

INTERNATIONAL LABOUR LAW NETWORK NEWSLETTER

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SEPTEMBER 2025

Top ILLN News

European Works Councils (EWC) in selected European countries

- Austria
- Belgium
- France
- Italy
- Luxembourg
- Netherlands
- Poland
- Sweden
- Switzerland
- United Kingdom

Labour law is one of those areas that has not been fully standardized in the European Union, and we sometimes encounter different solutions in other European countries. Individual EU Member States have a certain degree of autonomy in creating specific regulations, but they are subject to minimum standards and regulations, particularly in areas such as working time, employee leave, and anti-discrimination regulations, which are almost identical in all countries.

This does not change the fact that Europe is becoming more integrated every year and, from the point of view of many entities, especially large multinational corporations, it is almost a single market. This includes the labour market. Therefore, there is justification for standardizing the working conditions and wages of employees across the so-called old continent. One of the tools for achieving this are European Works Councils. That is why it is worth knowing how this institution has developed in individual countries.

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EUROPEAN WORKS COUNCILS (EWC) IN SELECTED EUROPEAN COUNTRIES

AUSTRIA

Legal Basis and Framework

In Austria, the provisions on European employee representation, including EWC, are laid down in Part V of the Labour Constitution Act ("ArbVG"). The aim is to reach an agreement on an EWC (between the special negotiating body and central management. If no agreement can be reached, an EWC is established by law. It must be established if:

- (i) the central management and the special negotiating body pass a resolution to that effect, or
- (ii) the central management refuses to enter into negotiations or fails to do so within 6 months upon the first request, or
- (iii) no agreement is reached within 3 years of this request or the proposal by the central management and the special negotiating body has not passed a resolution.

Alternatively (to an EWC), the special negotiating body and central management may reach an agreement to establish procedures ensuring that employees are properly informed and consulted. The difference to an EWC is that no separate body is created to support these tasks. Depending on the size of the company or group of companies, coordination without a corresponding body can lead to difficulties. For this reason, in practice, the agreement to establish an EWC is the broadly preferred option.

Popularity of EWC within Austria

According to current estimates (as of 2025), around 3,000 European companies would be eligible to establish an EWC. There are currently around 1,000 active EWC, 31 of which are from companies headquartered in Austria, i.e. just 3.1%, which is relatively insignificant. For 28 of these 31, the Austrian regulations on the EWC apply.

Popularity of EWC in a case when one only elects members from Austria while the seat is abroad

It is common for Austrian works council members to be represented in an EWC while the seats are located abroad, as Austria is a "subsidiary country" for many corporations, there are very well-organised works councils in Austria, and many EU countries have less developed co-determination systems than Austria.

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The EWC is popular within Austrian works councils when it can be used as a genuine platform – especially for early information and international networking. However, its popularity declines when it has no impact or is not taken seriously by employers.

What is the election mode of EWC members from Austria?

Only in who are members of a works council in one of the company's divisions located in Austria may be delegated to the EWC, although they do not necessarily have to belong to the body authorised to delegate. Representatives of the relevant voluntary professional association (like trade unions) or statutory interest group (like chamber for white – and blue-collar workers) may only be delegated if they are members of the works council. The works council member is delegated to the EWC by a simple majority vote, whereby at least half of the works council members must be present.

The number of members of the EWC depends on the number of employees in the relevant Member State. One member may be appointed for every 10% of the total number of employees in the company or group of companies.

Relation of EWC with local trade unions or other employee representatives

The EWC does not take precedence over national employee representatives but is rather a supplementary body for cross-border matters. Since many such matters involve overlapping responsibilities, coordination between European and national employee representatives is essential. How this should be handled in specific cases is not specified in detail by law and is therefore left to the individual autonomy of the central management and the special negotiating body.

The EWC can serve as a support for communication

between national employee representatives. This makes it relatively easy to verify information from the employer regarding the working situation in other countries where the group has operations.

Local trade unions may support the EWC, particularly in its establishment and work. They have indirect influence through training, consultation and their expertise. For example, the EWC may call on external experts, including local trade union representatives.

Some problems or challenges with EWC topics within Austria

Although the EWC cannot directly influence the economic affairs of the group and its rights are limited to information and consultation, its existence is a mixed blessing for the employer. Central management retains the sole right to make decisions but must comply with certain deadlines and procedures in order not to invalidate or delay these measures.

The coordination of employee representatives by the EWC limits the principle of “*divide et impera*”, or divide and rule, at least to some extent. Further challenges are the additional time required due to the associated restriction of planning freedom. Short-term decisions on the part of the company management are no longer possible without further ado. The EWC must be informed in good time so that it (and any experts) can form an opinion.

In addition, there are also costs that are higher than the costs of employee representatives at national level, such as increased travel expenses or interpreters for all languages involved. Furthermore, the preparation work for the meetings, which usually last several days, should not be underestimated.

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EUROPEAN WORKS COUNCILS (EWC) IN SELECTED EUROPEAN COUNTRIES

BELGIUM

Legal Basis

Directive 2009/38/EC was transposed into Belgian law by means of Collective Labour Agreement (CLA) No. 101 of 21 December 2010. This CLA is formally entitled the “Collective Labour Agreement concerning the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees” and was declared universally binding by Royal Decree of 24 March 2011.

Scope of Application

Since the implementation of the Directive was carried out through a CLA concluded within the National Labour Council, its scope of application is limited to the private sector. However, the Directive itself is not confined to the private sector as such. Although opinions have already been issued advocating the development of a similar regime for the public sector, this has not yet been done.

Given that both the Directive and the CLA concern a transnational matter, the effects of the CLA are not necessarily limited to Belgian territory. Certain provisions of the CLA will (indirectly) impose obligations on undertakings or establishments located outside Belgium. Accordingly, the CLA contains two categories of provisions: those with a transnational dimension and those with a purely

national dimension. Provisions with a transnational dimension apply if the central management is established in Belgium. They affect the undertaking or group as a whole, including establishments situated abroad. Provisions with a purely national dimension may only be applied to the undertaking or establishment located in Belgium where the central management is established outside Belgium.

The CLA applies to an undertaking with a Community-scale dimension or to a group of undertakings with a Community-scale dimension. A Community-scale undertaking is defined as an undertaking employing at least 1,000 employees within the Member States and at least 150 employees in each of at least two Member States. In the case of a Community-scale group of undertakings — consisting of a number of undertakings of which one exercises control over at least one other — the requirement is that

BELGIUM



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the group as a whole employs at least 1,000 employees, and that at least two undertakings in different Member States each employ at least 150 employees.

As regards the subject of European Works Councils (EWCs), no concept equivalent to that of the “technical business unit,” as used under Belgian works council legislation, is applied. Consequently, several legal entities within the same Member State need not be aggregated in order to determine whether the conditions of application of CLA No. 101 are fulfilled.

To determine whether the undertaking or group employs the total required number of employees, the sum of all employees across the different Member States must be taken into account. Since Brexit, employees employed in the United Kingdom are no longer included in this calculation.

Initiative, Negotiation and Establishment of a European Works Council

Although in Belgium there is increasing emphasis on the importance of EWCs, on strengthening their role and on improving the interaction between the EWCs and local works councils, further progress remains necessary. From a Belgian perspective, the main obstacles to the establishment of an EWC are seen as: a lack of knowledge about what an EWC entails, national information and consultation processes that are slow or weak, and the low perceived added value, as undertakings often do not see sufficient benefits to justify establishing an EWC.

The procedure for establishing an EWC or an information and consultation procedure lies within the responsibility of the central management. The procedure may be initiated either by central management itself, or upon written request

addressed to central management by at least 100 employees or their representatives employed in at least two establishments or undertakings located in at least two different Member States.

On the employers’ side, the responsibility for commencing negotiations lies with central management. On the employees’ side, the negotiation procedure begins with the establishment of a Special Negotiating Body (SNB), which must represent the employees employed in the EU and the EEA. Each Member State in which the undertaking or group employs staff must be represented in the SNB. Where Belgian law applies, it is also required that a reserve list be drawn up in order to ensure continuity in the negotiations.

As regards the designation of employee representatives in the SNB, CLA No. 101 provides for a cascade system. Where a works council exists in Belgium, the employee representatives within that council shall designate, from among their members, the Belgian representative(s) to the SNB. In the absence of a works council, this task falls to the Committee for Prevention and Protection at Work (CPPW). If neither body exists, the trade union delegation shall assume the role, provided it has been authorised to do so by the joint committee. In the absence of a works council or CPBW, a direct election by the employees may take place. No specific details are given regarding the organisation of the election, the eligibility of candidates, or the nomination process. Full discretion therefore exists, and it appears that in practice the Belgian employer has full control over initiating this process.



Once central management is informed of the names of the SNB members, it must convene a meeting.

The EWC-agreement concerns the establishment of one or more EWCs or procedures and must be set out in writing. CLA No. 101 specifies the minimum topics that must be included in the EWC-agreement. One such topic is the composition of the EWC, including the number of members, the distribution of seats — taking into account, as far as possible, the need for balanced representation of employees with regard to the type of activity, category of employees, gender, and the duration of the mandate.

Once the EWC is established, a cooperation protocol must also be drawn up to ensure the proper organisation of information and consultation meetings. This functions as a set of internal rules of procedure.

Central management in Belgium and the EWC

cooperate with due regard to their respective rights and obligations.

CLA No. 101 reiterates the obligation set out in the Directive as regards the content of the EWC-agreement. It is explicitly provided that the agreement shall apply irrespective of the applicable national legislation on employee information and consultation. Where the agreement is silent, and where decisions entail substantial changes to work organisation or to employment contracts, the process must take place simultaneously at both national and European level. The EWC must be informed, where necessary, at the same time as the national employee representative bodies, and the overall level of protection of employees may not be reduced.

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EUROPEAN WORKS COUNCILS (EWC) IN SELECTED EUROPEAN COUNTRIES

FRANCE

Legal Basis and Framework

- Council Directive 94/45/EC of 22 September 1994
- Council Directive 2009/38/EC of 6 May 2009
- Law No. 96-985 of 12 November 1996 on the implementation of workers' rights to information and consultation in Community-scale undertakings and groups.
- Decree No. 97-1049 of 13 November 1997, specifying its modalities.
- Ordonnance No. 2011-1328 of 20 October 2011

On Tuesday, 21 May 2025, the European Parliament and the Member States of the European Union reached a political agreement on the revision of Directive 2009/38/EC governing European Works Councils.

What are we talking about?

The competence of the European Works Council is limited to transnational issues, i.e. those concerning the entire company or group, or at least two establishments or companies located in two different Member States (Labour Code, art. L. 2341-8).

How can a European Works Council be established?

A European Works Council may be established in several situations (Labour Code, art. L. 2343-1):

- an agreement is concluded between the head of the company (or his/her representative) and the special negotiating body, approved by a majority of its members (Labour Code, art. L. 2342-8);
- the parties (the company manager and the special negotiating body) decide to establish a "legal" European Works Council (Labour Code, art. L. 2343-1);
- the head of the company refuses to open negotiations within six months of the written request from employees or their representatives (Labour Code, art. L. 2343-1);
- the parties have not, within three years (either from receipt of the employees' written request or from the date on which the company manager officially decided to establish a special negotiating body), been able to conclude an agreement for setting up a conventional committee or an information and consultation procedure (Labour Code, art. L. 2343-1).

FRANCE



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Obstructing the establishment of a European Works Council, the free appointment of its members, or its regular functioning constitutes an offence punishable by up to one year of imprisonment and a fine of €7,500. Obstruction of the sole regular functioning is punishable by a €7,500 fine (Labour Code, art. L. 2346-1).

Presence of European Works Councils in France

Around 1,000 EWCs are currently active in Europe, of which approximately 10% are headquartered in France (*Guide des Comités d'entreprise européens, CFE-CGC, 2023 edition*). The companies concerned are mainly in the metallurgy and chemicals sectors. This relatively low rate can be explained by the strong tradition of national representation, through trade unions and the Social and Economic Committee (CSE).

Election of European Works Council members in France

In the case of an EWC established by agreement

The composition of the Council is freely determined. The parties may, of course, draw inspiration from the rules applicable to the "legal" EWC.

Note: the distribution of seats must ensure balanced representation of employees by activity, category, and gender.

In the case of a "legal" EWC or where the agreement is silent

The European Works Council has legal personality and is composed of:

- the head of the company (or the head of the dominant company in the group) or his/her representative;
- staff representatives from the company's establishments (or from the companies within the group), including a secretary appointed by the committee and a bureau.

Annual information and consultation meeting

The European Works Council has the right to meet with central management once a year in order to be informed and consulted, on the basis of a report prepared by central management, on the development of the activities of the Community-scale undertaking or group of undertakings and on its prospects. Local managements shall also be informed accordingly.

The meeting shall cover in particular:

- the structure, economic and financial situation,
- the probable development of activities, production, and sales,
- the situation and probable trend of employment,
- investments,
- substantial changes concerning organisation, the introduction of new working methods or production processes, transfers of production, mergers, downsizing or closures of undertakings, establishments or important parts thereof, as well as collective redundancies.

Collective agreements establishing European Works Councils often provide for several meetings per year (either of the Council itself or simply of its bureau).



Coordination between EWC information/consultation and other representative bodies

In the case of an EWC established by agreement

The agreement sets out the arrangements for coordinating the information and consultation of the European Works Council with those of other employee representative bodies, in accordance with their respective competences (Labour Code, art. L. 2341-9).

In the case of a “legal” EWC or where the agreement is silent

Where a European Works Council is established without an agreement, or where the agreement does not specify this link, the information and consultation process must be carried out both within the EWC and within the national employee representative bodies whenever decisions are envisaged that may lead to significant changes in the organisation of work or in employment contracts (Labour Code, art. L. 2341-9).

The Court of Cassation held that their consultation procedures do not have the same purpose or scope.

One is exercised within a national geographical framework and is governed by national legislation, while the other is exercised within a transnational framework and is governed by provisions which, although formally national, are substantively European, and do not prejudice the competences of national information and consultation bodies.

On this point, the directive establishing the European Works Council expressly states that it does not prejudice workers’ existing rights to information and consultation under national law.

It should be recalled that the EWC is competent only for transnational matters.

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The Court of Cassation has handed down an important ruling on this issue (Cass. soc. 16 January 2008, GDF v. European Works Council of Gaz de France).

This decision affirms the autonomy of the European Works Council in relation to the body established at national level. As a result, whether or not the information provided to the European Works Council is sufficient may still be challenged, even if that information is identical to that already provided to the French central works council and deemed sufficient by a court ruling.

This is a clear affirmation of the full autonomy of the two institutions.

EUROPEAN WORKS COUNCILS (EWC) IN SELECTED EUROPEAN COUNTRIES

ITALY

Italy implemented Directive 2009/38/EC on European Works Councils (the “EWCs”) in 2012 through Legislative Decree No. 113 (the “Transposition law”), which sets out the terms for the appointment of the EWC delegates and for informing and consulting employees in large multinational companies with at least 1,000 EEA employees and 150 in at least two Member States.

Pursuant to the Transposition law, Italian EWC delegates must be appointed as follows:

(i) one third by the trade unions that executed the National Collective Bargaining Agreement applied by the undertaking, or by the group of undertakings concerned;

(ii) two thirds by the works council of the undertaking, or by the group of undertakings concerned. If there are no works councils, the company and the trade unions may agree on the appointment procedure.

The appointment procedure is generally specified by the internal policies of each trade union.

However, the Transposition law provides that

“EWC members shall be appointed in proportion to the number of employees employed in each Member State by the undertaking or by the Community-scale group of undertakings, by allocating in respect of each Member State one seat for each portion of employees employed in that Member State amounting to 10%, or fraction thereof, of the number of employees employed in all the Member States taken together”.

Pursuant to Ruling no. 30/2013 of the Italian Ministry of Labour, the “employee” is defined as an individual who *“binds themselves, in return for the payment of salary, to cooperate in the enterprise by performing intellectual or manual labour, employed by and under the direction of the employer”* for the purposes of the Directive 2009/38/EC.

With regard to the right to participate in, be informed of, and be consulted on, corporate decisions affecting multiple Member States, Italy opted for a strict transposition of the Directive without establishing proper coordination with Italian labour law. This means that transnational matters covered by the Directive were entrusted to EWCs, while all domestic labour relations and participation processes remained within the scope of national law and our domestic tools.

ITALY



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A clear example of this division led in the “*rights of information and consultation*”: under Italian law these rights actually belong to EWCs for transnational matters, while the power to negotiate with the management is still vested in trade unions. This means that EWCs may receive information from management before decisions with significant impact on employees, but they lack the authority to negotiate. Trade unions, on the other hand, hold negotiating power but often do not receive the necessary information in time to conduct useful negotiations with companies.

Additionally, it is worth noting that domestic trade unions have a long-standing and powerful role within Italian industrial relations; they often prefer to maintain control over industrial relations at the national level and are not particularly interested in establishing EWCs.

These factors have led to a single outcome: as in many other EU member states, EWCs have remained a marginal tool within our industrial relations so far, mostly limited to a few large companies in sectors such as automotive and energy.

The ongoing debate at EU level on possible revisions to Directive 2009/38/EC may offer an opportunity to strengthen their role in Italy; however, achieving real change would require not only legislative amendments but also a broader cultural shift in the way industrial relations are conceived and practiced.

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EUROPEAN WORKS COUNCILS (EWC) IN SELECTED EUROPEAN COUNTRIES

LUXEMBOURG

Transnational employee representation in Luxembourg: the role of the European Works Councils

Luxembourg, with its strategical position, dense presence of multinational companies, exceptional international workforce and active job market, provides a particularly fertile ground for the operation of the European Works Councils (EWCs).

Established under Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 (the "Directive"), EWC serves as a key employee representative body which significantly strengthens the rights of employees in transnational companies to be informed and consulted on transnational scale matters, promoting social dialogue and employee participation at the European level.

In Luxembourg, the Directive was transposed by the law of 26 December 2012, effective from 3 January 2013. The law introduced into the Labour Code the framework for the creation of a EWC or an alternative procedure within Community-scale undertakings and groups.

Any community-scale undertaking or any community-scale group of undertakings must have a EWC.

A community-scale undertaking means any undertaking with at least 1,000 employees within

the member states of the EU and at least 150 employees in each of at least two member states. A community-scale group of undertakings means a group of undertakings having at least 1,000 employees within the member states and at least two group undertakings in different member states with at least one group undertaking with 150 employees in one member state and at least one other group undertaking with 150 employees in another member state.

The rights of the EWC will be determined in the agreement to be concluded in this respect. In principle, the competence of the EWC is limited to information and consultation on transnational economic and social questions concerning the entire community-scale undertaking or group of undertakings.

The negotiation for the establishment of the EWC

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shall be started by the central management of a Company whose headquarters or central management is in Luxembourg in the following circumstances:

- on its own initiative; or
- at the written request of at least one hundred employees or their representatives, belonging to at least two undertakings or establishments located in at least two Member States; or
- at the written request of the trade unions that are signatories to the applicable collective agreement, if any, including at least one trade union organisation that is the most representative at national level; or
- at the written request of a trade union organisation that is the most representative at national level, represented in at least one of the staff delegations of the undertakings or establishments concerned.

Such written requests must be addressed to the central management. Employees and their representatives must be informed accordingly to ensure transparency and effective communication throughout the election process.

In Luxembourg, members of the EWC representing employees working in Luxembourg are elected through an indirect process. These members are chosen by the representatives of the staff delegations of the relevant companies or entities, elected by a simple majority of votes cast by those present at the assembly.

The EWC has the right to meet with the central management once per year in order to be informed and consulted on transnational matters within its competences.

The EWC in Luxembourg operates alongside local staff delegations, which are the primary employee representative bodies at the national level.

While the EWC focuses on transnational issues, there is often close cooperation and communication between the EWC and local staff delegations and eventually trade unions where applicable, especially when issues discussed at the EWC have local implications. However, the EWC remains a distinct body with its own scope, and its relationship with other staff representatives' bodies is shaped by both legal requirements and practical arrangements within each undertaking or group.

It is important to highlight that the transposition of the Directive in Luxembourg closely mirrors the original text of the Directive. As a consequence, this approach does not fully address all local particularities and, at times, lacks the necessary precision, which may result in ambiguities or interpretative challenges. Such uncertainties raise legal risks and seeking the guidance of experienced legal professionals is strongly recommended to ensure compliance and mitigate potential issues.

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EUROPEAN WORKS COUNCILS (EWC) IN SELECTED EUROPEAN COUNTRIES

THE NETHERLANDS

Legal Basis and Framework

In the Netherlands, the legal basis for EWCs is the Dutch Act on European Works Councils ('WEOR'), which transposes EU Directive 94/45/EC. The WEOR applies to community-scale undertakings or groups headquartered in the Netherlands with over 1,000 EU-wide employees and at least two Member States with over 150 employees.

The WEOR goes beyond the EU minimum by granting EWC members rights such as paid training and internal consultation. Employers must also cover legal costs related to disputes.

The central management (In Dutch: "*hoofdbestuur*") is the body responsible for negotiations with employees:

- in the case of a community-scale undertaking: the management of that undertaking;
- in the case of a community-scale group of undertakings: the management of the controlling undertaking (parent company);

In case this management is located outside the EU or the relevant Member States: another management body within the EU is designated by law as the central management, so that the obligations of the WEOR can always be enforced within the EU.

Negotiations to establish an EWC take place

between this central management and a Special Negotiating Body ('SNB'). The SNB consists of employee representatives from all entities across the Member States concerned, ensuring cross-border representation. Together, the central management and the SNB shape the content of the agreement to establish an EWC or an alternative arrangement for information and consultation.

Because the negotiations and agreements are tied to the central management at the location of the headquarters, the seat of the head office is decisive. If the headquarters is located in the Netherlands, disputes concerning the application or compliance of the agreement of the WEOR, including the implementation and compliance of the agreement, may be brought before the Dutch Enterprise Chamber (In Dutch: "*Ondernemingskamer*") in Amsterdam.

NETHERLANDS



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Popularity of EWC within the Netherlands

EWCs are moderately popular in the Netherlands. Although no central registry exists, it is estimated that about 73 EWCs fall under Dutch jurisdiction, including both active and inactive councils. Dutch companies, especially multinationals, regularly engage with EWC structures, though these are not widespread.

Popularity of EWC in a case when you only elect members from the Netherlands while the seat is abroad

The popularity of establishing an EWC in the Netherlands, where only members from the Netherlands are elected, even while the seat is abroad, would most likely be low. This reflects the Dutch consensus model: decisions require collective support, as directors cannot act alone. Employee participation should go beyond national borders, balancing employer and employee interests. This fosters better working conditions, solidarity, and engagement and benefits both the organization and society.

Election mode of EWC members from the Netherlands

Article 8 WEOR provides two forms of employee participation: 1) an EWC or 2) an alternative arrangement, both requiring formal agreement between central management and the SNG. When at least 100 employees from two or more establishments make a request, an SNG must be formed, unless recent negotiations have already taken place or were stopped less than two years ago.

Article 9 of the WEOR regulates the SNG composition, allowing one member per 10% of the workforce per Member State. According to Article 10 of the WEOR, SNG members are usually appointed by the Central Works Council (COR), or if none exists, the Group Works Council (GOR) or

local Works Council (OR). Without a works council, members are elected by secret ballot, with unions able to nominate candidates.

If central management and the SNG fail to reach an agreement, Dutch members are, according to Article 16(1) of the WEOR, appointed to an EWC in the same way as the SNG. The rules set out in Article 10 of the WEOR once again apply, but Article 17 of WEOR provides further elaboration. EWC members appointed in this way serve a four-year term. Only employees of the community-scale undertaking or group may be appointed, so Dutch works council members may also qualify. Membership ends when the person is no longer employed.

Relation of EWC with local trade unions or other employee representatives

In the Netherlands, employee representation at the European level is shared between works councils and trade unions. Trade unions often act as expert advisors during EWC negotiations and establishment, especially for cross-border coordination and sector-specific expertise. In some Dutch EWCs, union representatives participate, usually as external experts rather than elected members.

Some problems or challenges with EWC topics within the Netherlands

Research shows that Dutch EWCs face several challenges, such as late consultation that limits their influence, unclear definitions of "transnational" that causes inconsistent involvement, and low union participation weakening their role. Enforcement is weak, because sanctions, other than legal remedies, are seen as ineffective. Confidentiality and transparency are usually only ensured during restructurings. Recent WEOR amendments have reduced flexibility, especially by tightening the definitions of "information" and "consultation" to better protect employees.

EUROPEAN WORKS COUNCILS (EWC) IN SELECTED EUROPEAN COUNTRIES

POLAND

The European Works Council (EWC) constitutes a key element of transnational social dialogue, serving as a form of employee representation in companies and groups of companies operating at EU level. Its fundamental task is to ensure that employees have the right to information and consultation on significant matters concerning the functioning of the enterprise. Its role is to provide employees with access to information about planned management decisions on transnational issues i.e. matters affecting the situation of employees in more than one country in which the company operates.

By design, European Works Councils are informative and consultative bodies. Their function is neither to negotiate employment conditions nor conclude binding collective agreements with management as these responsibilities remain primarily within the competence of trade unions.

Legal Basis and Framework

The legal foundation for establishing European Works Councils (EWCs) within the European Union is Council Directive 94/45/EC, which was implemented into the Polish legal system through the Act of April 5, 2002 on European Works Councils. This Act sets out the principles for the establishment and functioning of EWCs, as well as the procedures for informing and consulting employees in companies and groups of companies operating at EU level. Its aim is to

ensure that employees have the right to information and consultation on transnational matters. Importantly, the Act does not infringe upon the rights to information and consultation established by other separate legal provisions.

Election of Members of the European Works Council

The election of members of the EWC in Poland depends on the structure of the company (whether it is a single workplace or a group of workplace) as well as the presence of trade unions.

If a representative trade union organization operates in the workplace, it holds the right to appoint EWC members. Where multiple representative trade union organizations are active, they are required by law to jointly nominate candidates through mutual

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agreement. If no agreement is reached, employees elect the members out of candidates proposed by the respective unions.

In cases where no representative trade union exists in the workplace, EWC representatives are elected directly by the employees through a secret and direct ballot. For the election to be valid, at least 50% of all employees must participate. If this quorum is not met, a second election is held after three months, which is valid regardless of voter turnout.

If a company operates more than one plant in Poland, the election procedure becomes a two-stage process and more complex. In the first stage, each workplace elects or appoints three representatives. However, workplaces with a high number of employees relative to the company's total workforce in Poland may be entitled to additional seats. An additional representative is granted to any establishment employing at least 25% of the company's or group's total workforce in Poland. The number of additional representatives may increase to two if the establishment employs 50% of the workforce, or three if it employs 75%. In establishments where representative trade unions operate, they appoint the representatives. In the absence of trade unions, representatives are elected by employees in a secret and direct vote, requiring at least 50% turnout for validity.

After the local election results have been collected from all workplaces, a meeting of all Polish representatives is held. During this meeting, the final members of the EWC are elected from among them, in accordance with the number of seats allocated to Poland.

Special Employment Protection for EWC Members

Being elected as a member of the EWC is highly regarded among employees, as it provides special

protection of their employment relationship. According to Article 37 of the Polish Act on European Works Councils, an employer may not terminate or dissolve the employment contract, unilaterally change the working or pay conditions to the detriment of an EWC member, without prior consent. This protection applies throughout the term of office (from the day of election until the end of the 4-year mandate) and for an additional year after the mandate expires. If the employee is represented by a trade union, the employer must obtain the union's consent for termination or changes. If the employee is not a union member, the employer must seek approval from the relevant district labour inspector (based on the employer's registered office location) and provide justification for the proposed action. In principle, this means that the employer cannot unilaterally terminate the employment contract unless such consent is obtained. Without written approval from the union or the labour inspectorate, the employer is not legally allowed to carry out such actions.

Popularity of European Works Councils (EWCs)

In practice, EWCs in Poland are typically relevant to either large Polish companies that have expanded into other EU member states, or Polish companies that are part of international corporate groups where EWCs have already been established. In Poland, European Works Councils operate among employers belonging to European capital groups. These employers value the constructive exchange of information and the broad, cross-border perspective on issues affecting both employees and companies, not just from a local, but also from a European standpoint. This dialogue allows key issues relating to the labour market to be addressed, as well as important economic and business aspects such as competitiveness, operational efficiency, and the impact of economic changes on employment.

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EUROPEAN WORKS COUNCILS (EWC) IN SELECTED EUROPEAN COUNTRIES

SWEDEN

Legal Basis and Framework

The Swedish Act on European Works Councils (Sw. lag (2011:427) *om europeiska företagsråd*) (the "Act") implements the EU directive 2009/38/EC on European Works Councils and governs establishment of EWCs in Sweden.

Pursuant to the Act, an EWC may be established if a corporate group has at least 1,000 employees in EU/EEA, with at least 150 employees in each of two different EU/EEA states. The number of employees in Sweden is calculated as the average number of employees during the two immediately preceding business years.

The Swedish EWC Act applies when a community-scale company or controlling company of a group has its registered office in Sweden. The company is obligated to actively promote the establishment of an EWC, provide workforce data, participate in negotiations with the aim to reach an EWC agreement and cover reasonable costs. The Act includes rather detailed provision on what will apply if the negotiating parties cannot reach an EWC agreement within a three years' period.

Popularity of EWCs based in Sweden

According to the EWC database, there are currently approximately 70 multinational Sweden based companies having an EWC agreement in force. Many Swedish companies rely on strong local co-determination, reducing the need for EWCs.

Popularity when Swedish employees elect members to an EWC seated abroad

Under the Swedish EWC Act, employees from each EU/EEA state shall receive seat(s) in the EWC in relation to the number of employees in each state in proportion to the total workforce in EU/EEA of the group. The employees in one EU/EEA state shall receive one seat in the EWC for each full or commenced tenth of the total workforce in EU/EEA. Therefore, it is not uncommon for Swedish employees to be elected to take part in EWCs based in other countries, especially in larger multinational groups. How popular it is depend on many things, but Sweden has a well-established culture of union engagement.

Election of Swedish employees to participate in EWC

Under the Act, the Swedish representative(s) in an EWC shall be an employee of a Swedish company

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and is appointed by the local trade unions that have an established collective bargaining agreement ("CBA") with the Swedish group company.

If there are several local trade unions having a CBA with the Swedish group company, the local trade unions shall try to agree among themselves on which of their members that shall represent the Swedish employees in the EWC. If they cannot agree, the following apply:

- If only one representative shall be appointed, he/she shall be appointed by the local trade union representing the majority of the Swedish employees.
- If several representatives shall be appointed, the appointment shall be made in accordance with the procedure for the appointment of employee representatives as set forth in the Swedish Act on Board Representation of Employees in the Private Sector (Sw. *Lag (1987:1245) om styrelserepresentation för de privatanställda*).
- If the employer is not bound by any CBA, the representative shall be appointed by the local trade union representing the largest number of employees in Sweden.

Local trade unions within the same main organization shall be considered as one organization.

Relationship between the EWC and local trade-union/employee bodies

In Sweden, EWCs operate alongside local union organisations. Information from the EWC is normally shared with the local union organisations depending on what the EWC agreement stipulates in that regard. The relationship is generally cooperative.

Current problems and challenges

The use of EWC in Sweden remains relatively uncommon. This is largely due to the strong tradition of local co-determination between the employer and trade unions pursuant to the Act on Co-Determination in the Workplace (Sw. *Lag (1976:580) om medbestämmande i arbetslivet*), which often is perceived to provide the best possibilities to influence the employer in the decision-making process in employment matters. Additionally, many Swedish multinational companies have transferred their headquarters to other countries and there is generally limited awareness and understanding of EWCs and the benefits of such body. The lack of standardized procedures and clear guidance further contributes to this unawareness and uncertainty of EWC. Many employers (and employee representatives) also find it sometimes challenging to create an efficient and appropriate collaboration between the local trade unions and the EWC even if this challenge is normally solved in a constructive way.

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EUROPEAN WORKS COUNCILS (EWC) IN SELECTED EUROPEAN COUNTRIES

SWITZERLAND

Legal Basis and Framework

Directive 2009/38/EC of the EU (the “Directive”), which concerns EWC, is not applicable in Switzerland. Accordingly, the Directive was not implemented into Swiss national legislation. However, the Directive has implications for Swiss companies with subsidiaries in the EU, as well as for Swiss subsidiaries of EU-based companies. In addition, Switzerland has its own provisions and mechanisms for employee participation and organization, which are regulated by the Swiss Participation Act.

Popularity of EWC within Switzerland

Swiss companies with subsidiaries in the EU are nonetheless subject to the obligation to establish an EWC in respect of their foreign subsidiaries, provided that the requirements under the Directive are met. While Swiss entities are not directly subject to the Directive, they may include Swiss employee representatives in the EWC, provided that the social partners agree to this through a voluntary arrangement. A 2013 study found that 72% of Swiss companies with an EWC opted to include Swiss employee representation.

Popularity of EWC in Cases where Swiss Members Are Elected while the Seat Is Abroad

Swiss employees may also be included in the EWC of an EU-based company. However, this

requires that either the relevant national implementation provisions provide for such inclusion, or that such participation is agreed upon on a voluntary basis.

Election Mode of EWC in Switzerland

The rules follow those of the country in which the relevant subsidiary is based. There are no legal rules governing the election of Swiss representatives in an EWC. However, the rules of the Swiss Participation Act are generally applied in practice.

Relation of EWC with Local Trade Unions or Other Employee Representatives

Approximately one third of employees in Switzerland are unionized, with several different trade union federations operating within the country. These trade unions may conclude collective employment

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contracts with employers' associations or individual employers, thereby regulating working conditions at a supra-company level.

Further, the Swiss Participation Act serves as a framework law setting out general provisions on employee participation at company level. In particular, it governs the establishment of employee representation bodies. The content of the Act is supplemented by various substantive legal provisions, for instance regarding participation rights in the context of collective dismissals or business transfers. The scope of the Act is limited to Swiss territory and, unlike the Directive, it does not cover cross-border situations.

Problems or Challenges with EWC Topics in Switzerland

As the Directive does not extend to employees in Switzerland, their integration into the information and consultation structures established thereunder remains uncertain. To resolve this legal ambiguity, a bilateral agreement between Switzerland and the EU would be required, under which Switzerland would be recognized as an associated state.

If Swiss employees are voluntarily included in an EWC, they may participate either as full delegates or as delegates with observer status. Accordingly, it is possible for Swiss representatives to attend EWC meetings without voting rights.

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EUROPEAN WORKS COUNCILS (EWC) IN SELECTED EUROPEAN COUNTRIES

THE UNITED KINGDOM

Legal Basis and Framework

Following Brexit, the UK's relationship with European Works Councils (EWCs) has undergone significant transformation, affecting both the legal framework and the practical participation of UK employees. While UK employers with operations in the EU must still comply with EWC requirements in relevant member states, the involvement of UK employees in EWCs has been significantly curtailed.

For example:

- UK employees are no longer counted when determining whether a company qualifies as a 'Community-scale undertaking' under the EWC Directive.
- They cannot trigger the establishment of an EWC by joining with employees from other EU member states.
- The right to request information about workforce structure and the use of agency workers across the EU/EEA has been repealed – a key tool previously used by UK employees to support cross-border representation efforts.

Responsibility for EWCs previously managed by UK undertakings has been transferred to representative agents based in EU member states. Where no agent was nominated, the default is the entity employing the largest number of EU-based staff. The governing law of such EWCs has also shifted from UK law to the law of the relevant EU member state, ensuring continued enforceability under EU jurisdiction.

Post-Brexit UK Law and Policy Tensions

UK employees may now only be represented on an EWC if:

1. The EWC operates under the laws of an EU member state, and the agreement expressly provides for UK representation.
2. The EWC continues to operate under UK law, due to the continued application of the TICE Regulations in limited circumstances.

In 2024, the UK government launched a consultation on repealing the domestic EWC framework, stating that it was never intended for UK-based EWCs to operate indefinitely post-Brexit. Some businesses currently face the burden of operating parallel EWCs – one under UK law and another under EU law. The consultation proposed repealing the requirement to maintain UK-based EWCs, but following a change in government, no legislative amendments have yet been confirmed.

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Election and Office Holding

There is no longer a statutory framework for the election or office-holding of UK members of EWCs established under agreements concluded after 11:00 pm (UK time) on 31 January 2020. However, the terms of individual EWC agreements may still impose obligations regarding representation.

Under the TICE Regulations, where they continue to apply:

- UK EWC members must be UK employees (not external union representatives).
- If UK employees are already represented (e.g. by a recognised trade union), those representatives may elect or appoint EWC members.
- Otherwise, UK management must conduct a ballot of all UK employees, following consultation with employee representatives.

Application within the Employment Tribunal

UK Employment Tribunals continue to have jurisdiction to hear complaints from UK EWC members, including:

- Claims of detriment or dismissal arising from the performance of EWC duties.
- Complaints that an employer has:
 - Unreasonably refused time off to perform EWC functions (Regulation 25). Failed to pay amounts due in connection with EWC duties or training (Regulation 26).

Summary

The post-Brexit landscape for EWCs is complex. While UK employees have lost many of their former rights under the EWC Directive, legacy agreements and transitional provisions continue to create obligations for some employers. Legal practitioners advising multinational clients should remain alert to jurisdictional overlaps.



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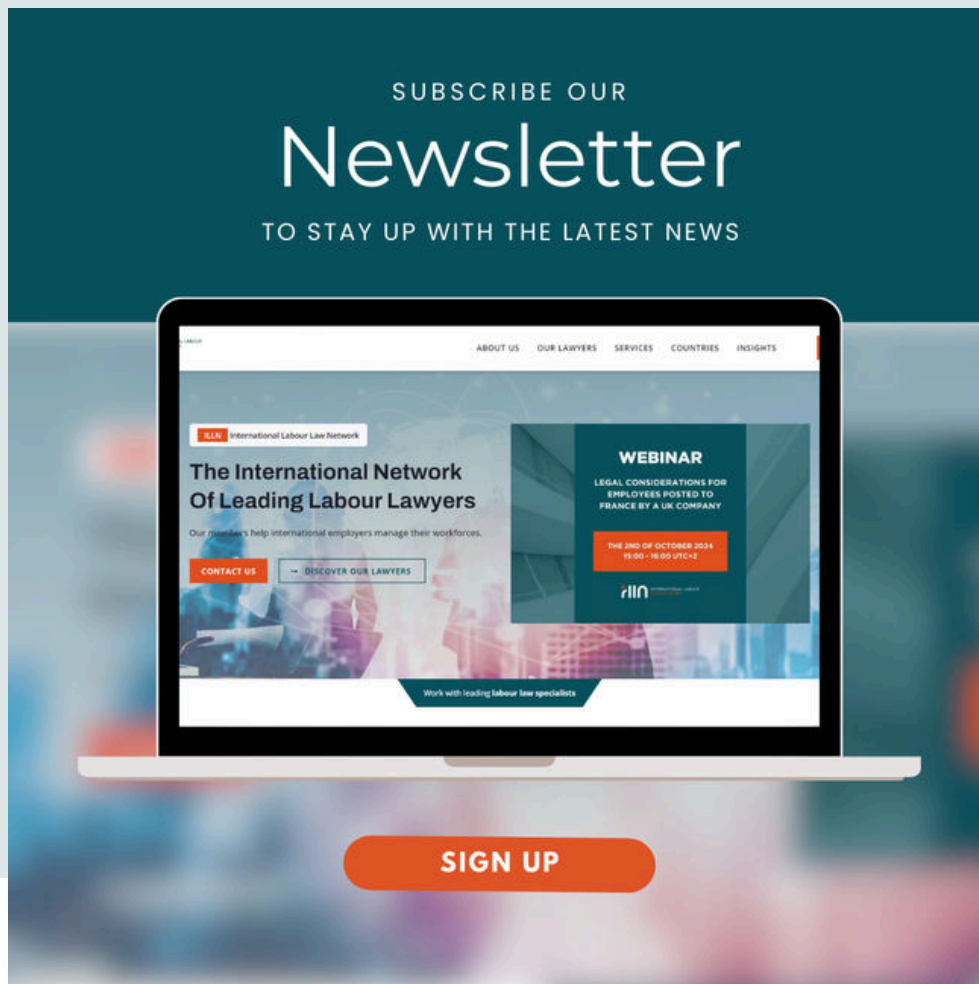
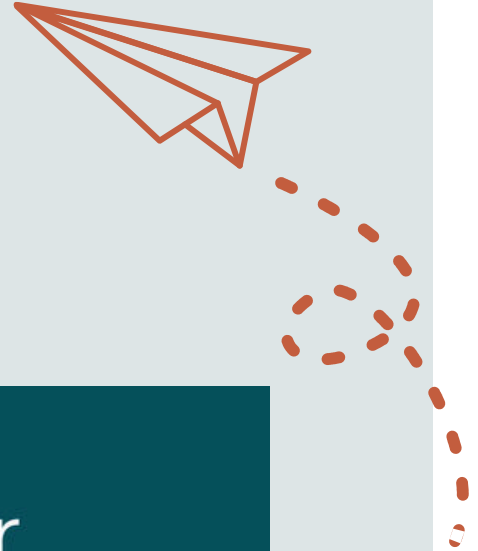
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