

IBM European Works Council Agreement

[Amended on 29 October, 2002]

INTRODUCTION

This Agreement is in application of the European Directive 94/45 EC of 22 September 1994, which institutes European-level information and consultation procedures. It is hereafter referred to as the 'Directive'.

IBM is active in the Information Technology industry, an extremely dynamic and rapidly changing industry requiring decisive management of its business and speed of execution of its decisions and actions.

IBM management believes that the success of its business will be improved by employees being involved in matters concerning the company and its workforce. IBM seeks to achieve this through direct communication with its employees and also through dialogue, in a spirit of cooperation, with such employee representatives designated by law for this purpose.

It is in this spirit that management of IBM Europe, Middle East and Africa (EMEA) representing the relevant IBM organizations in Europe and the Special Negotiating Body of employee representatives from countries having implemented the Directive have negotiated the present Agreement on the European-level information and consultation procedure tailored to these needs.

I- AIM OF AGREEMENT

In order to implement the right of employees to information and consultation at European level a European Works Council shall be established. It shall be called the "IBM European Works Council" (EWC).

The EWC shall be competent for information and consultation on specific matters as defined hereafter (Sections VI & VIII) which concern IBM EMEA as a whole or IBM companies or groups of companies in at least two different Member States. According to the subsidiarity principle, the EWC will not involve itself in matters which can be adequately addressed by national or local consultative bodies and/or which concern only one of the countries represented.

II- COVERAGE

This Agreement shall cover IBM companies in all countries having implemented the Directive at the date of signature of this Agreement. Countries implementing the Directive at a later date will be included, once their law for designating representatives is in place and their representative(s) have been designated accordingly.

For more agreements search www.ebr-ewc.net

A list of the companies which are covered by this Agreement is included in the Annex to this Agreement. Each year the EWC will be informed of changes to this list which may result from changes in corporate structure.

This list includes all companies controlled by IBM as follows from the laws applicable to such companies.

If an IBM company acquires control over any new company in one of the Member States during the term of this Agreement, the employees of such company will automatically be covered by this Agreement.

III- MEMBERSHIP

The EWC is composed of the following members : the IBM EMEA management representative and the employee representatives.

IBM Management: The EWC will be chaired by the Vice-President, Human Resources, for IBM EMEA or by his/her appropriate representative. He/she may be assisted in EWC meetings by 3 staff members.

Employee representatives: For each country having implemented the Directive one employee representative may be designated if the law for designating EWC representatives has been enforced. Furthermore, there will be additional EWC members in proportion to the number of employees per country, employed by the IBM companies included in the Annex to this Agreement. These additional seats will be allocated as follows: One seat per country with at least 20% of employees covered by this Agreement, two per country with at least 30% of employees, three per country with at least 40% of employees, four per country with at least 50% of employees, five per country with at least 60% of employees and six additional seats per country with at least 80% of employees.

The process for electing or designating individual employee representatives to the EWC, the duration of their mandate and the procedure for its renewal will be in accordance with national law and practice in each country. All employee representatives to the EWC must be employees of the companies listed in the Annex to this Agreement.

For each employee representative, one substitute from the same country will be designated in accordance with the above mentioned rules. The substitute may only attend a regular or extraordinary EWC meeting to replace the regular EWC member if he/she is unable to attend. In that case, resources allocated to the regular EWC member shall be shared with the substitute employee representative.

In the event of an employee representative leaving IBM or resigning from the EWC, a new representative shall be appointed following the rules outlined above, unless the local law provides for the substitute to replace him.

Votes: Each member of the EWC has one vote. Decisions of the EWC require majority.

IV - SECRETARY AND SELECT COMMITTEE

For more agreements search www.ebr-ewc.net

The EWC shall elect from the employee representatives a Select Committee composed of the Secretary, his/her deputy and four additional members. No country can have more than one member in the Select Committee.

The Select Committee has the right to meet as far as necessary to prepare the regular and extraordinary EWC meetings.

V - EXPERTS

The EWC may be assisted by experts of its choice, in so far as this is necessary for the accomplishment of its tasks. An expert is defined as a natural person possessing recognized professional qualifications appropriate to the mission for which he or she is being retained.

If the participation of an expert in a regular or extraordinary EWC meeting is necessary to perform his or her mission, he or she can be invited to report on the specific item of the agenda for which he or she has been appointed. Experts will not take part in EWC meetings on a permanent basis. Where an expert is invited, he or she must attend in person. No substitute will be admitted.

IBM will bear the expenses of experts up to a maximum of 10,000 Euros per year. An annual budget of 10,000 Euros will, for that purpose, be allocated to the EWC. Unspent budget can be carried-forward by the EWC for the same purpose in the following year(s). A yearly statement of related expenses will be provided by the Secretary to the Chairman and the employee representatives.

VI -REGULAR MEETINGS

The content of the regular meetings will be exchange of views and dialogue on the following issues: the structure of the undertaking or group of undertakings, its economic and financial situation, probable changes in its activities, production and sales, research and development, the current status of and probable changes in employment, investments, substantial changes in organisation, the introduction of new working methods or new production processes, transfers of production and activities, mergers, reduction in size or closure of companies or establishments or major parts of them, collective dismissals, education and protection of health.

The regular meetings will primarily focus on the performance of IBM in Europe and on the trends of the business, including the general lines of major business and human resources strategies. Standard reporting information about human resources and financial data, in line with the current measurement system, will be addressed during the regular meetings.

Within this framework the Chairman and the Secretary will draw up the agenda. Should the Chairman and the Secretary not agree on the contents of the agenda, it is drawn up by the

Chairman. The agenda is sent to the EWC members two weeks before the meeting. Last minute changes to the agenda will be possible.

Furthermore, if any exceptional circumstances requiring information and consultation of the EWC, as defined in section VIII below, arises, IBM may elect, where this is feasible, to discuss this in the regular meetings.

For more agreements search www.ebr-ewc.net

Management representatives, chosen by the Chairman for their expertise, may take part in the meetings to provide appropriate oral or written information.

The EWC may choose to deliver its opinion to IBM management by the end of the meeting. The employee representatives may deliver, through the Secretary, written opinions to IBM management within one week after the meeting at the latest, at which point the consultation process will be complete.

The consultation process will in no way affect management's prerogatives and power to take appropriate decisions at the time required by the business and does therefore not necessarily have to take place before the decision is taken.

VII - NUMBER OF REGULAR MEETINGS

There will be two regular meetings of the EWC per year. The dates of these meetings will be announced by the Chairman with at least 3 months notice.

According to the IBM reporting cycle, the first regular meeting will normally be held at the end of the first quarter and the second at the beginning of the fourth quarter of each year.

VIII - EXTRAORDINARY MEETINGS

If any of the following exceptional situations arises :

1. Transfer of activities and related jobs across borders,
2. Transfer of Manufacturing production across borders,
3. Transfer of undertaking out of IBM,
4. Closure or reduction in size of establishments,
5. Collective dismissals,

having grave implications for the employment of a total of more than 500 employees and of more than 100 employees (or more than 20% of the total country IBM population whichever is lower) in each of at least two countries covered by the Agreement within a period of 12 months, the Chairman will notify the Secretary in writing.

If the Secretary so requests within one week of the notification, the Chairman will arrange for there to be a meeting for the purpose of an exchange of views and dialogue on the circumstances in question.

Within one week after the request from the Secretary, a description of the main lines of the circumstances in question will be circulated by the Chairman to the EWC.

The meeting will take place within two weeks after the request of the Secretary has been received by the Chairman. The participants will be the Chairman, the Select Committee, an appropriate representative designated by the management responsible for the changes under discussion and in addition, the EWC representative(s) from each country significantly affected (i.e. in which arises an exceptional situation having grave implications for the

For more agreements search www.ebr-ewc.net

employment of more than 100 employees or more than 20% of the total country IBM population within a period of 12 months).

The employee representatives may choose to deliver their opinion to IBM management by the end of the meeting. The employee representatives may deliver, through the Secretary, written opinions to IBM management within one week after the meeting at the latest, at which point the consultation process will be complete.

The consultation process will in no way affect management's prerogatives and power to take appropriate decisions at the time required by the business. It will take place before the decision is implemented, unless significant circumstances did not permit to do so.

IBM internal communication tools will be used for the notification, the request and the description of the circumstances.

IX- CONSULTATION

Consultation means an exchange of views and dialogue.

X- MINUTES

The Chairman shall be responsible for preparing the minutes of the regular and extraordinary EWC meetings. The minutes will be jointly agreed by the Chairman and the Secretary and distributed to the EWC members within four weeks after the meeting.

XI - DURATION OF MEETINGS

The duration of the regular meetings will be one day, preceded by a preparatory meeting of the employee representatives which will take place the day before.

The duration of extraordinary meetings will be one day including a preparatory meeting of the employee representatives.

XII - VENUE OF MEETINGS

The EWC meetings will take place in the IBM Education Center in La Hulpe.

IBM may decide to provide another appropriate facility.

XIII- LANGUAGE

English will be the working language of the EWC. All written material produced by IBM will be in English.

Each year, an annual budget, sufficient to provide for the required simultaneous interpretation of meetings and translation of documents, will be negotiated between the Chairman and the Select Committee and allocated to the EWC.

XIV - TIME ALLOCATION

For more agreements search www.ebr-ewc.net

The time spent by the employee representatives taking part in the meetings mentioned in this Agreement and in agreed upon education, including the necessary travel time where applicable, is considered as working time.

In addition, the employee representatives may spend the time they require to fulfill their EWC responsibilities, which will not exceed 120 hours per year for the Secretary, 60 hours per year for the members of the Select Committee and 40 hours per year for the other EWC members.

Employee representatives must give their local management notice of their absence to fulfill their EWC duties in due time.

XV- EDUCATION

IBM agrees to provide English language education to those employee representatives needing it to fulfill their EWC responsibilities, and will advise local management to make the necessary arrangements.

IBM will offer education on IBM specific business matters and the interpreting of economic and financial data.

XVI - DISSEMINATION OF INFORMATION

The employee representatives may communicate the information received to their respective country representative bodies. If information has been classified "Confidential" by IBM, this classification must be maintained and also respected by country representative bodies. In countries where there is no country representative body, the respective employee representative may, in accordance with local laws and practice and with the exception of confidential information, communicate the information received to the employees of his/her country.

A Communique will be prepared and agreed upon by the Chairman and the Secretary at the end of each meeting.

XVII- INFRASTRUCTURE

To the extent necessary for the fulfillment of their EWC responsibilities, the employee representatives may use IBM internal communication tools as available in their respective companies, in line with the IBM internal rules regarding the use of these tools, for communication between the EWC participants and towards their substitutes and their country representative bodies.

XVIII- COSTS

IBM Central management shall bear the costs for preparatory meetings of the Select Committee (Section IV), experts (as provided for in Section V), the regular meetings (Section VI), extraordinary meetings (Section VIII), interpretation and translation (as provided for in Section XIII) and education (Section XV).

Travel and accommodation costs will be borne by the employing company of each employee

For more agreements search www.ebr-ewc.net

representative, in accordance with its business travel rules.

XIX- CONFIDENTIALITY

IBM may provide the EWC with information which it considers as confidential information.

All EWC participants shall be bound to respect the confidentiality of information and agree not to disclose confidential information at any time, including after the end of their mandate. Any involved expert shall sign a specific agreement to respect confidentiality.

Information considered as confidential information are business and trade secrets and any other information, which is designated as confidential by IBM. IBM shall not unreasonably designate information as confidential.

IBM is not obliged to provide information as far as this would violate mandatory regulations (e.g. Stock-Exchange, defense, medical records) or substantially harm its legitimate interests (e.g. business secrets).

Any breach of confidentiality obligations by an EWC participant will lead to legal and/or disciplinary action by IBM in accordance with the provisions of the respective national law.

XX- DURATION

The duration of this Agreement shall be for a period of four years from the date of signature of this Agreement by the SNB and IBM. The EWC will be operational six months after this date. During that six months period, IBM will initiate the process of electing or designating individual employee representatives to the EWC and convene the elected/designated employee representatives for a preliminary session with the purpose of discussing the internal organization and functioning of the future EWC.

This Agreement will be automatically extended for additional four year periods, unless terminated by either party (EWC and IBM), by written notice at least six months prior to expiry, to the other party. During the notice period the Agreement shall remain in full force and effect.

If one of the parties does not agree to enter into a renegotiation, this decision shall be confirmed in writing to the other party prior to the expiration of the Agreement. Silence will mean acceptance to enter into negotiation.

In case both parties agree to enter into a renegotiation of this Agreement after its expiry, the EWC will continue to fulfill its duties under the conditions of the expired Agreement and it will serve as the party for the renegotiation. If no new Agreement is reached within three years after the expiry of this Agreement, the subsidiary requirements of the Annex of the Directive will apply.

In case IBM does not agree to enter into a renegotiation, the subsidiary requirements of the Annex to the Directive shall apply.

In case the EWC does not agree to enter into a renegotiation, the subsidiary requirements of the Annex to the Directive shall not apply. Such decision can only be taken by at least two-thirds of the votes. A new request to convene the special negotiating body to set up a new

For more agreements search www.ebr-ewc.net

procedure for information and consultation at European level may be made at the earliest two years after the above mentioned decision of the EWC.

XXI - APPLICABLE LAW AND COMPETENT COURTS

The competent court will be the court competent for the central management of IBM in Europe, which is currently Nanterre in France. Should the central management be moved to another European country, the competent court will change accordingly. The law applicable to this Agreement will be the laws of the country of the competent court, except for disputes regarding individual rights and obligations of the employee representatives which will be subject to the national law governing and to the national court competent to decide about disputes regarding the employment agreement of such representative.

XXII. PROTECTION OF EMPLOYEES

The employee representatives and their substitutes shall be protected in accordance with the national laws and/or practice in force in their country of employment.

XXIII - FORM OF AGREEMENT

This Agreement shall be drawn up, and when applicable amended, in English. A certified translation in the languages of the EWC employee representatives will be provided by the management. The English version shall prevail.

This Agreement shall be signed by the SNB, the IBM representative in the negotiations and the IBM EMEA Chairman.

XXIV -AMENDMENTS OF THE AGREEMENT

This Agreement may be amended by mutual written agreement between the parties (EWC and IBM central management), without either party being obliged to enter into renegotiations about proposed changes by the other party, during the duration of this Agreement.

XXV -INTERNAL REGULATION

The EWC may draw up an internal regulation regarding its way of functioning. No provision of that regulation will bind IBM without prior acceptance of the EWC Chairman. That regulation may not contain any provision violating the terms and conditions of this Agreement.