions shall apply if:

- a) Central Management refuses to commence negotiations within six months after negotiations for an EWC agreement have been requested by the employees, or
- b) after three years of negotiations with no agreement reached.

The subsidiary requirements set out some ground rules for the operation of an EWC, such as the guarantee of at least one annual plenary meeting, the right to establish a select committee, or provisions for information and consultation in cases of restructuring. However, those rules remain relatively vague and subject to controversial interpretation and even legal disputes. Consequently, the subsidiary requirements have never become very popular – either for management or for employee representatives. They apply to only some 2 % of over 1,000 EWCs in operation but nevertheless frequently serve as a benchmark for the negotiation of new EWC agreements. Also in Deutsche Bahn and Deutsche Post DHL, employee representatives and management agreed on standards which significantly exceed the provisions set by the subsidiary requirements.



Nordic delegates (here from Denmark and Iceland) always play a vocal role in the Deutsche Post DHL EWC meeting

EWC national law

Whereas the collective rights and obligations of the EWC are primarily regulated by the EWC agreement, EWC members are also subject to their specific national legislation pertaining to EWCs. This domestic law primarily relates to subjects on which EWC agreements are silent or which refer specifically to such national law. In the case of Deutsche Bahn and Deutsche Post DHL, such reference to local law is made in particular with regard to elections, protection, communication, individual training and time off for EWC members. Whatever the EWC agreement stipulates on the above-mentioned subjects, it may not override any national rights. The agreement may establish European minimum standards for all countries but may not undermine stronger rights where they exist.

THE COMPANIES: FACTS AND FIGURES

Deutsche Post DHL Group

History

Deutsche Post DHL originated from Deutsche Bundespost, which used to be the German federal government postal service. In 1989, as part of a privatisation process, Deutsche Bundespost was demerged into the three divisions of telecommunications, post and banking. In 2000, Deutsche Post AG became a publicly listed company limited by shares. From 1998 onwards, Deutsche

Post acquired shares of the US-based DHL International, which resulted in 100 % ownership in 2002. Further inorganic growth was achieved over time by multiple acquisitions of companies such as Danzas, Van Gent & Loos, Nedlloyd, Ducros, Exel or UK Mail. Today Deutsche Post DHL Group is considered the largest logistics company in the world.

Structure and activities

Deutsche Post DHL Group is made up of two main divisions: Post and Parcel Germany and DHL. Various business units are operated under the DHL brand.

BUSINESS UNIT	Post and Parcel Germany	DHL Express	DHL Forwarding Freight	DHL Supply Chain	DHL eCommerce Solutions
CORE ACTIVITIES	Mail and parcel services in Germany	Express delivery & international shipping	Air, ocean and overland transport	Contract logistics and solutions	International parcel and e-commerce businesses
EMPLOYEES IN EUROPE *	187,638	40,466	21,515	69,061	17,673

* Headcount figures for Europe, 31 March 2019

Ownership

Deutsche Post AG is a publicly listed company at the Frankfurt Stock Exchange and belongs to the DAX 30 index (German blue chip companies). The German government hold the largest percentage of shares (20.5 % on 31 Dec. 2018) indirectly via the KfW bank. The remaining 79.5 % of the shares are free float with mainly institutional investors such as banks and investment funds like Blackrock (6 % share ownership). The percentage of capital held by private shareholders was 12.7 % in 2018.

FINANCIAL PERFORMANCE

Revenue 2018:	€ 61.6 billion
EBIT 2018:	€ 3.2 billion
Company value (market capitalisation / value of all shares) 6/2019:	€ 33.7 billion

EMPLOYEE FIGURES

Headcount global:	540,245
Headcount Europe:	345,940
Headcount Europe (except Germany):	127,812
Temporary agency workers Europe (FTE):	33,020

COUNTRIES REPRESENTED BY THE EWC

30 countries (50 members)

Deutsche Bahn AG

History

Deutsche Bahn was created as a joint company of the formerly divided railway operators of West and East Germany. Five years after the Berlin Wall came down, the West German "Bundesbahn" and the Eastern "Reichsbahn" merged.

Before the merger, the state-run Bundesbahn had already made significant losses, amounting to debts of EUR 22 billion at the time of reunification. Since 1950, each new government had repeatedly set up commissions to find a way out of the Bundesbahn's financial dilemma. With the integration of the Eastern German

Reichsbahn, the financial crisis even increased. The German government responded with deregulation and the introduction of market-driven, cost-conscious management structures. Deutsche Bahn was supposed to earn its money in the marketplace instead of receiving subsidies from the government.

Whereas the Deutsche Bahn business used to have its primary focus on German territory, the company expanded its European footprint significantly following the acquisitions of Schenker-Stinnes in 2002 and UK-based Arriva in 2010.

Structure and activities

Deutsche Bahn AG is made up of three major pillars with numerous companies underneath.

DIVISION	Passenger transport	Freight transport and logistics	Infrastructure
CORE ACTIVITIES	German and European mobility services	Logistics services via rail, land, air and sea	Rail infrastructure in Germany
EMPLOYEES GLOBALLY	105,485	104,659	54,507

From a European perspective, the most relevant brands of Deutsche Bahn are:

- Arriva (comprises the local passenger transport of the DB Group outside Germany),
- DB Cargo (bundles the European rail freight business of DB Group, and
- DB Schenker (provides logistics services in air and ocean freight, land transport, and contract logistics).

Ownership

Deutsche Bahn AG is organised as a share company with the German government being the sole shareholder. Earlier initiatives to privatise the company were suspended.

FINANCIAL PERFORMANCE

External revenue 2018:	€ 44.02 billion
EBIT 2018 (adjusted):	€ 2.11 billion

EMPLOYEE FIGURES (31 MARCH 2019)

Headcount global:	334,158
Headcount Europe:	303,898
Headcount Europe (except Germany):	97,049
Temporary agency workers Europe (FTE):	n/a

COUNTRIES REPRESENTED BY THE EWC

18 countries (42 members)

THE EWC AGREEMENTS: DEUTSCHE POST DHL

Background

In early summer of the year 2000, trade unionists and works council members of Deutsche Post from all over Europe gathered in the town of Königswinter near Bonn. This very first European employees conference of Deutsche Post was funded by the European Commission in order to promote social dialogue between employee representatives and management at the company level. At the conference, a strong desire was expressed by all attendees to establish regular contact between the various countries and to request the Deutsche Post management to establish a European Works Council.

On 14 August of the same year, the German Company Works Council ("Konzernbetriebsrat") together with the works council of the subsidiary Nedlloyd Road Cargo Luxembourg and supported by the European Transport Workers' Federation (ETF), the Union Network International (UNI) and the German trade union ver.di submitted a request to Central Management for the initiation of negotiations on a European Works Council Agreement. Such negotiations began in Brussels in early 2001.

The negotiation process occurred at a time when the company was at the halfway stage in a transition process from a former state-owned company towards a global player. The different cultures of the acquired companies caused significant challenges for both management and the employee representatives involved. Nevertheless, negotiations were able to be finalised in Milan (Italy) with what was then called the "Deutsche Post World Net Forum" Agreement. Over the years, the Agreement has been amended on various occasions, with the 2012 DPDHL Forum Agreement being the latest and binding version.

Joint forum or European Works Council?

During the negotiation process, the negotiation partners were in contention as to how the European representative body should be construed: the employee representatives shared the position that a European Works Council in the proper sense of the law must be created by and composed of independent employee representatives who would then meet as the EWC with Central Management to be informed and consulted. In contrast, management was inspired by the DHL European Consultation Forum (ECF), which was inherited from DHL as result of the acquisition and was designed as a joint forum for managers and employee representatives. Reports from former ECF members and the analysis of their experience reinforced the concerns of the employee

representatives, however. The employees were united in their view that a joint forum without any autonomy on the part of the employees would not serve their goal to create a meaningful body to represent employees.

While negotiations came close to the deadline set by law, both parties eventually compromised by creating a joint forum (DPDHL Forum) with two independent sub-bodies beneath it: the European Works Council (EWC) and the European Management Forum (EMF). Although the complex structure of the DPDHL Forum is quite unique, the employee representatives secured all legal rights granted to independent EWCs by European law.



Group work at
the Deutsche
Post DHL EWC

Membership and number of seats

From the very start of the negotiations, the employee representatives argued that each and every European country should be represented regardless of the headcount, and declined proposals to introduce minimum thresholds or cluster countries with one combined EWC member. The Agreement provides for each country having at least one member on the forum. At the time of this publication, 28 EU countries are entitled to be represented. Together with the EEA (European Economic Area) countries Norway and Iceland, the Deutsche Post EWC members originate from 30 European countries.

In consideration of the size of the business, the DPDHL Forum Agreement provides for a maximum of 50 EWC members, and a further 25 management representatives to be nominated for the EMF. Every four years before the start of the new term of office, management and the EWC agree on an amended distribution key concerning how to allocate the 50 EWC mandates to the countries. Thankfully, the German employees offered to limit their membership to 8 EWC members although the percentage of German employees exceeds 60 % of the European headcount. This allows other large countries to choose one or more additional EWC members.

Plenary meetings

Whereas European law provides for a minimum standard of one plenary meeting a year, the DPDHL Forum meets twice a year. Each meeting is structured over a two-day period with the EWC and EMF convening separately on the first day and a joint forum meeting being held on the second day, followed by separate debriefing sessions by the two subentities in the late afternoon of the same day. During the joint meeting, Central Management is

generally represented by at least one member of the Deutsche Post DHL management board. Central Management is to inform the DPDHL Forum about business developments, company prospects and a detailed number of topics listed in the Agreement. Consultation is to take place based on information provided by Central Management and questions, issues and statements.

Select Committee and Business Committees

In between plenary meetings a select committee with six representatives on each side (management and the EWC) meet at least twice a year for administrative matters related to the forum, such as setting the agenda and deciding on meeting venues, but also having in-depth consultation in the case of extraordinary circumstances such as transnational relocations, closures or acquisitions. In addition, joint business committees with three representatives on each side were established to address the specific challenges of the divisions in Express, Supply Chain, Global Forwarding and Freight or Post&Parcel/E-Commerce solutions.

The DPDHLF Agreement includes a significant number of further provisions, the most important of which are as follows:

- Interpretation and translation
- Right to communicate with employees
- Democratic elections of EWC members
- Financial means and resources
- EWC Office
- Right to be supported by external experts
- Right to training
- Working groups
- Protection against discrimination or unfair dismissal
- Right to paid time off for EWC work

Legally binding contract

The DPDHL Forum Agreement sets out the formal rights and obligations of the parties. The Agreement may be terminated by either party with a set notice period. In the case of diverging views on the interpretation of certain clauses of the Agreement, the Select Committee is tasked to look to resolve the issues amicably. If no agreement can be reached, either party (management or the EWC) may escalate the dispute to the labour court. As the Agreement is governed by the German European Works Council law ("EBRG") any legal dispute would fall under the jurisdiction of the labour court in Bonn. Any expenses incurred by a legal dispute are to be borne by Central Management. Since the Agreement was signed in 2003, litigation has not occurred.

THE EWC AGREEMENTS: DEUTSCHE BAHN

Background

At the time EWC legislation was introduced during the mid-1990s, the German railway system had just completed the legal integration of the West German federal railway (Bundesbahn) and the East German Reichsbahn. The integration process caused major challenges, which explains why the establishment of a European Works Council was not a priority issue on the agenda during those years. It must also be remembered that historically Deutsche Bahn only employed a very limited number of employees outside Germany compared to other large corporations.

The situation changed dramatically after the newly created Deutsche Bahn started to acquire companies operating in a multinational European network. The intention was to serve large customers by delivering their goods to all European countries. In 2002, Deutsche Bahn bought Stinnes AG, including the Schenker brand. With this acquisition, Deutsche Bahn became a truly international company.

The Schenker employees had already been part of a European Works Council under the previous ownership of the German energy supplier E.ON. However, the experience that Schenker truck drivers and warehouse workers had had with the E.ON EWC had not always been positive. EWC meeting agendas predominantly focused on subjects related to nuclear power plants or energy pricing and left little room for transport and logistics issues.

After E.ON decided to divest Stinnes (Schenker), it was predominantly the Scandinavian employee representatives who were convinced that the time was right to call for a Schenker European Works Council. In summer 2005, Schenker trade union representatives from Sweden, Norway, Finland and Denmark gathered in Stockholm and issued a formal request to management to enter into negotiations for a Schenker EWC Agreement.

Yet the Nordic request for a Schenker EWC was rejected by Central Management, as they did not want to allow for various EWCs within Deutsche Bahn. Management took the view that the Schenker employees should become part of a larger Deutsche Bahn EWC instead.



Deutsche Bahn EWC

From an EWC by law to the EWC Agreement

The Nordic EWC initiative had also caused worries among the German Group Works Council members who feared they would be underrepresented in the negotiations in terms of numbers. Although representing the vast majority of employees, Germany would only have been granted four seats in the SNB. Finally, the Nordic request for negotiations was rejected and in consequence a Deutsche Bahn European Works Council had to be created by law according to the subsidiary requirements of the EWC Directive. In parallel, the EWC supported by the European Transport Workers' Federation (ETF) negotiated an "Implementation Agreement" for the

operation of the new EWC. This agreement has meanwhile been amended and eventually became a valid EWC Agreement on 31 March 2012. It is remarkable that this EWC Agreement not only stipulates the rights and obligations of the EWC and management but also recognises the Core Labour Standards of the International Labour Organization (ILO), and in particular the right to form free trade unions and the right of those unions to negotiate collective agreements for the employees. In addition, the parties recognise the current OECD guidelines for multinational companies.

Membership and number of seats

The Deutsche Bahn Agreement sets no minimum thresholds of employee numbers for a country to be represented on the EWC. From each country in the European Economic Area where Deutsche Bahn or a subsidiary has an operating unit or an enterprise section, a minimum of one employee representative shall be delegated or elected to the EWC. If a further (second) business unit is operating with at least 100 employees in a certain country, there is to be an additional country representative. In countries with a company that has more

than 10,000 employees, a further national representative shall be delegated or elected. For each additional 10,000 employees or a fraction thereof, there shall be one more representative. Germany is represented by 12 members on the EWC. There are no substitutes to be elected to the EWC and terms of office are unspecified. Other than the DPDHL Forum, the Deutsche Bahn EWC is an employee-only body with no dedicated representative structure for management.

Plenary meetings and working groups

The Deutsche Bahn EWC allows for one plenary meeting per year and a further meeting if required and to be decided by the EWC. In practice, this has led to two annual plenary meetings. Plenary meetings usually last for three days including travel time and including information and consultation with Central Management on the second day.

Every EWC member also automatically belongs to a specific "working group" which combines all EWC members from a division. Permanent working groups have been introduced for the following business areas:

- DB Arriva/Regional Passenger Transport
- DB Schenker Rail Working Group
- DB Schenker Logistics

The EWC may delegate specific tasks to the working groups, including information and consultation. The working groups meet regularly twice a year with each EWC representative being invited to a total of four meetings over the course of a year.

Management Committee and Presiding Committee

The EWC is chaired by a chairperson, who is elected by the EWC members. Together with three elected deputies, the chairperson forms the Presiding Committee and manages the day-to-day business of the EWC.

In addition to the Presiding Committee, the EWC operates a management committee which consists of the Presiding Committee and other members of the EWC. The other members of the Management Committee are proposed by the working groups and elected by the EWC. The Management Committee shall meet as required, but no less than twice a year.

Important elements of the EWC Agreement further to the above provisions of the Deutsche Bahn EWC Agreement include important sections on matters such as the following:

- Interpretation and translation
- Additional meetings if needed
- Right to communicate with employees
- Financial means and resources
- EWC Office
- Right to invite experts
- Right to language training
- Protection against discrimination or unfair dismissal
- Right to paid time off for EWC work

Legal status

The Deutsche Bahn EWC Agreement sets out the rights and obligations of the parties. If terminated by either party, the agreement continues to apply until a new Agreement is signed. In the case of dispute regarding the interpretation of this Agreement, the Presiding Committee is mandated to enter talks with management. If no agreement can be reached, the Agreement is considered to be legally valid and enforceable before the labour court. As the Agreement is governed by the German European Works Council law ("EBRG") any legal dispute would fall under the jurisdiction of the labour court in Berlin as the seat of the company. In practice, no legal disputes have ever been addressed to the court thus far.

EWC ELECTIONS

There is one fundamental difference in the way employee representatives and managers are mandated to perform their roles. Whereas business leaders are appointed by superiors and are supposed to operate along reporting lines, chains of command and hierarchies, employee representation is built upon the principles of industrial democracy. Both the internal operation of an EWC and the way in which members get appointed or elected to the EWC are subject to democratic procedures. Somewhat like politicians, EWC members are accountable to the electorate of a certain geographical area and depend on their democratic legitimacy. It is absolutely crucial for the success and reputation of a EWC that its democratic foundation is acknowledged and honoured by all parties.

There is no uniform approach in the EWC Directive as to how the principle of industrial democracy is to be implemented by the EU Member States. In awareness of the diversity in which works councils, trade unions and other forms of employee representation operate across the countries, the Directive has imposed on all EU Member States the need to determine the specific method of election or appointment of EWC members. It is commonly understood that a standardized election process set by company rules or EWC Agreement cannot supersede any national regulations. Local laws shall prevail in the case of conflict between an EWC Agreement and the respective regulations.

Very importantly, the legal provisions for the election or appointment of EWC members of a certain country and for the election or appointment of local employee representatives are generally distinct regulations. The way in which an EWC member is elected or appointed normally follows different rules than the election or appointment of a local representative. For example, if a national law defines a certain time period (term of office) for a local employee representative, this rule does not apply to the EWC members' term of office.

The legal term "election or appointment" used in many EWC agreements must not be misunderstood as a free choice of procedures but relates to the different ways the Directive has been transposed into the legislation of various countries. If EWC members are to be "appointed" by local law, this always implies the rights of employee representative bodies such as unions or works councils to choose the EWC members for their country. The "appointment" of an EWC member is never meant as a management prerogative to select a certain employee for EWC membership.

In accordance with local cultures and traditions of social dialogue, the Member States have transposed the EWC Directive in different ways. Overall, there are three election/ appointment procedures:

A – ELECTION/ APPOINTMENT BY WORKS COUNCILS

In countries with a strong emphasis on independent local works councils, EWC members are elected or appointed by the members of the existing local works councils. Subject to the respective national law, candidates must be either members of the local works council or ordinary employees without any local mandate. In the event that various works councils exist in a country, the nomination either takes place at a national works council convention, through a central works council, or by agreement of the different local works councils. In this model, trade unions play a rather informal role – if they are involved at all. They can propose candidates to the works council but have no decision-making rights. The Netherlands, Austria and Germany are examples of this group of countries.

B – APPOINTMENT BY TRADE UNIONS

In a second group of countries, trade unions are key players in the selection of their EWC members by law. Whether or not a trade union is eligible to be involved in the selection normally depends on its “representativity”, which can be demonstrated either by the ratification of the national collective bargaining agreement, the number of trade union members in the company, or the number of votes obtained at the last works council election. Different procedures exist for the way in which trade unions choose their EWC members: in some countries the decision is taken by the external trade union administration, while in other countries the trade union members in the company may seek agreement or have a vote. Italy, France and Sweden are examples of countries where trade unions assign EWC members.

C – ELECTION BY ALL EMPLOYEES

A process where every single employee is invited to vote for the EWC members is foreseen by law in many countries as a default model in the event that there are no local employee representatives, or their role is not perceived as sufficiently representative of the entire country. This may occur, for instance, if a trade union only represents blue-collar workers and not the entire staff or a works council exists at a certain site, but other locations remain unrepresented. Subject to certain exceptions, there is limited guidance in national laws on the specific mechanics for an election by all employees. Some countries (United Kingdom, Ireland) set out more detailed rules for ballot procedures, while other countries (Bulgaria, Lithuania) stipulate that EWC members must be elected at an assembly attended by all employees.

EWC members chosen by management: Myth or reality?

In the course of this publication, local managers of the two participating companies were invited to explain the EWC election procedures in their country. The responses given confirm the necessity of awareness training at all levels. Although many managers expressed the view that management should not interfere in elections, there are still managers with a basic lack of knowledge, as is illustrated by the following statement:

»Honestly, we did not have a representative for quite some time. I suppose it was not really required. ... And then it came from the head office that they want a representative from our country, probably to exhaust the wonderful growth opportunity in [country]. When this was requested, it was decided by senior management at these early stages the best thing we should do was to appoint somebody and we just had a discussion between the HR Director, CEO and CFO as to who the best person would be, and from the topics on the agenda it was decided, if we get somebody from Human Resources in the first instance, then this person would probably be the best person to contribute to the whole programme.

We did talk about, perhaps we should open up an election, and whether this was the right way to go, but we decided against it because we lacked so much knowledge about what the role really was, to ensure that we would have the right person. We are currently reviewing things and exploring whether there is a need for change and possibly opening an election.«

How to arrange EWC elections – Recommendations

Even though direct election by all employees is considered a fall-back option by most national law, in practice, this model has become a way of electing EWC members that is used frequently in many companies. This evolution stems from the growing absence of trade unions or works councils in many countries and workplaces. In most Central and Eastern European countries in particular it has been observed that local works councils are rather rare and trade unions – where they exist at all – often exercise limited influence on the election process.

For the above reasons, there is particular emphasis in this chapter on the way elections should be conducted in countries where EWC members have to be elected

directly by all employees. The following guidelines do not apply to countries where EWC members are elected or appointed by trade unions and works councils.

Constituencies

For countries entitled to more than one EWC member, it needs to be clarified how the responsibilities of the EWC members will be divided. Existing models are either built on geographies (regions), business divisions, or employment grades. Unless this is well defined, each

EWC representative covers the entire workforce of the affected country. It must be clarified that all legal entities and subsidiaries controlled by the company need to be involved.

Eligibility

In principle, all employees (including part-time employees) are eligible as candidates. The pre-selection of suitable candidates by management is not permitted.

All employees from the respective country are eligible to vote.

As the EWC is a body of employee representatives, potential conflicts of interest must be avoided as much as possible. Such conflicts may arise primarily for senior managers in Human Resources or other management functions. If in doubt, the EWC Office should be contacted prior to the elections.

Call for elections

Management and the acting EWC members are to agree on the content of the call for election and the method and timelines concerning the communication to the employees. The call for elections must include a thorough description of the purpose of the EWC and the expected role profile.

Communication via email only is not sufficient. For operational workers, hard copies, handouts and notice board publications are required in order to inform the employees.

The EWC Select Committee or Management Committee should be provided with a copy of the call for elections.

Languages

The call for elections and any further communication in relation to the elections need to be issued in the language of the local country.

Presentation of candidates

Prior to the election, candidates must be given ample time and opportunity to introduce and present themselves to their colleagues for the election. Experience shows that ballot arrangements often favour candidates who enjoy a certain publicity in the execution of their professional roles and can use their professional network to

promote their candidacy. Methods must be explored as to how lesser known candidates can be provided with equal opportunities. This includes the use of company media, town hall meetings and visits to other sites where necessary.

Ballot requirements

Secret ballots are crucial for the successful completion of the election. It is recommended to appoint an electoral committee composed of impartial employees who volunteer to conduct and supervise the ballot.

It is understood that local management refrains from influencing the outcome of the elections by promoting or discouraging certain candidates.

A secret ballot is required even if only one candidate per position is standing for election. In some countries a valid election requires minimum turnout (participation) levels.

When setting the date for the ballot, sufficient time should be allowed for as many employees as possible to participate, including part-time employees and shift workers.

Ballot boxes should be placed in easily accessible areas such as canteens or entrance halls. These ballot boxes must be sealed, and the numbers recorded. Ballot boxes may only be opened by the electoral committee (see above) at the end of the ballot.

Reporting back

The outcome of the elections must be communicated to the EWC, including information on the total number of votes cast and the breakdown of votes among the candidates.

The election results must be communicated to the workforce of the respective country directly after the verification by the EWC has been obtained.

Involvement of EWC members in the election process

At Deutsche Post DHL, the EWC members are given a crucial role in the preparation of the new election process at the end of their four-year term of office: the EWC Agreement requires local agreement between the EWC member(s) and management as to the way the election is conducted.

»Responsible national management shall agree the details of the election process with the respective national employee representatives in the DPDHL Forum in compliance with the relevant national regulation.« (Art 2.2.4 of DPDHLF Agreement).

The EWC members should observe that the above clause will be applied and should seek advice from the EWC Office or expert on the details to be agreed.

THE INFORMATION AND CONSULTATION PROCESS

The main purpose of an EWC is to be informed and consulted by management on the business evolution and prospects. Because the market environment is subject to constant change, one or two annual plenary meetings would not be enough for an EWC to respond to all new challenges occurring in a financial year in a timely manner. For this reason, information and consultation not only takes place in plenary meetings but – when necessary – with sub-bodies of the EWC, such as working groups (Deutsche Bahn) or the Select Committee and business committees (Deutsche Post DHL), depending on the rules as set out by the EWC Agreement.

Topics for information and consultation

The EWC Directive lists a number of subjects which are often considered kinds of minimum standards for information and consultation, and which include both economic and social matters. According to the Directive, information (without the obligation to consult) should relate in particular to the structure of the company, the economic and financial situation, the probable development and the production and sales. The information and consultation of the EWC should relate in particular to the situation and probable trend of employment, investments, substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cutbacks or closures of undertakings, establishments or important parts thereof, and collective redundancies (Directive 2009/38/EC).

Since the EU Directive on temporary and agency workers was adopted in 2008, EWCs are also entitled to be informed about the use of agency workers. Furthermore, many EWCs have extended the above list of topics by agreement with their management and have included topics such as health and safety, equal opportunities or data protection as matters for information and consultation.

Information

The Directive names Central Management as the bearer of the obligations of information and consultation. Notably, the Central Management is not necessarily the CEO or a board member but could be any other representative acting on behalf of the company. The term "Central Management", however, implies that it is ultimately the responsibility of the board to ensure that all obligations arising from an EWC Agreement are fulfilled. For the majority of multinational companies headquartered within the EU, it has proven good practice for the CEO to address the EWC at least once a year to share his/her strategy and to listen to the employee representatives. Depending on the topics on agenda, it will be the role of the EWC for each meeting to identify the most knowledgeable and appropriate managers on the subject to be invited. In addition to their expertise on the subject, management presenters should also hold a leading position within the company, allowing them to feed the reflections with the EWC back into the decision-making process.

It is often asked how detailed the provided information has to be. Under the EWC Directive, "information" means

»transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations...« (Directive 2009/38/EC Art. 2)

From the EWC perspective, what is crucial is whether the information provided will be suitable and sufficient to carry out the required in-depth assessment. It is commonly understood that if the above criteria are not met, management would have to provide further information based on the needs of the EWC identified. An experienced EWC will only conclude the information phase once all the requested information has been submitted by management.

Consultation

Regrettably consultation is often neglected, if not ignored, in the operation of many EWCs. Some managers and employee representatives even struggle to agree on a common understanding of what is actually meant by “consultation”. A look at the literal meaning of the Latin verb “consulere” (= to advise) may provide some guidance: in the Roman Republic (509 to 27 BC), a “consul” held the highest elected political office and the two elected consuls alternated in holding imperium each day. In later centuries, a consul became a more representative role to advise citizens living abroad. In modern times, consultation has become a synonym for offering and requesting advice. For instance, patients “consult” a medical doctor to seek his/her guidance and treatment. In the world of business, huge corporations like Boston Consulting or McKinsey offer their services as consultancy firms and are specialised in offering strategic guidance to management. Being a business consultant can also serve as a stepping-stone to becoming a business leader. At Deutsche Post DHL, for instance, the CEO and two other board members are former McKinsey consultants.

In the framework of the EWCs, consultation means

»the establishment of dialogue and exchange of views between employees’ representatives and Central Management ... at such time, in such fashion and with such content as enables employees’ representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings« (Directive 2009/38/EC, Art. 2).

Consultation in terms of the Directive is a mutual effort by the parties (management and the EWC) to arrive at a common understanding of the information provided and, ideally, to come to joint conclusions. Management must consider but does not have to agree with the views of the EWC. The EWC must be enabled to digest the information obtained and come up with alternative ideas, proposals or demands. Each time an information and consultation meeting is planned, it must be ensured that enough time is allocated to respond to the information shared by management. Therefore, a presentation that only allows for a Q&A (question and answer) session at the end would not satisfy the legal requirement for consultation.



Speaking with one voice! Deutsche Bahn EWC members at an award winning ceremony

The EWC Opinion

In the course of a formal information and consultation procedure, the EWC is entitled to issue an opinion at the end of the consultation process. The EWC's opinion is the consolidated result of its analysis of all the information provided. The opinion is not, therefore, a summary of the private views of individual members but the collective view of the EWC as a body. Generally, the opinion will be issued in the form of a written statement to be submitted to the corporate board or any more appropriate decision-making authority. European law requires Central Management to await the EWC's opinion, take it into consideration and provide a reasoned response to the EWC before taking any irreversible decision.

The EWC is under no obligation to issue an opinion, and formulating the collective views it is not always an easy task. An opinion can be positive and supportive to a management proposal. It can also be critical or negative and opposed to a management plan. The most challenging type of opinion includes alternative proposals. As the leverage of the EWC is limited to the power of persuasion, any proposed alternatives must be reasonable and prepared with some deliberation.

The timing of information and consultation

It is obvious that information and consultation can only be meaningful as long as the final decision has not yet been taken or implemented. Just as a patient should consult the doctor before passing away, management must consult the EWC before a site is closed or redundancies become a fait accompli. A recent survey of 1,500 EWC members conducted by the European Trade Union Institute (ETUI) revealed that only 20 % of the EWC members are of the view that their EWC is consulted by management before a final decision is made.

This research has reinforced the argument of the European trade unions that in any future revision of the EWC Directive should render timely information and consultation a priority. For the time being, EWC members should not wait until management initiates EWC consultation. Based on their own information gained via the EWC network, certain projects can often be anticipated to qualify for the involvement of the EWC. It would then be up to the EWC to submit a formal request to management for the information and consultation process to be implemented.

The link between European and local information and consultation

In the event of transnational matters impacting employees to a significant extent, management has a dual obligation: it must involve the EWC and the local employee representatives or the employees directly if no local works councils or unions exist. Once notified by management, the EWC has the right to meet, at its request, the Central Management or other more appropriate level of management with its own decision-making powers in order to be informed and consulted.

Extraordinary meetings particularly become necessary in the event of relocations, closures or collective redundancies. Depending on the company's EWC Agreement, it will be either the Select Committee or another subentity of the EWC which gets involved. In fact, both processes, information and consultation at the European level and information and consultation at the local/country level will have to be managed parallel to each other. Contrary to popular myth, there are no national laws within the EU requiring local representative bodies to be informed before the EWC. In actual fact, the 2009 EWC Directive has stipulated that EWCs must be informed earlier than or at the same time as local employee representatives.

In the event of extraordinary information and consultation meetings, the EWC members of those countries which are impacted by the measure must also be invited. For a meeting concerning the relocation of a warehouse from Portugal to Spain, for instance, the EWC members from Spain and Portugal will have to be invited in addition to the regular EWC members of the respective sub-body dealing with the issue. In the above example it would be paramount for the Spanish and Portuguese EWC country members to build the link between the locally impacted employees and the EWC. They would only be able to represent the interests of the impacted employees if they liaised with them as soon as possible, even if they were located at a different site in the country. EWC laws and agreements provide for the necessary means, such as site visits to establish contact.



The Deutsche Post DHL EWC sending a message to Central Management at a plenary meeting in Bonn

WHAT YOU CAN ACHIEVE: TEN EXAMPLES OF GOOD PRACTICE

Colleagues on the shop floor tend to know rather little about their EWC. In times of growing populism and nationalism, you have to be brave to wave the European flag. Some colleagues may even express their scepticism and question whether there are any benefits of their reps being away from the workplace.

»Why are you going off to visit foreign countries again? Are you turning into a manager? What's in for us?«

Such questions – whether serious or ironic – will pop up sooner or later in any conversation with local employees.

Admittedly, the results of EWC involvement are not always measurable and therefore not easy to communicate. Some advantages only become visible in the combination of joint efforts by European and local employee representatives together with trade unions and sometimes even with the support of certain management allies. Signing a European Charter or Agreement documenting the results will tend to be the exception. Nevertheless, there are numerous examples of good practice where EWCs undoubtedly made a difference. EWC members should be prepared to advertise the benefits of their EWC and to explain to their colleagues what the EWC can do for them. Whenever reporting back in local meetings, it will be instrumental to celebrate some success stories of what the EWC has achieved in the past. The following list is not exclusive, but may inspire each EWC member to think of their own best-practice examples to be shared with the colleagues in their country.



Deutsche Bahn EWC Chairman Jörg Hensel in the former German parliament ("Bundestag")

Shared Services Centres

In 2013, the Central Management of Deutsche Bahn commenced information and consultation with the EWC on the creation of a Shared Services Centre (SSC) in Bucharest. The company wished to centralise its global accounting activities in Romania for greater efficiency and lower costs. From the very start of the project, it was obvious that accounting staff in many European countries would be affected by the project. The EWC successfully launched negotiations with European management on a framework agreement to provide maximum support for the impacted employees. The

agreement included a redeployment programme for the impacted employees, retraining measures, mobility services, minimum standards in the case of redundancies, a financial fund for hardships and extensive communication at all levels across the company, for example. The collaborative relationship of Central Management and the EWC on this subject triggered significant public attention and was a landmark for going far beyond just sharing information. In acknowledgment of their SSC Agreement, the EWC of Deutsche Bahn received the public German Works Council Award in 2016.

Transfer of undertakings

Soon after the acquisition of DHL by Deutsche Post, Central Management reviewed their own practices for managing business travel. Up until then, business trips had been booked by a dedicated subsidiary of DHL named "Travel House", which employed some 30 staff in various European countries. Deutsche Post DHL intended to sell the company and use external services in future. During the European information and consultation process, Central Management was able to allay many of the fears of the impacted employees. The acquiring

company, which was a large company specialised in business travel, gave reliable commitments for job security and career opportunities. As a result of the consultation, the legal minimum of one year's job security was extended to at least three years after the transfer. Furthermore, conditions of employment could not be made less advantageous under the new employer. Eventually the employees being transferred had a positive attitude towards their new company.



Deutsche Bahn EWC members receiving their prize at the awards ceremony of the German works council in 2016

Employee Opinion Surveys

Like many large corporations, Deutsche Bahn and Deutsche Post DHL run annual employee opinion survey. Whereas the EWC of Deutsche Post DHL has no influence on the way the survey is designed and managed, Deutsche Bahn has established a joint working group at the EWC level. Via the working group, the EWC members get involved in the details of the survey even before it is launched by reviewing the questions to be

included. For each survey, questions may be proposed by EWC members for their country. The working group also addresses employees' potential fears regarding the confidentiality of the poll and concerns about voluntary participation. Finally, the results of each poll are shared openly with the EWC and follow-up actions to be taken are discussed.

Agency work

The use of workers from temporary work agencies (TWA) is on the radar of many EWCs for good reason. At Deutsche Post DHL the EWC has been operating a joint working group on the subject together with management for quite some time. Among other activities, the working group examined local practices in various countries to ensure that agency workers are treated with dignity and respect. The working group put great emphasis on the implementation of European legal standards

such as equal pay and equal treatment. Although the EWC's call for a European framework agreement regulating the use of agencies was declined, some inappropriate or even illegal local practices were put on hold. Central Management also committed to reviewing their procurement processes to ensure that only reputable agencies would be rewarded with a supplier contract in future.

Social Plan

When, in 2009, Deutsche Post DHL announced the planned relocation of the European headquarters of the Express division from Brussels to Bonn, the project stirred up bad memories among the Belgian employees. A decade earlier the company had already relocated the European airport hub for the intercontinental Express shipment business from Brussels to Leipzig, leading to thousands of job losses. This time the restructuring affected about 800 employees. Although many of them were management grades used to having little involvement with the works council or union, they all of a sudden realised the advantages of unity.

»Brain and mussels must stay in Brussels« became the motto for the fight for their jobs. In joint efforts, the EWC and local employee representatives in Belgium demanded social protection for a maximum number of employees. Initially, the company rejected the employees' proposals, but finally an agreement was reached literally overnight for a social plan including severance pay which covered all employees with the exception of very senior managers. Almost 200 jobs could be saved and kept in Brussels.

EWC members of Deutsche Bahn at a plenary meeting



Local Management Failures

Sometimes it takes little more than a phone call for an EWC member to prevent damage to the company and the employees. A Spanish EWC member from Deutsche Bahn reports on the way he used his EWC network:

»Some years ago, our local management planned to change the well-known local name of our company. When I heard about the plan, I called the EWC Chairman. The EWC Chair then talked to the

responsible manager at the German headquarters, who himself took immediate action and telephoned our Managing Director. All these calls were made within a very few hours on the same day. The call from headquarters reached our Managing Director on his mobile phone while he was having an appointment at the dentist. He was very upset after the call but he stopped the plan to rename the company immediately.«

Protecting employee representatives

Monitoring local practices and offering moral support to employee representatives whenever possible is a matter of course for every seasoned EWC. Thankfully, local representatives who also hold an EWC mandate enjoy special protection under the Deutsche Bahn and Deutsche Post EWC agreements. Any potential disciplinary measures or even termination of EWC members triggers immediate involvement of the EWC. Over the years, thorough investigations in a number of individual

cases have been conducted. In fairness, none of the planned management measures was evidently caused by the EWC membership of the colleague concerned. However, in some cases EWC members had become subject to a disciplinary procedure due to their activities as local employees. At Deutsche Post DHL the EWC succeeded in fully reinstating the colleagues concerned in these cases by attracting management's attention to local labour laws and the company's code of conduct.

Human rights

Although the legal scope of EWCs is formally limited to Europe, most EWC members consider fairness at work, dignity and respect as universal values. Therefore, if necessary, some EWCs even raise subjects at their meetings which concern the workforce in other parts of the world with reference to the company codes of conduct. As involvement of employee representatives is rather limited in most other global regions, EWCs can

act as an alarm bell in the case of severe compliance problems outside Europe. When Deutsche Post DHL employees in Colombia were to be forced to undergo polygraph (lie detector) tests regarding their loyalty to the company, for example, the EWC successfully intervened – in cooperation with the internal trade union organisations – and the tests were finally abandoned.

Health and Safety

Safe and healthy workplaces should be a priority issue for any company. Even though health and safety is not recognised by EU law as an EWC competency, the EWCs of Deutsche Bahn and Deutsche Post DHL went a step further. The Deutsche Bahn EWC Agreement has incorporated health and safety as a compulsory standard subject for information and consultation. At Deutsche Post, a joint working group deals with the subject continuously. The EWC has urged management to conduct risk assessments at all European sites and to put more emphasis on the prevention of stress-related diseases by

promoting healthy workplaces and leadership cultures. EWC members also do not hesitate to flag up safety problems once they cannot be resolved locally. For instance, Danish DHL employees from aviation recorded an appalling video on the hazardous loading of aircrafts due to poor maintenance. Soon after the footage was presented to management by the employee reps at a meeting at headquarters, appropriate measures were taken to remedy the situation. Meanwhile Safety First has even become official part of the Group's Strategy.

Divestments

In summer 2010, the Express division of Deutsche Post DHL announced its intention to withdraw from the French domestic parcel business and to focus solely on international shipments. The company had already launched talks with a private equity fund with regard to selling the business with some 3,200 employees. Amongst the employees, the investor's reputation caused massive concerns about future job security. All of the EWC's demands to commence information and consultation on this important decision were rejected by Central Management on the grounds that a divestment of a French subsidiary would fall outside the remit of

the EWC. As management was not prepared to enter into European talks, the EWC Chairman decided to travel to France to visit the French co-workers. In a large and emotional meeting in Paris, he expressed the support and solidarity of all European national representatives. On his return to Germany, he persistently urged the CEO of the Express division to enter into direct negotiations with the French unions. Eventually, his requests were heard, and high-level talks were arranged. Facilitating those direct negotiations was definitely a success for the EWC.

TRANSNATIONAL MATTERS

EWCs are competent to deal with cross-border matters. Issues relating to a single country alone do not normally qualify for European information and consultation. Single country issues should normally be resolved by the social partners – where they exist – inside the country. Addressing local matters at EWC meetings could easily overstretch the agenda but also lead to dialogue being duplicated at local and European levels.

For the above reason, the EWC Directive has limited the role of EWCs to transnational matters:

»Matters shall be considered to be transnational where they concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States« (Directive 2009/45/EC (Art. 1)).

Whether or not a certain management decision is to be considered transnational has triggered controversial debate between management and employee representatives ever since EWCs have existed, and has led to several legal disputes. Each case must be analysed thoroughly, not only in relation to the impact of a decision on employees but also in view of the level at which the decision is taken.

The following examples stand for matters where it is commonly understood by all parties that the matter is of a transnational nature and the EWC must be involved:

- a) the migration of accounting activities from two EEA countries into a Shared Services Centre inside or outside the EU;
- b) the divestment of a subsidiary with employees in more than one EU country to a third party;
- c) the relocation of a hub, warehouse or production site from one EEA country to another EEA country;
- d) a board decision to outsource delivery services in Europe.

European case law has confirmed that a transnational dimension must be assumed if a negative employment impact occurs in one EEA country, but the activities are relocated to another EEA country. Thus, the matter concerns two Member States and falls into the remit of the EWC. Regrettably, the Directive remains silent on relocations from a EEA country to a non-EEA country. Management may therefore argue that relocation activities from a single EEA country to countries such as Ukraine or the UK (post-Brexit), for instance, would fall outside the remit of the EWC, as only one EEA country is involved.

Even more contentious debate can arise if a major reorganisation is preceded by a pilot project. Taking a narrow perspective, such pilots may be viewed as local measures, yet their role as trials for other countries implies that the pilot serves as the kick-off for a rollout into other countries. The EWC Directive has not defined any time periods within which measures in two countries must be assumed to be interrelated. Some companies have taken advantage of this legal loophole by only announcing transnational redundancies in one country at a time. By extending the implementation over a longer period, these companies claimed that each initiative stood on its own without having any transnational impact. This approach gained sad notoriety in the world of EWCs as a “salami tactic” when European projects were sliced into various “national” implementation measures to camouflage their transnational dimension.

In the above scenario, the EWC should always claim its right to be informed and consulted. European labour courts have confirmed that the EWCs are entitled to be involved even if implementation measures at national level do not occur in parallel but result from a European management initiative. The key criterion for assessing the transnational dimension would be the management level at which the decision is taken. Accordingly, an EWC which can provide evidence that a management decision is being taken outside the country will always have a strong argument for getting involved.

Many legal experts share the view that even measures impacting employees in one country alone may qualify for EWC consultation in a situation where the decision on potential redundancies is taken in another country, with two countries therefore being involved. This position is built upon the preamble of the EWC Directive:

»Appropriate provisions must be adopted to ensure that the employees ... are properly informed and consulted when decisions which affect them are taken in a Member State other than that in which they are employed« (Directive 2009/38/EC Recital 12).

Professor Thomas Blanke, author of the legal commentary to the German EWC law, has argued that the EWC must be involved if the subject concerned lies outside the control of the local/national management. According to him, any local information and consultation would be of limited use because the local management is only implementing decisions taken at a higher level with no authority to alter or reverse the decision. In his commentary, Professor Blanke presents the following example:

»Central Management located in Germany plans to close a site in Belgium. The matter concerns both the company in Germany (Central Management taking the decision) as well as a site in another Member State. The EWC must be informed Decisions of this kind are always a transnational matter. Therefore, there is no requirement ... that a management decision (taken in Germany) must impact at least two further Member States« (Thomas Blanke: EBR- Kommentar, Baden-Baden 1999, p. 240).

It must be acknowledged that many EWC agreements include less favourable definitions of transnational measures than German EWC law and management might be reluctant to involve the EWC in those cases. After many years of controversial debate, the EWC of Deutsche Post DHL and Central Management have agreed that the EWC will be informed (but not consulted) in the event of significant Central Management decisions impacting employees in a single country outside Germany.

Although Central Management is formally obliged to notify the EWC in the event of a transnational reorganisation, this cannot always be taken for granted. There are many examples where EWC members themselves discovered relevant projects and demanded that they be involved. In large corporations like Deutsche Bahn or Deutsche Post DHL it will sometimes be a challenge even for management to oversee all business activities with a potential relevance to the EWC. It will be an ongoing task of Human Resources and Employee Relations managers to raise awareness within the management community of the need to consider the involvement of the EWC when necessary.



Deutsche Post DHL CEO Frank Appel answering questions from the EWC led by former chairperson Margrit Wendt

What EWC members can do

EWC members should continuously monitor the business development in their countries and assess the extent to which initiatives and projects may have a transnational dimension.

For this purpose, EWC members should:

- Feed information from their countries back to the EWC, particularly in the case of restructuring. By the EWC collecting and comparing such data, it may become obvious that similar measures have occurred in other countries as well.
- Ask local/national management whether a certain measure is being planned and proposed by local/national management or whether the measure is being imposed on the country by the European/global headquarters.
- Be mindful that local investments or the hiring of new employees in another country could be part of a transnational reorganisation, for instance in the case of a cross-border relocation of a warehouse. In these cases, EWC members should always reach out to their European colleagues to find an acceptable solution for all parties.

EWC MEETINGS

The EWC Directive obliges companies to convene at least one annual information and consultation meeting with their employee representatives. In practice, EWCs limited to this single occasion tend not to be very productive. Modern business is moving forward rapidly and the need for a higher meeting frequency is commonly acknowledged nowadays. The Deutsche Bahn and Deutsche Post DHL EWCs meet with management twice a year, with further divisional bodies or subgroups having additional meetings. There is no doubt that EWC meetings absorb significant financial and human resources. In 2010, the UK Government published a study revealing that the total average costs of an EWC plenary meeting amounted to around € 120,000. Thus, there are good reasons to use the rare and precious meeting time as efficiently as possible. The following chapter focuses on the most important tasks of EWC members before, during and after an EWC meeting.



Delegates of the Deutsche Post DHL EWC at a plenary meeting with their interpreters

Before the meeting

Confirm your attendance

The logistics of an EWC meeting require good planning and significant lead time. Annual plenary meeting dates are usually planned and communicated at a very early stage to allow EWC members to schedule their own agendas around the meeting dates. Attending plenary meetings is considered a matter of high priority for EWC members. Once official invitations are circulated, EWC

members are requested to notify the EWC Office within the given timeframe of their participation. In the event that a member is unavailable to attend a meeting, the deputy – if there is one – will step in. It is one of the responsibilities of the national EWC members to involve and notify their deputies under such circumstances.



Deutsche Bahn
EWC

Propose agenda topics

To a large extent, EWC meeting agendas follow a standardised pattern which includes a report of the business evolution and prospects, and a presentation of developments from an employment perspective. Other presentations might cover subjects for information and consultation as listed in the EWC Agreement. In addition, there will be opportunities to accommodate further topics of interest to the employees. EWC members should make sure that an exciting agenda and

the invitation of competent speakers are built around those matters which are truly relevant for the workforce. If EWC members do not take ownership of the agenda, joint meetings with management can easily turn into roadshows driven by management. Ultimately, the chairpersons and select committees will be putting agendas together, but any early input and suggestions from the countries will be appreciated and considered.

Set your objectives

Before heading to the airport, EWC members should have identified their key priorities and expectations for the actual meeting. This may be a certain question or a report concerning a problem in their country. It is highly important for EWC members to know exactly what they

wish to get out of the meeting. A “wait and see” attitude will not be enough. The internal preparatory meeting will be used for sharing the various expectations and for consolidating them into a collective approach.

Use your network

It seems obvious, but it is often overlooked: EWC members are ambassadors for their country. It is not their private opinion that matters but the views and the needs of the people they represent. An active EWC member will always liaise upfront with the employees of the country they represent to explore the relevant issues to be addressed to the EWC. Communication with employ-

ees is not limited to reporting back after the meeting but already begins with taking stock of the employees’ expectations before the meeting. As the employee spokesperson for their community, EWC members will constantly reach out to the local employees to listen and to understand the latest developments in the country.

Reflect the diversity of the business

It is natural for business developments affecting the direct working environment of an EWC member to always attract his/her particular attention. A parcel courier, for example, may be more excited about working conditions for couriers than an IT specialist, for whom data security

issues may be of more interest. Nevertheless, EWC members must think outside their own professional box within the company and increase their knowledge of the entire business they represent.

Study documents

Most companies like Deutsche Bahn or Deutsche Post acknowledge the need for EWC members to receive documentation such as PowerPoint presentations in good time ahead of the meeting. Quite often, tremendous efforts are made by the EWC Office but also by the responsible HR teams to chase presenters to deliver their documents in a timely manner to allow them to be translated and distributed ahead of the meeting. These

efforts only reap rewards if the EWC members utilise the materials for their own preparation. To be clear: the internal meeting of the EWC is not considered the ideal time for members to start paying attention to the circulated documents. This process must already start inside the countries and, if appropriate, in cooperation with local employee representatives.

Collect data

The “ideal” EWC member will have a decent understanding of the business evolution and challenges of his/her country. He/She will be familiar with the latest financial results and forecasts as well as employment trends. Part of the preparation may also be to produce a country update for the other EWC colleagues at the internal meeting. Some EWCs use templates, questionnaires or checklists for this purpose to compare local practices

and employment conditions. Depending on the agenda topics, certain emphasis should be put on the dedicated topics to be discussed. If the agenda includes the topic of health and safety, for example, EWC members should endeavour to find out about the latest QSHE data in their country. There may be different legal rights regarding access to the data, but a minimum effort should be undertaken by all members.

Team up with your country delegation

Larger countries will often have more than one EWC representative who wish to liaise throughout the year, for smaller countries with a single seat the deputy can be involved. Some countries even convene national meetings

of their EWC members well ahead of the plenary meeting. At these occasions, the country-specific interests relevant for the EWC are discussed. The workload can thus be easily split and shared by several members.

Liaise with local management

Pre-meeting sessions with local management are not a formal obligation but may provide the opportunity to explore whether there is common ground regarding mutual interests. In a relationship of trust, local management may even disclose their own concerns about subjects like outstanding investments, too ambitious

growth targets or questionable group policies defined by the headquarters. If such matters are conveyed to the plenary meeting in a diplomatic manner, EWC members can feel assured of the silent sympathy of their local management.

Arrange for your travel

Participation in EWC meetings is a legal right which cannot be withheld for business or operational reasons. In a case of conflict, the EWC Agreement will prevail over local guidelines. Nevertheless, local rules for requesting time off and business trips should be strictly followed. Flights chosen should allow the EWC members to participate in meetings in a fresh and relaxed manner.

Participants with longer journeys must be granted additional overnight accommodation. Arrival and departure times are to be communicated to the EWC Office. In the event of any problems with time off and permission to travel, the EWC Office should be called for help.



Members of the DPDHL EWC preparing for a meeting with management

At the meeting

Most regular EWC meetings run for a period of two or three days and are structured in three stages. On the first day, employee representatives gather internally to share information and prepare for information and consultation with management.

In many companies the European Human Resources leaders will meet in parallel for their own preparation. On the following day, Central Management and the EWC members gather in a joint meeting to discuss the agreed agenda items. The meeting is concluded by an internal evaluation meeting of the EWC to review the information received and to agree on the follow-up action to be taken. The EWC members differ in their views as to what

they experience as the most valuable part of the meeting: some may say the interaction with management is the core of the EWC's work, but a considerable number of employee representatives stated in interviews that the opportunity to meet their colleagues and learn from them is at least as important. Whatever the individual preferences, there are some ground rules to be followed for making maximum use of this valuable meeting.

Be on time

Although Deutsche Bahn and Deutsche Post are going more and more global, they are still deeply rooted in German culture, and punctuality is perceived as a matter of respect to the other attendees. Generally, for

joint meetings with management it is suggested that members arrive fifteen minutes before the announced starting time. Participants are requested to notify the EWC Office in case of any delays.

There is no dress code

Historically speaking, there was little alternative at business meetings in (formerly) state-owned companies but to attend in a black suit and tie. Times are changing and rules have become less rigid, partly influenced by company cultures of acquired businesses. Today, there are no set dress codes for EWC meetings and the come-as-you-are approach is applied by most EWCs. A warehouse operator who wears wear dungarees during his

shift, for example, is not supposed to disguise himself as a businessman once or twice a year to impress senior management. It is important for employee representatives to feel comfortable and relaxed in their conduct, but there are some limits: shorts, trainers and jogging trousers should be avoided. If in doubt, smart, casual dress will always work.

Avoid laptops

Face-to-face interaction is one of the great benefits of having physical meetings. Unfortunately, the habit of building walls made of laptops is widespread in business, with people staring at their screens and doing their best to ignore the speaker. If half of the team is mentally absent, the EWC cannot perform. At the meeting, EWC members should recall what they learned in communication training about eye contact and body language. The use of electronic devices may be necessary for studying

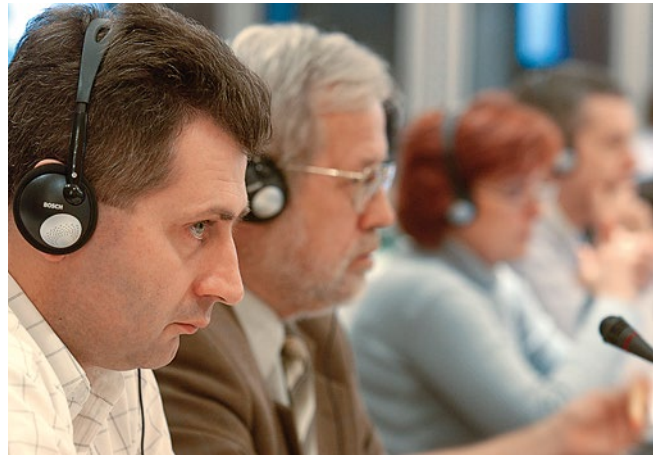
presentations and documents related to the meeting, but it will always distract attention.

»If your laptop is open, you're not listening. It's that simple!«

says an EWC Select Committee member from a large IT company.



The Deutsche Bahn EWC at a plenary meeting



The Polish delegation at a Deutsche Post DHL meeting

Represent your country

Part of the role of an EWC member is to represent the entire workforce of the country regardless of their own professional background within the business. At EWC meetings office, employees also have to represent

blue-collar workers from their country, and vice versa. The same applies to different locations and business units in the specific country.

Raise your questions

Well-prepared EWC members will always attend meetings with a list of well-prepared questions. When, if not now, will be the right moment to dig into subjects which really matter to the employees represented? There is no

rule stating that only the usual suspects are allowed to take the floor. In the interest of a constructive meeting, active contribution is essential.

Make your point

EWC members enjoy the privilege of meeting with the top management of the company at least once or twice a year. EWCs are far more than a funnel for receiving information. Their role is promoting dialogue between the parties, including feedback, proposals and demands from the employees. Management should also benefit

from the meeting and take away new insights or even action points. Collaborative managers will appreciate the opportunity to listen to what is happening on the shop floor. It goes without saying that any contribution should be factual and related to the subjects in the scope of the EWC.

Support your colleagues

A seasoned EWC will always demonstrate a high level of cohesion and team spirit during a meeting. Even if only a few countries may suffer from a certain restructuring move, their representatives will appreciate the moral support of the EWC as a whole. Delegates who never pay attention to the needs of their European colleagues cannot expect much empathy in times when their own

country is hit by bad news. Sometimes, it can also be highly emotive for a representative of a country directly affected to take the floor at a meeting with management. Under those circumstances, it may make sense for the issue to be brought up by representatives of other countries.

Lobby

Quite a few famous politicians and businessmen have sealed their biggest deals not in the boardroom but over dinner, at the bar or even in the lavatories. At EWC meetings there will also be informal opportunities to address certain subjects which are not appropriate for the official agenda or which require more in-depth discussion. Some people – whether managers or EWC members – are very skilled at networking outside the

formal meeting. There is no reason to shy away from informal dialogue, and, if necessary, more experienced colleagues may be of assistance in such off-the-record conversations. Experience has also shown that some management interlocutors will talk more openly once microphones are turned off and private opinions can be shared.

Stay until the end

There are not many good excuses for leaving early. Attending EWC meetings is considered to be working time, and agendas and meeting schedules are normally communicated well in advance to allow for proper planning of travel arrangements. Most companies

grant one or two extra nights' hotel accommodation for colleagues with long journeys. It should be considered a matter of respect to conclude the meeting as a team rather than to run out of the conference room one after the other before the meeting is declared closed.

Deutsche Post DHL and the famous EWC Beer Committee

Once upon a time, Jean-Pierre was elected to represent Belgium on the EWC. In his daily job he worked hard as a truck driver. Full of excitement, he travelled to Germany to meet his European colleagues for the first time in a large conference room at head office. But when the sun went down, he could not believe his eyes when he saw the incredibly expensive prices of drinks in the hotel bar. With his modest salary, he could not afford to hang around long with his mates. Local management had warned him they would never reimburse such expenses. That night, Jean-Pierre went to bed feeling sad. For the next EWC meeting, however, he brought a decent selec-

tion of Belgian beers with him in his suitcase for his mates. When his colleagues knocked on the door of his hotel room late at night, the EWC Beer Committee was born. Jean-Pierre served as the elected chairman of the Beer Committee for four years until he retired. By the time he left, the Beer Committee had become an institution for "social dialogue" and continued to operate as a melting pot of European cultures for more than a decade. Well-informed sources report that even managers have been seen at committee sessions with some EWC problems being resolved and fading away before dawn.



The Deutsche Post
DHL EWC in a good
mood

After the meeting

Follow up the action points

In a productive EWC meeting there will be conclusions of some sort. In most cases it does not go far as signing a binding agreement on a subject, but there may be at least

verbal commitments from managers regarding what will or should be done after the meeting. It is important that the commitments are put in place and monitored.

Volunteer

Time flies and not all topics can be worked out sufficiently within a few hours at a meeting. The EWC may call for volunteers to do a deep dive into a certain subject. Some of this work will be arranged in EWC working groups, which can only succeed if a sufficient

number of members commit to engaging in a subject. Some of this work will be arranged in EWC working groups, which can only succeed if a sufficient number of members commit to engaging in a subject.

Monitor rollout measures

“We will comply with local laws” is a management phrase frequently heard at EWC meetings when restructuring measures are announced. EWC members have a responsibility to validate that such statements have

substance and represent more than just lip service. Ideally, they will contact the local employees soon after the meeting to provide guidance and review the announced measures.

Report back to your country

According to European law, it is not only a legal right but even the duty of EWC members to inform employees in their country. Members who do not report back are in breach of their duty, and can even be held accountable in some countries. Reporting channels will depend on lo-

cal circumstances, but local management must provide the EWC members with the necessary infrastructure for sharing the information with the employees. This can involve emails, intranet reports, town hall meetings or site visits.

Use social media with care

It is not only younger generations that are fascinated by digital means for allowing the planet to become a permanent witness to their private and professional lives. Before going online, EWC members are invited to think twice about whether information posted on the latest EWC meeting is suitable for Facebook and co. It goes

without saying that company-sensitive information cannot be shared this way. But even social activities outside the meeting room can raise concerns. Too many posts showing the EWC member on sightseeing tours or in posh restaurants will tend to confuse colleagues at home about the actual purpose of the EWC.

CONFIDENTIALITY



We have a big problem with confidentiality in our EWC. Nearly everything is classified as “restricted” or “confidential”. It’s okay and good for me to have this information; I can build on it. But I’m not allowed to share it with my colleagues. I feel embarrassed when they ask me, and I can’t tell them the truth. They say, “You go to these meetings and you know nothing”. In the best case they look at me as if I was a tourist, but some people look at me as if I was behaving like a manager hiding the facts.

EWC member



The debate on classifying management information as confidential has been in the spotlight of EWC discussions from the outset. EWC members in many companies experience that confidentiality is – in their view – not limited to truly sensitive knowledge but gets applied arbitrarily to all sorts of data by management. In a survey conducted by the European Trade Union Institute (ETUI) among 500 EWC members, most participants responded that confidentiality turned out to be unjustified on many occasions and prevented EWC members from fulfilling their duty to communicate openly with the employees. Some EWC members of predominantly US-based companies report that even the fact of their own EWC membership, the EWC Agreement or EWC meeting agendas were classified as confidential.

Considering the above survey results it is important to note that management has no free choice in designating information as confidential. Legislation clearly states that the classification of information as confidential must follow objective criteria.

German EWC law, which applies to the EWCs of Deutsche Bahn and DPDHL, is very clear: confidentiality must be limited to “company and business secrets”. These terms are narrowly defined by jurisprudence and are enshrined in commercial law. They include, for example, patents, customer lists, pricing or individual employee data. The German EWC law also permits all EWC members to share confidential information with any other EWC member of their company, with experts and with interpreters for local employee representatives who would not be allowed to cascade the information themselves further down the line. In 2019, DPDHL Central Management and the EWC signed a Memorandum of Understanding (MoU) confirming the above principles.

In principle, most EWC members will agree that in a competitive market the commercial property and business secrets of their company must be protected against disclosure to third parties. Confidentiality is not unique to EWC members but applies equally to employees and (senior) managers when entrusted with sensitive data of customers, suppliers or potential mergers. The business must also protect certain data as a result of contractual obligations with third parties, stock market rules or legal obligations such as data privacy to protect individual employees.

The issue of confidentiality has become increasingly contentious between management and EWCs as a result of intensified data protection compliance procedures in many multinational companies launched for the prevention of cyber attacks and data leaks. However, some companies have also misused such justified concerns for turning their EWC into secret societies with hardly any visibility to the employees.

In the interest of balancing their obligation of confidentiality against their duty to inform the employees, EWC members should address the following questions in their dealings with management:

WHY?

Under some circumstances it may be obvious that confidentiality must be applied (compare “Example of good practice”) but the management rationale for classification may not always be that clear. EWC members deserve an explanation by management on the reasons for confidentiality. When in doubt, they should always ask why certain information may not be disclosed. What serious harm would be caused to the business if the information became public? Which laws or contractual obligations prevent the company from sharing certain information? Answers to these questions provided by management will reveal whether confidentiality is justified or whether it has been imposed in an overprotective manner.

WHICH INFORMATION

The classification of information as confidential not only depends on company policies but also on the way in which those policies are interpreted by individual managers. Whereas many business leaders act in a reasonable manner, EWC members will also experience managers who act overcautiously and even classify information which is unworthy of protection or which is already in the public domain as confidential. If the subject of confidentiality arises, it will likely not apply to the entire presentation but only to certain slides or figures within the presentation. In such circumstances, EWC members will ask management what particular information is to be protected.

HOW LONG?

If confidentiality is imposed, EWC members must understand how long the classified information is to remain under embargo. To be clear: there will be some information that may never be shared (i. e. for reasons of personal data privacy). Quite often, however, the information will be submitted to the EWC in a privileged manner and will be disclosed to a wider audience within the company or even beyond at a later juncture, for instance financial results (before publication) or planned acquisitions or negotiations with potential customers. In those circumstances, management should be asked to explain when the obligation for confidentiality will be lifted.

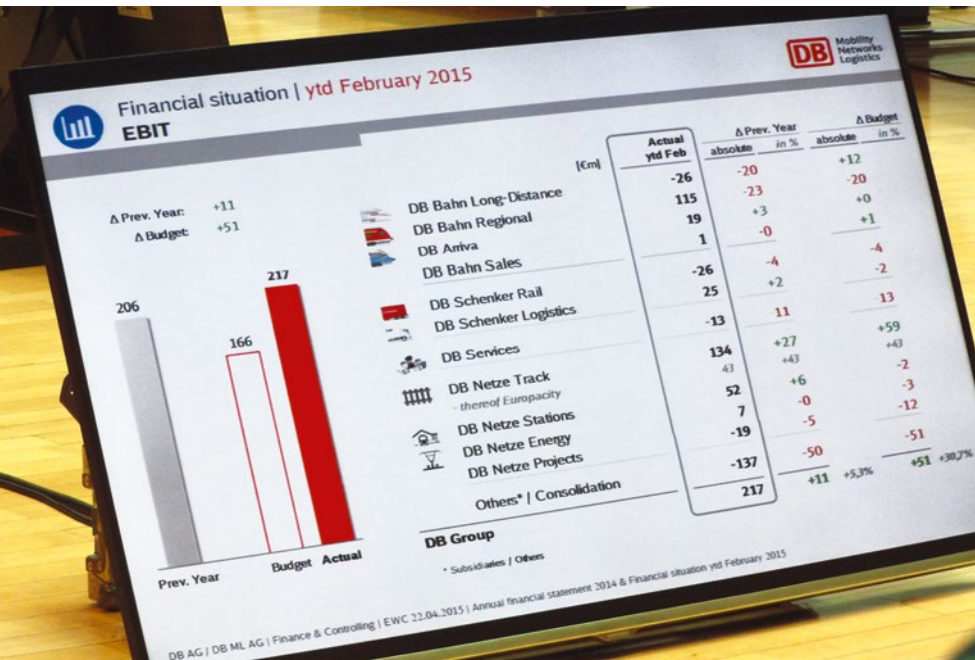
TO WHOM?

When receiving information that is confidential, the EWC members must know whether there are certain other individuals or groups with whom they may share or discuss the information obtained. This primarily applies in situations where the information was not provided to the EWC as a whole but only to a sub-group or individual. German EWC law permits any confidential information to be shared with other EWC members, experts, interpreters or local employee representatives.

Example of good practice

In 2006, the Dutch postal company TNT decided to sell their logistics division in the form of a tender. From the bidding companies, three potential buyers were shortlisted for further negotiations. The TNT EWC and the Dutch works council together created a joint working group to follow the process. After the working group members had signed an NDA (Non-Disclosure Agreement) on strict confidentiality, management gave them the names of the potential buyers and access to the data room where all the documents related to the divestment could be studied. The working group was also given the opportunity to meet with the preferred buyer and explore their business plan, including the probable impact on future employment.

Before TNT and the US equity fund Apollo sealed the deal, Apollo Management gave a formal commitment to the TNT EWC on the sustainability of employment and the creation of an EWC for the acquired business, which was eventually rebranded as Ceva-Logistics. All parties involved in the process were aware that the transaction was stock market sensitive and that confidentiality must be observed under such special circumstances.



Accurate financial data is crucial for EWCs

THE EWC OFFICE

Like any large organisation, EWCs require ongoing back office support for their activities and initiatives. This role goes well beyond the preparation and follow-up of meetings. In major multinational companies, those administrative tasks are managed by a dedicated EWC Office or secretariat, which normally located at the company headquarters. In fact, the EWC Office can be viewed as the engine room of an active EWC. Not all of the activities performed will be noticed by EWC members immediately, but without fully-fledged professional support EWC members would soon reach their limits in performing their tasks.



The EWC will be supported by a secretariat. The necessary staff and resources shall be provided. Regarding job grading, the relevant provisions of Deutsche Post AG are applicable.

*EWC Agreement Deutsche Post DHL
Art. 5.4*



Both the Deutsche Bahn EWC and the Deutsche Post DHL EWC operate an EWC Office. In each company the office is resourced with 2 – 3 staff, who are wholeheartedly committed to serving the EWC members. The office teams in both companies are entirely independent of management and report exclusively to the EWC chairperson and EWC leadership teams. In parallel, Central Management is equipped with its own Human Resources teams for matters related to the EWC. The role of the actual EWC Office is to provide the EWC members with the required infrastructure to make the work of the EWC as effective and sustainable as possible.

As a dynamic organisation, the EWC Office tasks depend greatly on the commitment and collaboration of the EWC members. In truth, a more proactive EWC tends to absorb more office support than less engaged bodies.

The following tasks are among the principal roles of the EWC Offices at Deutsche Bahn and / or Deutsche Post DHL:

- Planning and organising EWC meetings, including accommodation, equipment, facilities, etc.
- Producing minutes of meetings, including coordinating joint minutes with management (Deutsche Post DHL only) and circulation to EWC members
- Preparing training events, including nomination of training providers and experts, and selecting training venues
- Acting as a point of contact for Central Management concerning multiple issues (i.e. EWC requests for information, extraordinary circumstances, invitation of management experts)
- Maintaining accurate data on all EWC members and deputies



The (EWC) Managing Committee shall be assisted in its work by the office. The office shall be headed by a manager subject to the instructions of the (EWC) Managing Committee. The number of personnel necessary shall be determined in consultation between central management and the Presiding Committee...

*EWC Agreement Deutsche Bahn
Art. 8*



- Arranging interpreters for meetings and translation of documents based on the EWC members' needs
- Supporting members with individual training requests, primarily language training
- Maintaining the EWC profile in company media and on EWC websites
- Drafting presentations and statements on behalf of the EWC chairpersons
- Promoting, assisting and monitoring the election process of EWC members (Deutsche Post DHL EWC Office only)
- Supporting the chairperson and the members of the presiding committees in their role
- Follow-up and analysing the business evolution (KPI)
- Drafting EWC meeting agendas, including selection of speakers in cooperation with the EWC chairpersons and Central Management
- Editing and publishing regular EWC newsletters
- Organising and supporting subentities of the EWC, such as business committees or working groups

- Monitoring follow-up activities agreed with management on specific subjects concerning information and consultation
- Continuous review of business media reports focusing on European topics and analysis of corporate press releases
- Responding to external requests from trade unions, media or research organisations
- Administration of conference calls and video conferences
- Instigating and monitoring surveys on local practices related to transnational information and consultation topics
- Coordinating the involvement of external experts
- Advising EWC members in their day-to-day conduct on request (e. g. in cases of dispute regarding time off, participation in meetings, facilities)
- Maintaining the archive of all EWC-related documents
- Contributing to European projects.

If EWC members encounter major issues related to their role which cannot be resolved locally, the EWC Office will always serve as a helping hand and first point of contact. EWC members are encouraged to seek guidance from the EWC Office team first before directing their issues or complaints to Central Management.

It goes without saying that the EWC Office teams can do their utmost to support the EWC members but cannot substitute the dedication of the members themselves.

To accomplish its tasks, the EWC Office relies on the networking skills of the EWC members, who are invited to respect the following ground rules:

- Respond to requests for information by the EWC Office without delay
- Confirm/Cancel participation in meetings as early as possible
- Inform the EWC Office proactively of company announcements and measures which may be of a transnational dimension
- Update the EWC Office regarding any change to the EWC national membership and/or contact details
- Provide input on and proposals for possible EWC agenda topics
- Share best practice examples relevant to the work of the EWC



EWC Office of Deutsche Post DHL:
Marita Benz, Heinke Jopp and Elmar Kallfelz



EWC Office of Deutsche Bahn AG
(Sebastian Rüter and Karin Bahrs)

EWC NEWSLETTERS

Interviews conducted among employee representatives and managers indicate that there is great room for improvement regarding the visibility of the EWC and the reporting back to the countries. Many members consider face-to-face interaction to be their channel of communication. Yet, what may work well in small countries or within a private working environment will reach its limit in countries with thousands of employees in a multi-site geography. Under these conditions, there is no alternative but to send out written reports to the colleagues.

A joint publication in the form of an EWC newsletter is a very useful tool for circulating information to a large number of employees and offers the following advantages:

- A newsletter creates synergies, as the meeting report only has to be produced once for the benefit of all EWC members.
- During meetings, EWC members are released from taking notes and can devote their full attention to the discussions with colleagues and management.
- It can be assumed that the content will not be flawed but factually correct and cross-checked when summarising the main results of a meeting.
- There will be certainty that whatever is documented in the newsletter will be open information and not subject to confidentiality.
- Produced and shared in an electronic format, the newsletter can be edited locally and further amended with country-specific news and reports.

Any newsletter will only be as useful as the efforts undertaken by the EWC members for further distribution. Each EWC member should put a plan in place as to how the newsletter can be spread to reach all blue- and white-collar employees.

Deutsche Post DHL
EWC newsletter

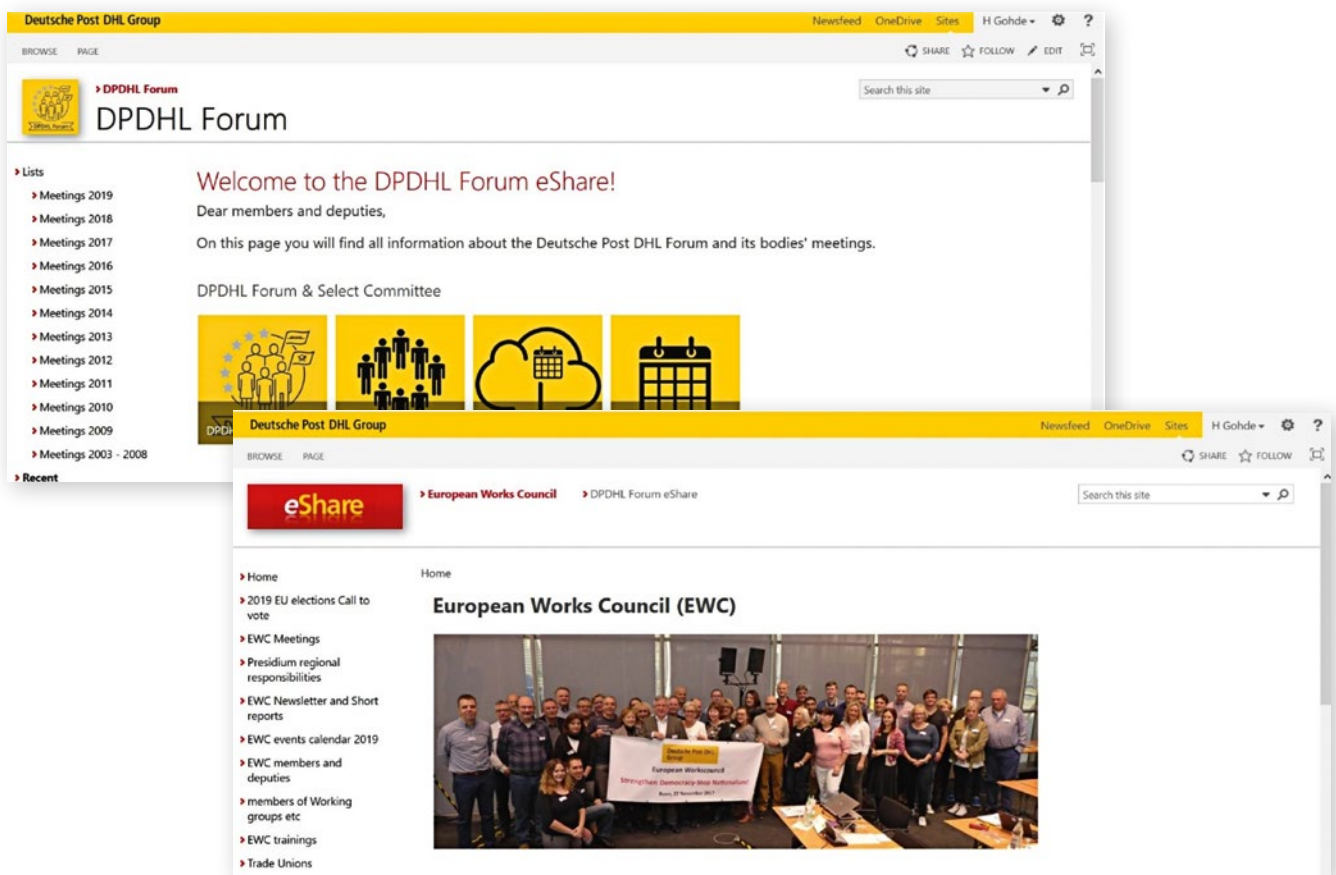


EWC WEBSITES: DEUTSCHE POST DHL

For Deutsche Post DHL, all relevant documents related to the joint Deutsche Post DHL Forum can be viewed and downloaded via an electronic database (“eShare”). The eShare forum is password-protected and can be accessed via the internet. All EWC members are provided with a company email account, but external experts or accredited trade union officials can also log in. Administration rights are granted to management and the EWC Office. Through the portal, sub-groups like the Select Committee, business committees or working groups can be followed by authorised groups. The eShare forum serves as a database and covers a large range of documents, including meeting agendas, management presentations or minutes of meetings in multiple languages.

Further to eShare above, the Deutsche Post DHL EWC operates an internal website for EWC members only. All internal documents like meeting calendars, trade union related documents, newsletters or a picture library can be found on this platform.

Both eShares also serve as a kind of EWC archive and former activities can be traced back easily.

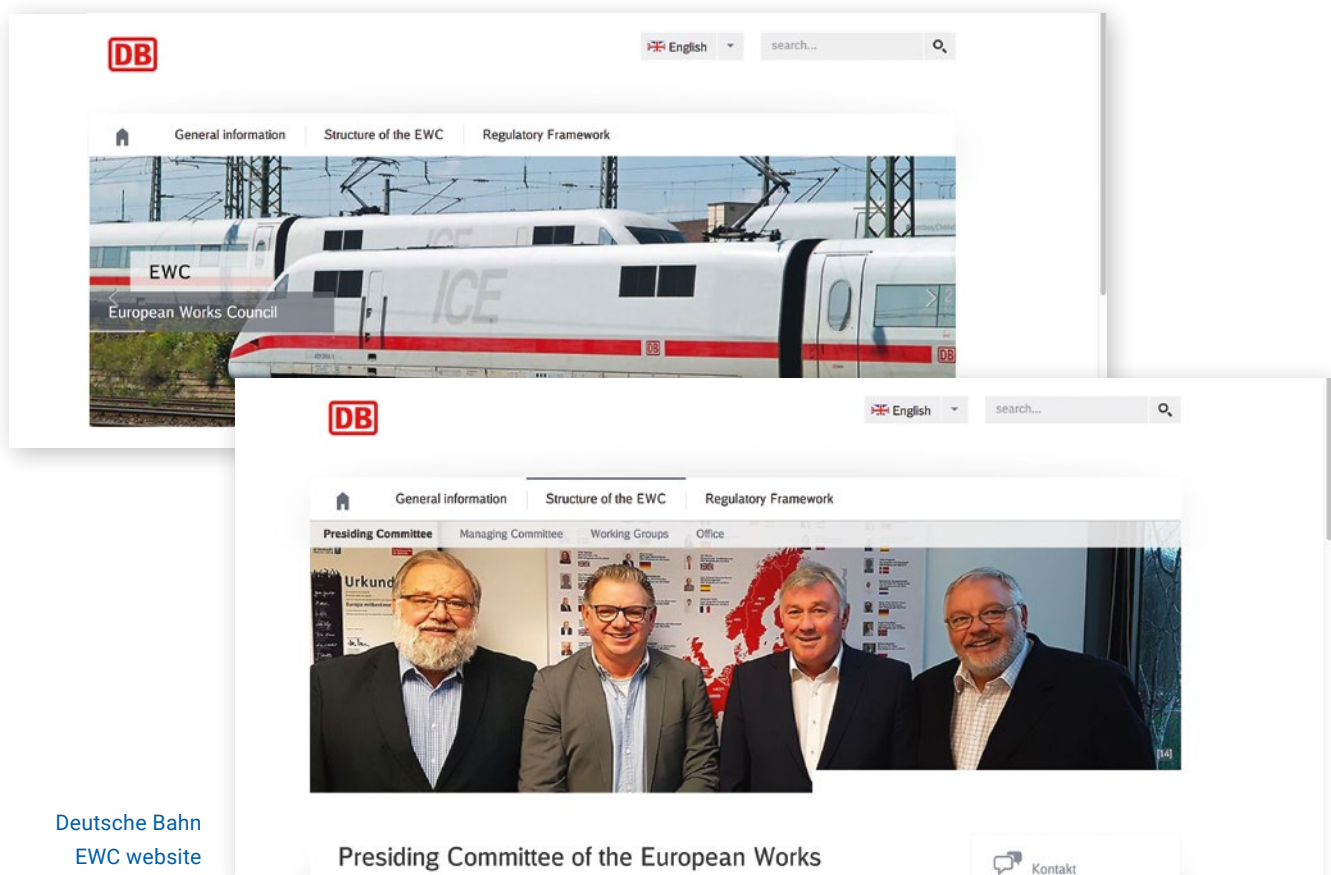


EWC WEBSITES: DEUTSCHE BAHN

Whoever searches the web for “Deutsche Bahn EWC” will be directed to the EWC website. Having such a public showcase is rather exceptional, as most companies prefer their EWC to share information within the protected web space of the corporate intranet – if at all. Yet, at the time the Deutsche Bahn EWC went live this was no option, because after various acquisitions there was no trans-European intranet available yet at Deutsche Bahn where all employees could connect. The open internet solution also offers advantages: for instance, it can attract the attention and publicity of external parties to EWC topics and demands. More importantly, any train driver or warehouse worker can easily find information on the EWC even without having a company email account.

The Deutsche Bahn website includes valuable information on the functioning of the EWC. Documents are not limited to summary reports of the latest EWC meetings but also cover the activities of the working groups. A download section offers materials including the EWC Agreement and the respective legislation. Most importantly, Deutsche Bahn employees at any site in Europe

are just a click away from finding out who their national representatives are. All EWC members are introduced with photos and contact details. It is remarkable that the administration rights are entirely with the EWC and no management permission is required for putting the latest news online.



Deutsche Bahn
EWC website

LOCAL NETWORKS: THE EXAMPLE OF BELGIUM

There is no single recipe for connecting EWCs with local representative bodies. But if members are creative, they can benefit from the EWC even as leverage for strengthening representation at the national level as illustrated by the following example of the Belgian works council network:

Once the ink had dried under the Deutsche Post DHL EWC Agreement in 2003, Belgian employee representatives were faced with a difficult question: how should they elect three EWC members although the company operated a total of ten companies in their country? Each company had their own local works council with hardly any connection to the other sites. Legally, the situation was clear: under Belgian law EWC members get elected by the works council members from their ranks, but there were no rules for any form of combined works council at the national level. Until then, works councils were working in isolation, but EWC members would depend on the confidence of all locations. In consequence, the Belgian unions, which play an important role in domestic employee representation, decided to convene a large conference where all Belgian DHL works council members were invited. More than 120 works council members belonging to five different unions from the ten companies followed the invitation and met for the first time ever to choose their three Belgian EWC members and three deputies. Before opening the election, it was agreed that each of the five Belgian DHL unions would be granted at least one delegate or deputy position to

ensure a balanced representation. This model had to be reviewed after Belgium lost one of three EWC seats a few years later. Nowadays, only the three largest unions hold either an EWC member seat or deputy seat. However, internal agreement facilitates a certain degree of rotation, which also entitles deputies to attend some EWC meetings during a term of office.

Over the years, the Belgium works council network advanced towards a more permanent and regular institution. A Steering Committee was composed of two representatives of each local works council and meets every other month to discuss EWC-related issues. Twice a year an extended meeting with more than 50 delegates is organised in preparation for the Deutsche Post DHL Forum.

Over time, different unions learned to work together. Previous rivalry or even hostility was replaced by the will to represent the country. Even former enemies became friends. The works council members decided to speak to the employer with one voice, both nationally and in Europe, and began to sort out their differences internally.

The Belgian EWC members underline the fact that they are bound by the decisions of the Steering Committee:

»When we speak at EWC meetings, we do not speak for our union or for our company but on behalf of all Belgium DHL workers«,

says Peter Luypaert, who also sits on the Presidium of the Deutsche Post DHL EWC. The process helped local works councils to move away from a rather competitive relationship towards a strong country network to defend the employees. It is self-evident that important local and national information is also exchanged when the Steering Committee meets. In the past, colleagues learned of local problems or strike action by their co-workers at other sites from the media, if at all. Today, they are informed well ahead of the public and organise mutual support across the entire country when necessary.

From the EWC's perspective, the Belgium model has helped to establish both a bottom-up and top-down communication system for sharing EWC-related information from a local warehouse up to corporate headquarters, and vice versa. The reality in other countries will look different, but the aim to foster a national network must remain the same.



“Think global – act local”:
Belgium works council members showing their support for trade union members in Turkey

LOCAL MANAGEMENT SUPPORT

Volunteering to the EWC means a personal commitment to make the company a better place to work. With their signature under the EWC Agreement, Central Management has acknowledged the importance of social dialogue. Many companies have also signed up to global standards for employee representation as set out by the conventions of the International Labour Organization (ILO) or the OECD. Other companies refer to the freedom of association as a fundamental right in their codes of conduct.

It is indispensable for each EWC member for local and national managers to wholeheartedly live up to the above principles. Accordingly, local management is supposed to supply each EWC member with the means required to accomplish their tasks. As a matter of common sense, EWC members and local management should remain in close contact to safeguard that all requirements as defined by the EWC Agreement are met and the EWC membership becomes a constructive and successful mission.

However, research conducted among local managers of Deutsche Bahn and Deutsche Post DHL revealed that there is a remarkable lack of knowledge about the role of the EWC and the necessary management support in some countries. Therefore, information and awareness should be increased at all local management levels: line managers, business leads, human resources and employee relations managers, where they exist.



The parties recognise the Core Labour Standards of the International Labour Organization (ILO), confirmed at the 86th Session of the International Labour Conference in 1998, and in particular the right to form free trade unions and the right of those unions to negotiate and enter into collective agreements for the employees. In addition, they recognise the current OECD Guidelines for Multinational Enterprises.

*Preamble of the Deutsche Bahn
EWC Agreement*



Each EWC Agreement stipulates the individual rights of EWC members with regard to working facilities, communication, protection and time off. Local practices may even far exceed those provisions. In the interest of a constructive relationship, local management and the EWC should continuously review and adjust the actual

support needed. Although the following recommendations are not legally binding, they highlight local examples of best practice at Deutsche Bahn and Deutsche Post DHL and should serve as a benchmark for each European country.

Background information

At the start of any new election period, local managers will be faced with a new situation if an employee from their site assumes office for the first time. Not only must training be provided for the EWC members to understand their role, but local managers also need to be introduced to the EWC and the expectations of local support to make the relationship work. Basically,

every responsible site manager should obtain at least a copy of the EWC Agreement to understand the rights and obligations of the EWC members. In some companies, Central Management undertakes specific measures such as conference calls or joint communications to all HR directors to familiarise them with the role of the EWC.

Time off

Any reasonable amount of time spent in conjunction with the EWC is to be considered paid working time. EWC members must be released from work to fulfil their duties. This is not limited to the attendance of meetings including travel but also relates to preparatory work (such as studying documents) or communicating with other EWC members or local employees. Most EWC agreements do not grant an absolute number of days

or hours because the time needed will depend on the business progress and roles of the EWC member in working groups or sub-bodies. In case of problems, the local EWC member should estimate the time required and strive to agree on a fixed number of hours per week or month for EWC duties with management in order to enable proper planning for both parties.

Working facilities

Outside EWC meetings there will be occasions when EWC members need to work on their tasks as defined by the EWC Agreement. Modern communication technologies must be provided for this purpose, such as access to a password-protected PC or laptop with email and internet connections without being monitored. It is

recommended that operational ("blue-collar") employees are also offered a corporate email account and access to the corporate intranet. Furthermore, EWC members must be given access to quiet office space on request where they can prepare meetings and do follow-up or meet with their co-workers.

The UK and Irish EWC delegation of Deutsche Post DHL at one of their regional meetings in London.



Communication

Under European law management must provide EWC members with the facilities required to communicate effectively with the employees they represent. Communication is considered a two-way process where the EWC member reports back from meetings but is also known and accessible to all employees for listening to and understanding their problems and concerns. As local conditions may vary, there is no silver bullet for the perfect communication strategy. However, local management must endeavour to support the EWC members with the most suitable means of communication, which may include the following:

- Dedicated notice boards for EWC communication at all sites within the country represented
- Permission to distribute EWC newsletters and other relevant information via email to all employees with a company email address
- EWC members' presence at local information and consultation meetings, particularly in the case of local consultation with regard to transnational matters
- EWC webspace on the company intranet
- EWC member slot at town hall meetings to present the work of the EWC
- Site visits by EWC members

Travel

The attendance at EWC meetings and EWC-related activities such as site visits are to be treated as business trips. Subject to the company travel policies, EWC members will normally issue their travel requests to local management. The approval process is expected to be managed in a timely and constructive manner. To make it clear: travel approval cannot be withheld for business or cost reasons. If there is a conflict between travel policies or other restrictions and the EWC Agreement, the right of EWC members to attend meetings prevails.

Journey times and connections are to be arranged appropriately to allow EWC members to arrive in good time and to remain until the end of the meeting. If necessary, extra nights of accommodation are to be granted. Any questions or disagreements regarding travel entitlements may be addressed to the EWC Office.



The EWC and the social dialogue at this level is very, very useful. I often see at the local level that understanding and awareness are very important. The EWC helps us to have this dialogue in a very good partnership. By understanding the long-term strategy of the company, the EWC members have become more interested in technologies and investments, for example, and the focus is not that much on money, money, money in the negotiations any longer.

*Local management representative
of Deutsche Post DHL*



Meetings between local management and EWC members

EWC members acting in the double role of EWC member and local representative will have regular opportunities to meet with their local and national management throughout the year. But even in countries where no local works councils or trade unions exist, meetings should be arranged between the national management and the EWC member(s), including any deputies. Such meetings

will help to build and improve the relationship, discuss the impact of European information and consultation for the country concerned and explore ways in which the visibility of the EWC can be improved. It is recommended that such meetings be held at least twice every calendar year.

Local dialogue on business performance

During EWC plenary meetings, Central Management will report on the business development and prospects, including financial results, business strategy, organisational changes and headcount evolution, etc. The information provided will often be aggregated data for the entire organisation without country-specific details. EWC members must be in a position where they can understand and compare their own country's situation against those European trends and results. It is highly

recommended that local management regularly review the business development with the EWC member for their country and share country-specific data on the subjects covered by the EWC Agreement. This will also help to reduce the number of questions on more local matters to be addressed at EWC meetings. There are quite a few examples where the promotion of local dialogue with EWC members has created added value for local management.

Workload planning and appraisals

EWC membership is not a private hobby for EWC members but a contribution to the success of the business. It should be perceived and acknowledged as such by management. This implies that workload planning and performance reviews must honour the EWC membership as a genuine part of the individual's job. When assigning business tasks to an EWC member, it must be ensured that the work can be accomplished

within official working hours and that no undue overtime or weekend work becomes necessary because of the EWC membership. In annual appraisals, line managers must value the fact that the EWC member is providing services on top of his/her regular duties. EWC membership must not have any detrimental impact on a person's career or promotion.

European management network

In interviews, some local and national managers have addressed their concerns that they are not well enough informed about the subjects discussed between the EWC and Central Management. Some managers are even frustrated that EWC members receive privileged and first-hand information before local management – if it is even informed at all. Such concerns can be allayed

if Central Management arranges regular communication among the European HR community in the form of emails, newsletters or regular conference calls on EWC-related topics. At Deutsche Post DHL and Deutsche Bahn, this practice has already been implemented in some business divisions.



My managers do not understand my role on the EWC. They have not been supportive of it at all. They told me directly to my face that being on the EWC was a problem for them. It's a problem for them as I spend too much time away from the business, and they told me that I would never get a promotion while I was on the EWC. I will need to decide whether to pursue my career or stay on the EWC.

EWC member



EWC meetings and local management presence

Most EWCs have agreed with Central Management on plenary meetings or meetings of their working groups and business committees being held at rotating venues across Europe. This approach not only demonstrates the international spirit of the EWC but also allows an insight into the particularities of the host country. Very often, such meetings are combined with site visits and plant tours guided by local management. In addition, at the actual meeting the host country should be invited to present an overview of the business and employment

situation presented by local management. If the EWC meeting takes place at the company headquarters, local managers of some countries could be invited to attend as guests or even regular participants. The European Management Forum (EMF) at Deutsche Post DHL, for example, is made up of 25 managers nominated by Central Management. From an EWC perspective it would be beneficial for the composition of such management teams to be truly European and include as many European countries as possible.



The Management Committee of the Deutsche Bahn EWC with former board member Ulrich Weber, HR

SITE VISITS

EWC members are the European ambassadors for their country. This role requires a decent knowledge of the business structures and the employment situation in their home country. Transport and logistics companies are normally characterised by a large geographical coverage, with employees spread across the entire country at different sites and locations.

To fulfil their role effectively, EWC members must establish close contacts with the employees they represent. Email or telephone communication is important, but will not always suffice to comprehend the needs of the represented employees. In a survey conducted among EWC members for Deutsche Bahn and DPDHL, of all channels for communicating the work of the EWC, direct one-to-one communication was valued the most. Site visits are crucial and help to build continuous contacts and to support local employees, for instance in the event of transnational restructuring.

Whereas some EWC members belong to a well-established domestic network of local works councils and trade unions, other delegates may find themselves more along the lines of lonesome riders who will not be able to build upon contacts to colleagues beyond their own location. For this group of EWC members particularly, site visits form an important element of their role. The added value of a site visit depends on decent planning and preparation, and the following recommendations should be observed.

1 – KNOW YOUR RIGHTS

EWC members must be resourced by management to perform their role properly. It is commonly understood that communication of EWC matters both ways (top-down and bottom-up) includes the right to visit other sites and divisions within the country represented. Some EWC agreements, such as the Deutsche Post DHL Agreement, specifically entitle EWC members to visit any location of all the divisions on their country after having informed local management.

2 – SET YOUR GOALS

Before hitting the road, EWC members should be clear of the actual purpose of their visit. This will be important not only for their own preparation but also for the hosting organisation to manage expectations and prepare for the visit. The visit must obviously serve the purposes of the EWC as defined by the EWC Agreement. Solely discussing domestic matters without any European relevance would not justify a visit as an EWC member.



EWC Members visiting a DHL site in Dublin (Ireland)

3 – IDENTIFY WHOM YOU WANT TO MEET

In locations with existing employee representatives such as works councils and/or trade unions, the initial contact will always be with those organisations who will be most likely to embrace the opportunity to welcome their EWC member on site. Where no such bodies exist, a request should be directed to the receiving management to meet with a representative group of employees. Ideally, this group would not be pre-selected by local management, but an open invitation would be communicated by local management to all employees. EWC members should be mindful that operational processes and routines cannot be suspended in order for them to be received .

4 – FIX THE RIGHT TIME

Unless an emergency situation has occurred, local visits should be planned well in advance with at least a few weeks' lead time. The date of the visit should take the business demands of the hosting organisation into consideration and would preferably be scheduled outside peak seasons when the employee's full attention on the business is required. However, the visit should be arranged at a time when the visitor can obtain an insight into the local working processes and a reasonable number of employees are present on site for dialogue. At warehouses or local hubs, for example, it has proved to be a suitable time to meet employees when they change their shift. Depending on local practices, town hall meetings or employee assemblies could also be opportunities to meet the employees. Talking to employees at town hall meetings would require prior alignment with local management.

5 – PREPARE YOUR MESSAGE

When coming on site, the EWC members should be able to explain the purpose of the visit and introduce the work of the EWC. Some colleagues may be hearing about the EWC for the first time. The KISS (“Keep It Short and Simple”) method may be more persuasive than lengthy PowerPoint presentations about the operations of the EWC. EWC members should engage in active listening and express empathy and respect for the situation and concerns of their colleagues. Support and encouragement of employees possibly impacted by reorganisations is crucial, but EWC members should not make promises that they cannot deliver after the visit.

6 – INFORM YOUR SITE MANAGEMENT

In good time prior of the date of the visit, EWC members will inform their local management of the purpose and intended date of the visit. Even if EWC members are legally entitled to visit other sites, requests for release from duty must be issued and travel policies adhered to according to local rules. Local HR management may offer their help in building contacts with management of the hosting organisation to facilitate the visit.

7 – REACH OUT TO THE MANAGEMENT OF THE SITE TO BE VISITED

At least two weeks before the planned visit, the EWC member should contact the hosting organisation. Unless there is a local works council or union on site, the planning of the visit will need to be arranged via local HR. The initial email should clearly state the reason for the visit, the proposed date and time, the duration, the target group and the facilities required. It would not be impolite to ask for some time during the visit where the EWC member may talk with the employees in the absence of local management.

8 – IT IS A VISIT, NOT AN AUDIT

Professional EWC members will always behave as guests in the premises visited. There may be information and/or operation practices which give cause for concern, but a visit is not an inspection. EWC members will always treat their hosts with respect and will take up even difficult issues in a reasonable and appropriate manner.

9 – COMING HOME: THANK YOUR HOST

At the end of the visit and on returning home the EWC members should thank the receiving organisation for their hospitality. A short email could summarise the main conclusions and lessons learned. Ideally, the EWC members have established direct contacts (email and telephone numbers) which will facilitate future exchange and collaboration.

10 – INVOLVE THE EWC

Particularly on the event of their very first visit, EWC members might feel a little nervous and insecure when visiting another site. In this case, the EWC Office can provide useful guidance and support. The EWC should also be involved in the case of any obstruction observed by management in relation to the visit. If appropriate, the EWC may nominate a leading EWC member from the Presiding Committee to accompany the local EWC member on the visit.



EWC publicity on a notice board at a DHL warehouse

We came as colleagues and left as friends! EWC members on a bus ride.



We provide the EWC members with all the resources they need and, of course, they can travel and visit other sites whenever deemed necessary. We have 41 sites in our country and the two EWC members cannot meet them all face-to-face in their daily work. I know they sometimes go to visit other sites and I do not have any objections if they do so, as this is part of their role.

Management representative





The employees in [site] were so interested in the visit and at the end they were really grateful for our presence and the explanations we provided. Despite there not being much news for them, the fact that they were getting the information and feedback from people other than a local manager was highly satisfactory. There were 14 employees present at the meeting, apart from the site manager, who did not want to attend in order to allow people to speak freely, but who had a conversation with us afterwards. Some were even on holiday and came to the site to attend the meeting. As regards participation, 14 out of 19 in [country] is a great success. Maybe not a big deal, but it was the first time when working on EWC duties that I had the feeling that I did something that has helped my colleagues and that makes me feel rewarded.

EWC member



THE ROLE OF THE TRADE UNIONS

UNI Europa's strategic objectives in EWCs

By Dimitris Theodorakis (UNI Europa)

Multiple forms of transnational employee representation and participation within different kinds of company structures exist today. The main forms are European Works Councils (EWCs) and representative bodies in European Companies (SEs). UNI Europa supports all forms of transnational employee representation and has adopted guidelines on EWC, intended to provide guidance to UNI Europa affiliates, and to coordinators and members of EWCs and special negotiating bodies (SNBs).

UNI Europa makes use of the possibilities offered by European legislation. UNI Europa assists EWCs to help them meet trade union goals and benefit the workforce. UNI Europa aims to ensure that employees' rights to information and consultation are always respected. UNI ensures trade union support for EWC members and ensures that all EWCs fully benefit from the improvements introduced by the new Directive of 2009 (Directive 2009/38 EC).

European trade union federations aim at increasing employee involvement in the decision-making mechanisms of companies covered by the relevant legislation. Trade union federations can assist in reinforcing cooperation between employees' representatives across borders and in linking developments at the company level to more general trade union goals. UNI Europa helps to develop EWCs into powerful tools of employee participation in companies' decision making. UNI Europa supports EWC members from Central and Eastern European countries to enable them to connect with their trade unions, receive adequate training and participate actively in their EWC.



Together with the affiliated trade unions, UNI Europa ensures a high unionisation rate within companies. UNI Europa can assist in ensuring that EWC members are linked effectively to employee representation/participation bodies at other levels (workplace, regional, national or international levels and board level representation). Through the coordination of trade union activities at company level, European trade union federations can empower EWCs to anticipate changes and to proactively offer possible alternative strategies and solutions to management. UNI Europa can coordinate and support international solidarity actions and can act as a link between Central Management of a company and the EWC in instances where company headquarters are outside the EU. UNI Europa supports trade union organising activities in multinational companies and strives for the signing of global framework agreements. UNI Europa can assist employee representatives in establishing a special negotiating body and creating an EWC.

In our efforts to strengthen employee representation and the work of EWCs, UNI Europa initiates and coordinates the establishment of trade union alliances in companies where there is an expression of interest in doing so by affiliated trade unions. Trade union alliances can link the work of EWC members and EWC coordinators with national employee representatives organising in the company concerned. UNI Europa can support EWCs through the establishment of Trade Union Alliances to ensure a common and coordinated trade union approach to the company concerned. Trade union alliances can help ensure a balance between the national interests of affiliates in order to allow for a truly European/international approach, creating a stable basis for transnational trade union activities (such as campaigns or negotiations for a global framework agreement). Trade union alliances can assist in developing the EWCs as a tool to empower members from countries with little or weak trade union involvement to demand and enjoy the same rights as colleagues from countries with stronger trade union power.

The vision of European Transport Workers' Federation (ETF) regarding EWCs

By Myriam Chaffart (ETF)

At the moment there are 37 European Works Councils (EWC) in the European transport and logistics sector. Of these, only 27 are active and fulfilling their role as information and consultation bodies.



An EWC brings together employee representatives from the different European countries in which a multinational company has operations. During EWC meetings, these representatives are informed and consulted by Central Management on transnational issues of concern to the company's employees.

EU Directive 2009/38/EC – governing the establishment of such EWCs – is applicable to transnational undertakings and groups of undertakings employing a total of over 1,000 employees in the European Economic Area, and at least 150 of them in two Member States. After 10 years of attempts to amend the initial Directive of 1994, a recast EWC Directive was adopted on 6 May 2009.

The ETF Executive Committee is responsible for all decisions on issues related to EWC policy. ETF's major priority is our continued efforts to establish a robust and modern EWC directive together with the other European trade union federations – especially in the digital era.

A firm stance has been adopted that workers' involvement at company level must move away from a mere formality towards a meaningful information and consultation tool.

EWCs have a huge potential power to influence corporate decisions in Europe's largest transport and logistics companies, especially in the area of automation and digitalisation. Information on companies' plans for the short, medium and long term is crucial in order to minimise the effects on employment and working conditions.

ETF invests a lot of additional effort in supporting the establishment of further EWCs in multinational transport and logistics companies in Europe. ETF is developing guidelines and tools to facilitate the establishment of EWCs in the transport sector.

Since June 2017, ETF has assisted its affiliates with six new requests for the setting up of an EWC and is looking forward to the first agreement being signed in the near future.

TRAINING

Joining and being part of an EWC is a continuous learning process in itself. EWC activities are very different from local bodies of employee representation and members require specific knowledge and skills to become effective members. In view of the significant attrition rates of EWC membership year by year, the induction of new members remains an ongoing challenge. Understanding the roles and functioning of EWCs is to a great extent “learning by doing”: participating in discussions, seeking guidance from more experienced members and asking questions of experts help new members to feel more comfortable and familiarise them with their role. Some EWCs even operate dedicated mentoring or “buddy” programmes for new kids on the block.

In addition to the informal learning experience, EWC members are legally entitled to regular and formalised training. The EWC Directive itself remains rather vague on the kind of training to be provided and gives little indication of the subjects or amount of training or the choice of training providers. Subsequently, it is left to each EWC to establish its own training approach and, where necessary, agree with management on time and budgets required. For the EWCs of Deutsche Bahn and Deutsche Post DHL the entitlements for training are thankfully guaranteed by the EWC Agreement. Both EWCs enjoy an exceptional degree of independence in identifying their training needs and arranging for tailor-made solutions. EWC members in companies with weaker arrangements may exercise far less influence on the type of training delivered. It is not uncommon for EWC members to feel patronised by managers who would only approve training programmes and trainers that unconditionally support management expectations of the way an EWC should operate. Over time, a growing number of training providers have entered the market which formally

offer their EWC services as being “impartial” but in fact operate as management consultants and will instead jeopardise the creation of a strong and confident EWC. Employee representatives should always carry out a thorough assessment of proposed training suppliers and ask for credentials from other EWCs before taking their decision.

EWC training is obviously not without its limits: first and foremost, the subject of the training must be relevant to and necessary for the work of the EWC. Secondly, the amount of time spent needs to be defined and must be reasonable. It has proved to be good practice to agree on a set number of training days with management, either per year or over a term of office. It must be acknowledged that EWC training entitlements are supplementary to any training periods granted for local employee representative bodies such as works councils or trade unions. Thirdly, any costs incurred by the training must be approved by the company upfront before making final bookings.

Whether EWC training is arranged individually or for the entire EWC team will vary and depend on the nature of the training: learning foreign languages, for instance, is offered locally as ongoing training in many multinational companies nowadays and normally leads to more sustainable results than a one-off international event attended by EWC members with different levels of prior knowledge. On the other hand, EWC group training on specific subjects will offer fantastic opportunities for getting everybody up to speed and strengthening the cohesion of the EWC as a team. For this reason, many EWCs prefer to organise at least one or two joint training days a year. Proper planning is crucial to keep control over limited resources and ensure that both individual and group training needs are well aligned.

The most relevant criterion for choosing a subject for training must be whether the training supports the more effective and efficient conduct of EWC members. Subjects, trainers and training methodologies should allow the participants to make the most of information and consultation with management. Sometimes, only the next EWC meeting(s) will show whether the training has served its purpose, and whether the lessons learned are put into practice. Finally, it must be acknowledged that training is not a matter of entertainment. Although the learning environment should always allow for a positive and inspiring atmosphere, no training whatsoever will have a positive outcome without the participants' willingness to learn, to reflect on their experience and sometimes even to modify their attitudes and familiar habits.



Team building activity at an EWC training course

The following list of topics is not exclusive but represents those training programmes that are commonly considered to be most useful and relevant for active EWC membership:

LEGAL BACKGROUND AND EUROPEAN LABOUR LAW

Employee representatives need to understand their rights and obligations properly. This includes learning about EWC law, the EWC Agreement and other EU legislation relevant for employees and their representatives. Many companies also run training courses on the differences and similarities between works councils and/or trade unions in the different EU countries.

UNDERSTANDING FINANCIAL AND ECONOMIC DATA

Managers are used to dealing with terms such as “EBIT”, “cashflow” or “CapEx” every day. Without basic financial knowledge, EWC members will have a hard time at a plenary meeting. The aim of financial training is to learn about the way a company is managed and how it reports back to the market. Understanding business language and the concepts behind it will pave the way for engaging management in meaningful dialogue.

CROSS-CULTURAL COMMUNICATION

It does not take long for new members to realise how differently colleagues from other countries behave at meetings and beyond. Cross-cultural training serves as an eye-opener to understand the behavioural patterns and underlying concepts of the different European cultures. Cultural awareness enables EWC members to reflect on and overcome their misperceptions and prejudices.

SUBJECT-RELATED TRAINING

Whenever the EWC wishes to dive deeply into a matter of interest from the employee’s perspective, training can be devoted to those subjects. Training may help to increase the knowledge base of all members and to enable the EWC to approach the management with ideas and proposals proactively. Theme-based training can be health and safety, digitisation, temporary and agency work or equal opportunities, for example.

MEETING SKILLS AND PRESENTATION TECHNIQUES

Good and successful EWC members are great communicators. At EWC training sessions, members can learn how to persuade colleagues and management. Such training can also raise self-confidence when it comes to talking in front of a larger audience by overcoming stage fright or resolving complex issues in meetings with management in a constructive manner.

TEAM BUILDING

Without a strong team spirit, any EWC will fail. The aim of “speaking with one voice” can be achieved if members learn to reconcile their individual objectives and the interests of the EWC as a whole. By its nature, team building will form an element of any EWC group training event, but dedicated team training with specific training tools and techniques will help speed up the team development cycle, particularly in the early days of a new EWC. It can also be applied – if necessary – to restore trust and unity within an EWC challenged by infighting and rivalry.

EWC members should always feel encouraged to watch out for new training opportunities and to notify the EWC of their training needs. Proposals for suitable topics and programmes for EWC group training are also welcomed. For individual training at the local level, seminars and courses are offered by trade union organisations in some countries. The European Trade Union Institute

(ETUI) also organises open courses for EWC members. The number of independent providers of dedicated EWC training is rather limited. Members interested should always seek guidance from the EWC Office before raising a formal training request to management.

PROTECTION

No employee should be afraid to join the EWC and speak his/her mind at meetings. European legislation makes it clear that members are protected against any form of discrimination due to their EWC membership. When the EWC Directive was transposed into national law, all EU Member States were obliged to establish rules of protection for EWC members in their countries. In compliance with these provisions, most Member States regulated that EWC members enjoy the same level of protection as members of local representative bodies such as local works councils or trade unions as a matter of principle. It is one of the shortcomings of the Directive that it only points to the local laws but does not guarantee equal rights to protection across Europe.

The approach chosen has perpetuated the disparity of employee rights in Europe with the result that members of the same EWC fall under heterogeneous protection standards. Thus, EWC members from countries with strong labour laws have little cause for concern, but regrettably, the situation looks less rosy for colleagues from countries where workers' rights are rather basic or where the legal enforcement of given rights can create major obstacles.

Be brave and
speak your mind!
Portuguese
representative at
the Deutsche
Post DHL EWC



Mindful of the above disparity, the protection of EWC members has been a matter of priority for Deutsche Bahn and Deutsche Post DHL during the negotiations of the EWC agreements. Both agreements underline the principle that members are to be neither favoured nor discriminated due to their office. Central Management and the employee representatives agreed to put in place a monitoring system in which each potential dismissal of a member automatically becomes a European agenda topic and no final action can be imposed on an EWC member or deputy before the EWC has been involved.

At Deutsche Post DHL, the protection mechanism has been triggered various times over the years, and on each occasion the Select Committee has undertaken an in-depth analysis of the specific circumstances. In fairness, investigations have never found merit in the assumption that a planned dismissal was caused by certain behaviour related to the EWC mandate. Most investigations concluded that the EWC member was affected by a change of business or restructuring measures like other colleagues in that country. A few incidents were drawn to the attention of the EWC where a member became subject to a disciplinary procedure due to his local mandate as employee representative. Although formally outside the remit of the EWC, Central Management concurred in those cases with the EWC opinion that allegations against EWC members were either unfounded or the

disciplinary procedure was not conducted in compliance with the company rules. In consequence, the EWC members concerned were fully reinstated.

It must be emphasised that examples like the above cases are rare. They should not give rise to the perception that companies such as Deutsche Bahn or Deutsche Post DHL would tolerate any discrimination of employees due to their EWC membership. On the contrary, Central Management has always been supportive in the matter and promoted awareness within the local management communities concerning the legal status of the EWC members. This can look very different in other companies and industries (see box).

As explained above, there are rules and procedures in place to ensure that no EWC member needs to be afraid, and the EWCs will do their utmost to defend their members. On the other hand, protection has its limits: in principle, if a warehouse shuts down or admin functions get offshored to a Shared Services Centre, no EWC member impacted by the measure will enjoy privileged treatment. In other words, an EWC member may be terminated (unless local law provides for further extended protection) for business reasons or individual matters unrelated to the EWC membership.

Other companies – other customs

Miroslav was a young financial controller working for an US multinational in a Shared Services Centre in Eastern Europe. He was one of the most vocal members of his EWC, and his mates admired him for never being afraid to speak his mind. Inspired by the EWC, Miroslav even started to collect signatures to launch a local works council. National management pushed very hard for alternative candidates when the time came for EWC elections, but Miroslav won the race by a large margin. The following day, he was called into the office because of a disciplinary procedure. Two supervisors had testified that

Miroslav had disturbed their teams by introducing himself as an EWC candidate. Miroslav was given just fifteen minutes' time to prove his innocence in writing and was terminated the following day for reasons of gross misconduct. Initially, he was determined to stand up for his rights in court, but in his country legal proceedings can be lengthy and the results unpredictable. At home he had a young family to feed. After two weeks of severe emotional ups and downs, Miroslav decided to swallow his anger and leave the company on a three-month severance package.

The following recommendations should be followed by colleagues who are preoccupied about their protection or even becoming subject to a disciplinary procedure:

INFORM THE EWC OFFICE

The earlier the EWC is notified on the matter, the sooner it can provide the colleague with guidance or launch preventive measures. Even if mistakes have been made by the EWC member and management allegations bear some weight, there is no reason to shy away from disclosing the case to the EWC Office. The EWC Office will always treat the matter with great sensitivity and also confidentially, unless the individual concerned agrees on the case being communicated to a wider circle.

GATHER THE FACTS

A disciplinary procedure or even dismissal quite often marks the final stage of issues which have simmering for quite some time. It has proved beneficial to record behaviours, incidents or statements from an early date which could be relevant for a future investigation. The more factual those records are, the easier it will be to subsequently reconstruct what really happened.

SEEK LEGAL ADVICE

As national laws differ, each case must be looked at against the legal background of the respective country. Unionized EWC members enjoy the great benefit that trade unions generally offer legal counsel to their membership free of charge. It can be beneficial to join a union for the guaranteed protection and support it provides. Independent lawyers will be more costly. The early involvement of legal advisors may help to avoid procedural mistakes and will point to the way out of the spiral of sanctions and escalation.

CALM DOWN

Colleagues who feel disadvantaged at work or are even being accused of misconduct will undergo highly emotive times. Unfair treatment at work may cause disappointment, frustration and anger. Good friends, family members and colleagues are important to provide comfort and advice so that the individual can stay level-headed. They will also help to protect the individual from succumbing to the temptation of counterattacks and further escalation in a state of self-defence.

REQUEST WITNESS STATEMENTS

In the case of alleged unfair treatment or a disciplinary procedure, it will all boil down to the question of whether there is sufficient proof that the allegations are well-founded. Complaints tending to be built on rumours or assumptions are likely to be dismissed unless proper documentation or testimonials provide evidence on the facts. If possible, it would be beneficial to nominate colleagues or other individuals who have witnessed forms of detrimental behaviour or can rebut the presumptions of the employer.

PREPARE FOR MEETING

At a certain stage of a dismissal or a disciplinary procedure there will be an official hearing to investigate the case and – if appropriate – to take a decision. Procedures and timelines for such hearings will vary from country to country. Under most local legislation it is permissible for the individual to be accompanied by a person of trust who can be either a trade union official, a works council member or a colleague in a supportive role. It is highly recommended that EWC members never attend disciplinary hearings alone.

IF IN DOUBT, DO NOT SIGN DOCUMENTS

Before signing any document presented by the employer, it is advisable to first fully understand the content and the possible implications of one's signature. Like any employees, EWC members should beware of providing their signatures under duress. Whether it concerns the record of a hearing, a witness statement or the admission of guilt, it must always be anticipated that the signed document may work against the individual at a later date. It should also be reflected that dispute settlements or severance agreements normally prevent the parties from further escalation or litigation and will also impose tight confidentiality on the individual concerned. If in doubt, employees should always hesitate to sign preprepared documents and ask for a reasonable reflection period.

Any form of discrimination against a single EWC is likely to become an acid test for the strength and cohesion of the entire EWC. The joint reaction will prove whether the EWC is just a group of isolated individuals or whether the members stand together as a team. "You'll never

walk alone" must be the motto whenever members of the team are targeted. Demonstrating empathy and support to a colleague under fire will be the noblest task of all EWC members.

EWC CASE LAW

Lawsuits related to EWC matters are rather rare and complicated. Taking a company to court remains the ultimate resort of dispute settlement. In a mature relationship EWC and management acknowledge their reciprocal rights and would always make it a priority to resolve contentious issues amicably. This approach works better, the more checks and balances are clearly defined and recognised as legally binding.

In the early years of the Directive, many EWC agreements were construed as non-binding agreements without any enforcement rights. Meanwhile significant violations of a valid EWC agreement can be submitted to the competent courts for formal resolution. In principle, any collective rights of an EWC (such as the right to hold meetings or the right to information and consultation) are subject to the jurisdiction of the country where the company is registered. Legal disputes related to the EWC of Deutsche Bahn, for example, would fall under the jurisdiction of the Berlin labour court, whereas the labour court in Bonn would have jurisdiction for legal complaints affecting the operations of the Deutsche Post DHL EWC. Individual matters of EWC members, however, will remain in the jurisdiction of the domestic

labour court of the country where the EWC member is employed. Such individual matters can include disputes concerning the election process, individual training, protection or communication rights.

Litigation always concerns specific isolated cases and it can be imprudent to take court decisions out of perspective. Nevertheless, some EWC decisions have attracted major public attention outside the legal and academic world, as they have helped to clear up some of the fog surrounding the intentions of the European legislator. The following examples represent a non-exclusive list of some of the most important EWC-related questions which have been addressed to labour courts in the past:

Do non-EU companies have to create a EWC?

German billionaire Michael Kühne has made no bones about his view of works councils and trade unions. When, in 1976, German labour law permitted employee representatives and trade unions to sit with shareholders on the supervisory board, Kühne emigrated from Germany and transferred the Kuehne+Nagel headquarters to Swiss law. But was Switzerland also a safe harbour against European Works Councils? Located outside the European Union, Kuehne thought so, and persistently ignored employee requests to provide the necessary information to establish an EWC. As the largest business inside EU territory, the German Kuehne+Nagel subsidiary apologised to the German court, claiming that they

had no leverage to obtain the required information from their European sister companies. When it was escalated to the European Court of Justice, the European judges demonstrated no sense of humour and ordered German management to sue their sister companies in Europe for cooperation. After a series of subsequent court cases, corporate management gave up their resistance and an EWC was created in 2012 – some 16 years after the initial request for an EWC had been made. The Kuehne+Nagel case motivated the European Union to specify in the EWC recast Directive of 2009 the responsibilities of any large non-EU company to identify a “Representative Agent” inside the EU for the purpose of EWC matters.

Can local issues be “transnational”?

In early February 1996, the French car manufacturer Renault announced – completely unexpectedly – the closure of its Belgian production plant in Vilvoorde near Brussels by July of the same year. As a result, more than 3,000 Renault employees and an estimated 1,500 employees in direct supply companies were informed that they would lose their jobs. There was strong consensus in Belgian society that this decision had ignored all legal rules and procedures concerning factory closures. The Belgian and Flemish governments strongly condemned the shut-down and took the company to court for violation of the OECD code of conduct. Large firms decided

not to replace older vehicles with Renaults and some citizens even decorated their cars with signs saying: “This is my last Renault”. Various court rulings found Renault in breach of domestic and European law. From an EWC perspective, the most relevant ruling was issued by the French labour court in Nanterre. The court confirmed the EWC position that the company had violated the information and consultation rights of the EWC. The judgment clarified that a decision in one country (France) affecting employees in another country (Belgium) had a transnational dimension and that the EWC would have been entitled to be involved.

Does EWC information replace local consultation?

Job losses are doubly insulting if employers don’t have the decency to inform staff of redundancies. The term “cornflake redundancies” is used where employees hear of job losses on the radio or television over breakfast. The UK retail chain Marks & Spencer convened a confidential meeting of their EWC in London to announce the closures of all their department stores in continental Europe. Management refused any further dialogue

with local works councils or unions on the grounds that the EWC had already been notified. A French court fined Marks & Spencer for breaking the law through the lack of consultation with its workers, who were effectively sacked by email. The ruling confirmed that in a case of restructuring, management will always have the dual obligation to inform and consult the EWC at European and national levels.



British Airways
EWC members
after seeing
their legal rights
confirmed by
the labour court

Is outsourcing a subject for European consultation?

It has been a long time since travellers queued up at a travel agency to book their flights. Technological innovation has posed a permanent challenge to the aviation industry over the past twenty years. With the market liberalisation and the arrival of low-cost carriers, the entire business model has changed tremendously. The UK flagship carrier British Airways responded to the challenges with massive cost cutting measures, including redundancies and outsourcing. It was primarily the ground handling services in Continental Europe that were transferred to dodgy low-cost operators. Every time another airport was outsourced, the EWC called for information and consultation, but management labelled each project in isolation as a “purely local” matter. The

term “salami tactic” was often used by the EWC members to articulate their frustration. When the outsourcing of the Vienna airport was announced in 2006, the EWC saw no alternative but to beg for justice at the Brussels labour court where the EWC Agreement was registered. Luckily, the EWC was in a position to present a copy of a PowerPoint presentation to the judge which revealed a pan-European outsourcing strategy which had been thoroughly planned by Central Management. The court did not hesitate to threaten to impose a persuasive fine on British Airways if the company did not begin to inform and consult the EWC within 24 hours of the court decision.

What is confidential?

Controversial views on the whole complex of confidentiality have been a constant issue in the lifecycle of most EWCs since they first began. Is the classification of information as confidential a management prerogative or are there certain criteria to be applied? This was one of the questions submitted by the EWC of the US-based IT company Oracle to the UK Central Arbitration Committee (CAC), which is the competent legal body for EWC agreements signed under British law. In a brief telephone conference call in 2017, Central Management had informed the EWC of the transfer of customer service activities from various European countries to a Shared Services Centre in Romania, leading to 384 job losses. The EWC was made aware that data shared with the EWC was strictly confidential and that sharing or discussing any information contained in it with anyone internal or external was strictly prohibited. Any violations of this would, according to Central Management, result in immediate disciplinary action. Contrary to this statement by the employer, the CAC came to the conclusion that it was not reasonable for management to impose a blanket, unlimited confidentiality obligation on the EWC.

ACRONYMS

(EWC + key business terms)

Slang, jargon, abbreviations and acronyms are becoming increasingly prevalent in business today. The following list represents some of the most frequently used terms. If necessary, EWC members should not hesitate to ask speakers (and colleagues) for clarification.

AER	Annual Equivalent Rate	DP	Deutsche Post
AGM	Annual General Meeting	DPDHL	Deutsche Post DHL Group
AOB	Any Other Business	DGFF	DHL Global Forwarding Freight (DPDHL)
APAC	Asia-Pacific (region)	DSC	DHL Supply Chain (DPDHL)
ARD	Acquired Rights Directive	EAT	1. European Air Transport (DPDHL airline); 2. Employee Appeal Tribunal (UK)
B2B	Business to Business	EBIT	Earnings before interest and taxes
B2C	Business to Consumer	EBITDA	Earnings before interest, taxes, depreciation and amortisation
BC	Business Committee	ECJ	European Court of Justice
BU	Business Unit	eCS	E-Commerce Solutions (Deutsche Post DHL)
CAGR	Compound Annual Growth Rate	EEA	European Economic Area
CAPEX	Capital Expenditure	EMEA	Europe, Middle East and Africa
CHRO	Corporate Human Resources Officer	EMF	European Management Forum (DPDHL)
CEE	Central and Eastern Europe	EOS	Employee Opinion Survey
CEO	Chief Executive Officer	EPS	Earnings Per Share
CFO	Chief Financial Officer	ER	Employee Relations
CIS	Certified International Specialist (DPDHL)	E-Share	(Database)
CL	Contract Logistics	ETF	European Transport Workers' Federation
CLA	Collective Labour Agreement	FAR	Fatal Accident Rate
COGS	Costs Of Goods Sold	FTE	Full-Time Equivalent
COO	Chief Operation Officer	FY	1. Fiscal year; 2. Financial year
CRL	Confidential Reporting Line		
CSR	Corporate Social Responsibility		
DB	Deutsche Bahn		

FYI	For your information	MC	Management Committee
GBR	“Gesamt-Betriebsrat” (German company works council)	MD	Managing Director
GDPR	General Data Protection Regulation	N/A	1. Not Applicable; 2. Not Available
GBS	Global Business Services	NDA	Non-Disclosure Agreement
GP	Gross Profit	NN	Latin: Nomen Nominandum (to be nominated)
H1	First Half (financial or calendar year)	OECD	Organisation for Economic Co-operation and Development
HC	Headcount	OHS	Occupational Health and Safety
HQ	Headquarters	OOO	Out Of Office
HR	Human Resources	PC	Presiding Committee
IFRS	International Financial Reporting Standard	P&L	Profit and Loss (Statement)
IPO	Initial Public Offering	P&P (DPDHL)	Post and Parcel
JV	Joint Venture	Q1	1 st Quarter (of the year)
K	Thousand (in combination with figure) e.g. 10K = ten thousand	QSHE	Quality, Safety, Health and Environment
KBR	“Konzern-Betriebsrat” (German Group Works Council)	ROI	Return On Investment
KPI	Key Performance Indicator	SC	1. Select Committee; 2. Supply Chain
LTIP	Long-Term Incentive Plan	SGI (DB)	Schenker Global Interface
LTIFR	Lost Time Injury Frequency Rate	SSC	Shared Services Centre
LTIR	Lost Time Injury Rate	SFF (DPDHL)	Safety First Framework
LT	Leadership Team	SMT	Senior Management Team
LWC	Local Works Council	SNB	Special Negotiating Body
LY	Last Year	SSA	Sub-Saharan Africa
M&A	Mergers and Acquisitions		

T&Cs	Terms and Conditions
TBD	1. To Be Determined; 2. To Be Decided
TEC	Top Executive Committee
TEU	Twenty-Foot Equivalent Unit (Container)
TU	Trade Union
TUPE	Transfer of Undertakings and Protection of Employees
TWA	Temporary Work Agency
UIC	International Union of Railways v
UKI	United Kingdom and Ireland
UNI	(formerly) Union Network international (now: UNI Global Union)
VAT	Value Added Tax
ViCo	Video Conference
VLV	Versus Last Year
VP	Vice President
WG	Working Group
WMS	Warehouse Management System
YOY	Year Over Year
YTD	Year To Date
ZRWD (DB)	Central Regulation Database (Zentralregelwerksdatenbank)

