

Avaya	<b>European Works Council</b>	File number 17
	Company Agreement on the continuation of the European Works Council between the management of Avaya GmbH & Co. KG as deemed to be the Central Management in the meaning of § 1 (3) in connection with § 2 (2) of the European Works Council Act (EWCA) of the Avaya Company Group (also referred to in the following as “Avaya”) and the European Works Council of 28 June 2007	Page 1/13
Date when Agreement goes into effect: 1 <sup>st</sup> July 2007		

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**Recitals:**

On the basis of Directives 94/45/EC of the Council of 22<sup>nd</sup> February 1994 and 97/74/EC of the Council of 15<sup>th</sup> December 1997 regarding the implementation of a European Works Council (referred to in the following as EWC for short) and taking into account the national transposition act, the European Works Councils Act in the version of 21<sup>st</sup> December 2000 (referred to in the following as the EWCA) and the pan-European activities of Avaya, the parties concluding the Agreement herewith agree that a European Works Council (EWC) shall be formed as an information and consultation body for all of the employees in the companies in the European Union and the European Economic Area (EEA).

Based on the Company Agreement “European Works Council” of 4<sup>th</sup> June 2004, which is replaced by this Company Agreement, the Central Management and the EWC have agreed on the following rights and obligations of the EWC. Both sides intend to foster cooperation between the Central Management, lower tiers of management and the European employee representatives and engage in a constructive dialogue to deal with economic, social and environmental challenges at the European level through this Agreement.

The pan-European cooperation should take place both to the benefit of the employees as well as the AVAYA Company Group in the course of creating a united Europe within the borders of the European Union. This Agreement should make possible an international exchange of information and opinion on a sustained basis. If details are not specified for its procedure, such shall be set out on a case-by-case basis in a spirit of trustworthy cooperation.

**§ 1 Scope**

1. The Agreement shall apply to all employees in the AVAYA Company Group within the European Union and the EEA states and shall cover the plants, branch offices, business offices and enterprises located there. Future expansions of the activities of the Avaya company group to additional countries of the European Union shall accordingly be taken into account and the Central Management shall inform the EWC on such expansions on an ongoing basis.
2. Plants/companies which are to be assigned to the Avaya company group shall be deemed to be those companies upon which Avaya can exercise a controlling influence. The imputation rules set out in Art. 3, section 2 of the EU Directive of 22<sup>nd</sup> September 1994 shall apply in determining the ability to exercise a dominant influence.
3. The list of plants/countries (**Annex 1**) located in territory falling under the scope of the Agreement shall be updated once each year on 30<sup>th</sup> October. The composition of the EWC at the next meeting shall be determined in accordance with the stipulations of § 3 on this basis.

## § 2 Cooperation

1. The EWC of Avaya is an autonomous institution of the interest representatives of the employees in those countries which fall under the scope of this Agreement.
2. The Central Management of Avaya and the EWC shall cooperate in a constructive dialogue with the will and intent of achieving understanding and with mutual respect for their respective rights and mutual obligations. Communication shall generally take place through the Business Committee and the contacts for the EWC determined by the Central Management. The Central Management shall notify the EWC of the respective contacts in writing and whenever changes are made in such.
3. The Central Management of Avaya shall act to ensure that all agreements which are coordinated with the EWC are also carried out. This shall in particular apply to dependent enterprises and plants belonging to such.

## § 3 Composition

1. The EWC shall be formed at the level of the Central Management.
2. Members may only be company employees who are employee representatives at the point in time of their appointment unless there is no works council or comparable institution provided for under national law at the plant. Executive staff in the meaning of § 5 of the Industrial Relations Act (BetrVG) or comparable national arrangements and/or employees with comparable functions holding responsibility for staff or commercial power of attorney (*Prokura*) may not be members of the EWC.
3. The procedure for appointing national representatives and their replacement members to the EWC shall be governed by respective national law while taking into account the restriction set out in § 3 (2). The Central Management of Avaya may not appoint any members.

4. The composition of the European Works Council shall generally be based on § 22 of the EWCA. The EWC and Central Management agree, however, that a claim to the appointment of an own employee representative shall only come about when at least 20 employees are employed in the respective country. Countries which do not have the required number of employees may be represented by the employee representatives of other countries or the Business Committee. At the same time, these employees shall be free to select the country which is to represent them in the EWC. The Central Management and the EWC may agree upon a distribution of seats deviating herefrom at any time.
5. The number of representatives from the individual countries determined on the basis of the aforementioned principles emanates from **Annex 2**.
6. The Central Management shall be notified of the composition of the EWC without undue delay after the conclusion of this Agreement. This shall also apply to changes in the composition during the term of the Agreement, in particular as a result of adjustments in accordance with § 1, no. 3.

#### **§ 4 Term of office**

1. Membership in the EWC shall end four years after the election or appointment of the member. The appointment of the new member shall be carried out in accordance with § 3.
2. The members of the EWC may be dismissed in accordance with the rules relating to their election or appointment by those employee representatives who appointed them to the EWC. If a member of the EWC loses his or her seat by dismissal or leaving Avaya or due to the end of his or her term of office as stated in section 1, this seat shall be occupied by an elected substitute member or by new election if there is no substitute member from the member country from which the member who has lost his or her seat has been appointed.

#### **§ 5 Information and consultation**

1. The EWC is responsible for matters as set out in § 32 and § 33 of the EWCA which involve at least two plants or two enterprises in different member countries if nothing to the contrary is set out in the following.
2. Information and notification of the EWC must take place in such good time so as to allow the opinion of the EWC to be taken into account in the decision rendered by Avaya. The parties shall do their utmost to have information and consultation take place at the same time at the local level and the level of the EWC.
3. The Central Management of Avaya shall inform the EWC on the basis of the documents required pursuant hereto. These documents must be sent to the EWC in writing or in text form (including facsimile, computer fax and e-mail) including the translated versions at least two weeks before the consultation.

4. Written information shall be provided in German, English, French, Italian, Dutch and Spanish. If need be the written information shall also be translated into other national languages.

#### **§ 5.1 Regular information and consultation in accordance with § 32 of the EWCA**

1. Information and consultation relate to trends in the business situation and prospects for the Avaya company group and the company strategies broken down by countries, enterprises and business fields as set out in § 32 of the EWCA. The probable impact of trends and strategies on employment must be presented separately. The trends in the business situation and prospects shall in particular include the following:
  - The structure of the enterprise or company group and the economic and financial situation
  - The probable trends in the business, production and sales situation;
  - The employment situation and its probable development;
  - Investment (investment programme);
  - Basic changes in the organisation;
  - The launch of new work and manufacturing procedures;
  - The relocation of enterprises, plants or important parts of plants and relocations of production
  - Mergers or split-off of enterprises or plants;
  - The downsizing or closure of enterprises or important parts of plants;
  - Mass redundancies;
  - Continuing training

The definition of the legal notion of mass redundancies under this Company Agreement shall be based on EU Directive 98/56 (mass redundancies) in connection with the pertinent national laws of the respective enterprises / plants.

2. The Central Management shall inform the EWC in writing on a quarterly basis outside the regular meeting following the publication of the respective quarterly financial statements of Avaya Inc. with respect to the following topics:
  - Financial data in the format set out in **Annex 3** in the national languages stated in § 6, no. 10
  - Numbers of employees in the format set out in **Annex 4**
  - Fundamental changes planned and executed in the organisation

In addition, the Central Management shall inform the EWC as to planned measures aimed at shedding staff which affect a number of employees which is deemed to constitute mass redundancies under the national legislation of the country affected as well as closures of plants even if only one country is affected by such. The consultation right in this respect shall be reserved, however, for national institutions in charge.

#### **§ 5.2 Information and consultation in the event of unusual circumstances in accordance with § 33 of the EWCA**

1. If unusual circumstances come about which have a significant impact on the interests of employees, the Central Management shall notify the European Works Council without request in due time and provide the required documents pursuant hereto. The following shall in particular be deemed to constitute unusual circumstances:
  1. the sale, the relocation or the closure of companies, plants or important parts of plants and the sale of important business shareholdings,
  2. Mass redundancies
2. The European Works Council shall be consulted with regarding such measures upon request. Generally this right shall be exercised by the Business Committee of the EWC. If countries or locations which are not directly involved in the Business Committee are affected by the extraordinary circumstances, the national EWC representative from the affected country may take part in the extraordinary meeting. If no national EWC representatives are appointed in the country affected, the employees of the country affected may appoint a representative of their choice.
3. The meeting for the purpose of consultation and information shall take place in due time prior to the commencement of the measure. The meeting shall take place no later than within 14 days after the EWC has been informed. The written information must be provided in the respective national language of the member of the Business Committee. If a country is represented which is not covered by the languages, the information shall also be translated into the national language of the country affected.

## **§ 6 Meetings**

1. Dates, locations and lengths of meetings shall be determined by the Chairperson of the EWC or the Business Committee in consultation with the Central Management. Generally all meetings shall take place at the central headquarters of Avaya. Exceptions may be agreed upon with the Central Management if for example the topics to be addressed at the meeting require such. The meetings shall not be public.
2. The EWC shall meet once a year for a regular meeting with the Central Management of Avaya for the purpose of information and consultation in the meaning of § 27 and § 32 of the EWCA in accordance with § 5.1.
3. In addition to the regular meeting, a virtual meeting shall take place once a year in the form of a meeting-exchange conference in which the Central Management reports on current topics for the purpose of information and consultation and members of the EWC will have the opportunity to ask questions. Topics and questions shall be coordinated by the Business Committee and the Central Management in due time before the virtual meeting. The management shall create the preconditions required for such meeting including simultaneous interpreting.
4. Extraordinary meetings shall be conducted in accordance with the stipulations of § 5.2 of this Agreement if extraordinary circumstances come about in the meaning of § 33 of the EWCA.
5. The length of the regular and extraordinary meetings including possible internal pre-meetings and debriefings shall depend upon needs, but shall be a maximum of 2 days

per meeting.

6. Travel to and from the meeting shall take place in accordance with needs. It shall be endeavoured to economise as much as possible.
7. The Central Management shall act to ensure that representatives receive time off to attend meetings.
8. All meetings of the EWC or Business Committee, including the pre-meetings and debriefings shall be interpreted simultaneously into German, English, French, Italian, Dutch and Spanish. If need be simultaneous interpreting shall also be provided into other languages. The need for interpreters shall be notified to the Central Management in due time before the meetings.
9. Minutes shall be kept of the meeting of the EWC with the Central Management by the management. This must generally be provided no later than three weeks after the meeting in German. Any changes or amendments of the minutes shall be mutually agreed upon by the Central Management and the EWC. The minutes of the joint meeting shall be signed by both sides. Minutes of internal meetings or internal parts of meetings shall be kept by the EWC.
10. The mutually agreed-upon minutes of the joint meeting shall be translated into English, French, Dutch and Spanish without undue delay and submitted to the EWC. Minutes of internal meetings of the EWC shall also be translated. If need be the minutes shall also be translated into other national languages.

## **§ 7 Cooperation within the EWC**

1. The EWC may make use of experts in its work. The enterprise shall bear the costs accruing in connection herewith in accordance with § 29, § 30 of the EWCA. These experts shall be entitled to take part in all meetings of the EWC and the Business Committee. It shall be allowed to use trade union staff as experts.
2. The EWC shall elect a chairperson and a first and second deputy chairperson. The EWC shall be entitled to issue rules of procedure. The EWC shall form a Business Committee in accordance with § 26 of the EWCA. If the Business Committee takes action instead of the EWC body, it shall have the same rights and obligations of the EWC vis-à-vis the Central Management.
3. The EWC shall be entitled to work together with all of the trade unions represented in plants in the respective countries.
4. To perform its tasks, the members of the EWC and the experts of the EWC shall receive access to all the plants of Avaya following prior notification.

In sensitive areas this must be agreed upon with the Central Management on a case-by-case basis and access may in particular be refused if urgent security needs or process technology requirements warrant this.

5. The EWC office shall be established in the plant in which the respective EWC chairperson is employed.
6. The members of the EWC shall report in their home countries in a suitable and at the same time inexpensive manner on the activities of the EWC - if possible within the framework of regular company meetings. If such meetings are not provided for under national law or are not carried out, all of the employees in the respective country shall be informed in writing or in other ways commonly used in the plant. In addition the EWC shall have an Intranet site made available for publication and a service e-mail mailbox.

## **§ 8 Costs**

1. The Central Management of Avaya shall act to ensure that the costs relating to the resources which the EWC requires to perform its tasks in a reasonable manner are assumed by the Central Management. An office must not necessarily be established, however.
2. The Central Management shall in particular bear the costs accruing within the framework of the staging of meetings including the interpreting costs, translation costs and the overnight stay and travel costs in accordance with the respectively applicable national travel cost guidelines of the Avaya Company Group for the members of the EWC, the Business Committee and the experts. The Central Management may delegate the assumption of costs to national or regional managements but shall act to ensure that costs are reimbursed.
3. The Central Management shall furthermore bear the costs of the ongoing conduct of the business of the EWC and shall make the material resources available as required pursuant hereto, in particular the resources required for secretaries' work.

## **§ 9 Protection of the members of the EWC**

1. The members of the EWC may not be impeded in their activities. They shall not be placed at a disadvantage or incur any disadvantages as a result of their membership in the EWC. This shall also apply to their career opportunities and development.
2. The members of the EWC may only be dismissed from their jobs during their period of office or one year following such if the prerequisites for extraordinary termination of employment under respectively applicable national law have been met.
3. The members of the EWC shall receive the leave they require for their EWC work. Any contingents of time off they have received shall not be affected by this.
4. If necessary, additional insurance policies shall be taken out for the members of the EWC in order to cover the risk of material loss or personal injury during their EWC activities.

## **§ 10 Non-disclosure obligation**

1. The members and replacement members of the EWC shall be obligated in accordance with the stipulations of § 39 of the EWCA to refrain from disclosing and using company and business secrets which they become aware of as a result of their membership in this institution and which is expressly labelled as confidential by the Central Management. This shall also apply after members leave the European Works Council. Experts and interpreters who are used by the EWC shall be obligated in the same manner to maintain confidentiality. There is no non-disclosure obligation within the European Works Council. The reasons for designating confidentiality shall be provided upon request.
2. The non-disclosure obligation shall not apply towards company employee representatives who are themselves obligated to maintain confidentiality under governing law in their respective countries or towards employee representatives on the Supervisory Board. This may not be used towards all the lower levels of employee representatives in the Avaya company group before a date which might be named by the Central Management.

### **§ 11 Application of national laws and regulations**

This Agreement shall not affect the rights of employees and their representatives to information and consultation under respective national laws and regulations or any other rights of employees and their representatives unless such would be improved by this Agreement.

### **§ 12 Partial invalidity clause**

If one or more of the provisions of this Agreement are or become invalid, this shall not affect the validity of the remaining provisions. The parties to the Agreement shall in such case be obligated to replace the invalid provision with a stipulation which comes as close as possible to the economic and legal meaning of the invalid provision.

### **§ 13 Expanded writing form clause**

1. No additional agreements, in particular of a non-written type, have been made.
2. With the exception of the date and the signature, this Agreement and all of its annexes do not contain any handwritten comments, additions, deletions, etc..
3. The Agreement together with all of its annexes may only be changed in writing. Such amendments must be countersigned by both parties. The same shall apply to the aforementioned writing requirement.

### **§ 14 Disputes, application of German law, agreement on legal venue**

1. The parties to the Agreement agree that the legal value for all disputes which arise in connection with all the rights and obligations set out in this Agreement or the EWCA

shall be the court having jurisdiction over the site of the Central Management in Germany, currently Frankfurt am Main. Excepted from this shall be all matters affecting the EWC members in their capacity as national employee representatives or as employees and which have an impact on their employment.

2. The Agreement and its annexes shall be governed by German law. Solely the original German wording shall apply in the interpretation of the Agreement.

## **§ 15 Changes to the Agreement**

In the event of changes in the structure of Avaya or the number of plants/companies, negotiations shall commence with the EWC to adjust this Agreement accordingly. The EWC may delegate these negotiations to the Business Committee or a negotiating group formed by it.

## **§ 16 Term of the Agreement**

1. This Agreement may only be terminated after 31<sup>st</sup> December 2008 subject to a six-month period of notice prior to the end of a calendar year.
2. In the event that the Agreement is terminated, the EWC and the Central Management shall commence negotiations to produce an agreement within one year after the notice of termination is received. This Agreement shall continue to apply during the negotiations. If the negotiations do not lead to the conclusion of a new Agreement before the expiry of one year, the EWC shall be instituted by force of law (§ 22 - § 37 of the EWCA) without a renewed procedure with a special negotiating body (§ 8 - § 18 of the EWCA) being required.

Frankfurt/Main, 28<sup>th</sup> June 2007

EWC Avaya  
Management)

Avaya GmbH & Co. KG (Central

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Norbert Kettner (Austria)

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(Günther Frei)

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Andrea Tognetti (Italy)

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Thom Matthiessen

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Michael Rösch (Germany)

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Florian Lorenz

## **Agreement between EWC Avaya and the Central Management of Avaya**

The EWC and the Central Management signed a Company Agreement on the Continuation of the European Works Council on 28<sup>th</sup> June 2007 which is to enter into force on 1<sup>st</sup> July 2007. The Agreement is subject to the reservation that the members of the Negotiating Committee of the EWC approve the Agreement.

The Agreement may therefore be revoked in the period up to 31<sup>st</sup> July 2007.

Frankfurt, 28<sup>th</sup> June 2007

Avaya GmbH & Co. KG

European Works Council

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Günther Frei

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Norbert Kettner

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Thom Matthiessen

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Andrea Tognetti

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Florian Lorenz

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Michael Rösch