

## **Transition to observe Subsidiary Requirements in the EWC**

The transition to observe Subsidiary Requirements usually happens in two phases of the process: either in the situation when no mutual understanding was reached on the EWC agreement after negotiations; or later when an effective agreement is terminated and a new Agreement cannot be reached within the legal time framework. The Termination of an effective agreement is usually motivated by the fact that the agreement no longer serves its purpose that the effective agreement offer, for example, weaker conditions than otherwise would be provided by the Subsidiary Requirements.

The transition to observe Subsidiary Requirements is nothing to be afraid of since even with them the work of the European Works Council can be made effective and operational. Furthermore, it is always possible to start new negotiations later on, either by observing the regulated waiting time or by agreeing on the matter separately with the employer.

It is also noteworthy to state that if the parties end up signing a EWC agreement which does not even fulfil the Subsidiary Requirements the provisions of this Agreement are primary also in this case. Therefore it is not advisable to sign a bad agreement under any circumstances.

However, the starting point should be that the matters are negotiated with the central management and the employee's negotiating body in the spirit of cooperation, with the aim to reach an agreement on a European Works Council or an equivalent procedure of information and consultation (EWC Act § 22).

Invitation to these negotiations is sent by the central management which gathers the negotiating body to a meeting where the agreement negotiations are initiated.

### **On the content of the agreement**

Generally determined matters in a written EWC agreement include:

- 1) The undertakings or establishments of undertakings covered by the agreement;
- 2) The composition of European Works Council, the number of members, the allocation of seats, taking into account where possible the need for balanced representation of employees with regard to their activities, category and gender, and the term of office;
- 3) The functions and the procedure for information and consultation and for linking these with respective national procedures;
- 4) The venue, frequency and duration of meetings of the European Works Council;
- 5) The composition, the appointment procedure, the functions and the procedural rules of the select committee set up within the European Works Council;
- 6) The financial and material resources to be allocated to the European Works Council and;
- 7) The date of entry into force of the agreement and its duration, the arrangements for amending or terminating the agreement and the cases in which the agreement shall be renegotiated and the procedure for its renegotiation, including, where necessary, where the structure of the Community-scale undertaking or Community-scale group of undertakings changes (§ 26).

Also other matters can be agreed upon, so this list is not exhaustive.

In this case, the agreement can cover both the European Works Council and other procedures of information and consultation, the first of these being the most common one.

## **Generally on Subsidiary Requirements**

Provided the parties cannot reach the above mentioned agreement, the Subsidiary Requirements of the EWC Act are observed, to be found in Articles 28–38.

These are applied in the following cases:

- 1) When the central management and the employees' negotiating body have agreed upon it
- 2) In cases where the central management has not initiated negotiations with the employees' negotiating body within six (6) months after the employees or their representatives have presented a request for negotiations (EWC Act § 19.2) or
- 3) Where the central management and the employees' representatives have in their negotiations not reached an agreement on the cooperation within three (3) years after negotiations according to Article 19 and its time frame, except when this is caused by the employees' representatives' decision according to article 24 not to open negotiations.

Therefore, it is of essential importance that in cases where the initiative to negotiations comes from the employees' side, it is done in writing and it states very clearly the date when the request for negotiations is presented. In addition, it is important to mention - in order to inform the employer – the dates when the above mentioned six (6) months or three (3) years will expire and when the employer therefore must start the EWC observing the Subsidiary Requirements (a model of a negotiation request will be found at the end of this text).

With this a situation is meant when, in total, at least 100 (can e.g. be 99 + 1) employees or their representatives of companies or business units from at least two Member States of the European economic area request to start negotiations on a EWC (§19.2).

It is furthermore worth to note that in cases where there are more than one controlling undertaking in a community-scale group of undertakings, the European Works Council is established, using Subsidiary Requirements, *only* on the level of the controlling undertaking (§ 27).

## **Subsidiary Requirements in detail**

### Composition of the European Works Council (§ 28)

The members of the European Works Council shall be elected in proportion to the number of employees employed in each Member State by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to ten (10) per cent, or the fraction thereof, of the number of employees employed in all the Member States taken together.

### Number of members in the European Works Council (§ 29)

The starting point is that the employees of a company or business unit situated in Finland of a community-scale enterprise or group of enterprises chose among them members to represent them in a European Works Council, either by agreement or by election.

If there is consensus on the election between the different personnel groups it is recommendable to state the election agreement in writing. In addition, if the number of members is not sufficient to allow all personnel groups to be represented it is recommendable to agree on a rotation system for instance so that the clerical personnel can rotate with the professional and managerial staff if there are so many employees that the number of seats remains stable. It is also recommended that the length of the representation period is set, likewise the period and procedure of giving notice, e.g. six months, in case the agreement should turn out to be problematic for some personnel group.

If the personnel cannot agree on the election process of their representatives, the Health&Safety Representatives of the two largest personnel groups in an undertaking or business unit can organise the EWC election or other appointment process together. In this case all employees of an undertaking or business unit have the right to participate in the election, both as candidates and as voters.

The election can, according to the Cooperation Group of the Industrial Employees' Association recommendation, be also organized by the shop stewards since they have been elected to represent the employees of a group of undertakings. Also other representatives of a personnel group can participate in the election process. This helps to avoid e.g. the organisation of a laborious election in all business units of a group of undertakings which would be the case for instance in a large chain of stores. This is based on the national practice acknowledged by the EWC Directive which can be observed also in Finland and which is stated also in the Finnish EWC Act: the employee representatives are elected according to national legislation and practice in each state.

### Announcement of the composition of the European Works Council (§ 30)

When the European Works Council has been established it must, as soon as possible, announce its composition or possible changes in it to the central management or to another assigned appropriate management of the community-scale undertaking of group of undertakings.

### Standing orders and select committee of the European Works Council (§ 31)

After the announcement, the European Works Council approves its standing orders which is usually done in writing although it is not to be seen as a normal agreement in the sense of the EWC Act. It is recommendable to include the representatives, the number of representatives, the possible date of meetings during the year, the possible venue of meetings and the like. Of course these matters must be discussed with the employer. The standing orders meant here concern only the matters of the employees themselves.

In addition, the European Works Council elects among the representatives a select committee with five members at the most which approves its own standing orders and which must be given the opportunity to conduct its work on a regular basis. Here it is important to remember that both the EWC in general and its select committee consist only of *employee representatives*. It is a body of employees which discusses with the employer. The employer does not belong to the EWC, it is the cooperation partner of the EWC.

### Right to receive information and to be consulted (§ 32)

The European Works Council and its select committee have the right to receive information and to be consulted in matters which concern a community-scale undertaking or group of undertakings or at least two undertakings or business units in a group of community-scale undertakings which are situated in different states of the European economic area.

This information and consultation must also under these circumstances be timely, it must be accomplished in an appropriate and sufficient way and include all the contents which the works council must receive in order to be able to assess the matter in a profound way and give its opinion to the employer before the employer makes final decisions in the matter.

Furthermore, transnational issues must be discussed just like in other EWC activities. The fact that Subsidiary Requirements are observed does not exclude this issue from the EWC activities. *Transnational issues* in this context are issues which concern a community-wide group of undertakings or an undertaking or at least two undertakings of a group of undertaking or business units in a community-wide undertaking which are situated in two different Member States of the EEA as well as issues which – regardless of the number of Member States – are of significant importance to the status of the employees or concern transfers of operations between Member States.

### Regular meetings and the matters handled therein (§ 33)

The European Works Council is entitled to convene at least once a year with the representatives of the Finnish central management of the community-wide group of undertakings or the undertaking to obtain information and to be consulted with regard to the group of undertakings' or the undertaking's business operations and future prospects. Central management shall issue at the earliest possible prior to the meeting a written report of the matters to be handled in the meeting.

Central management shall furthermore inform of the meeting the management of other undertakings or operational units of the community-wide group of undertakings or the undertaking.

The European Works Council must be informed in particular of the structure of a community-wide undertaking or group of undertakings, its economic and financial position and development prospects of operations, production and sales

Information to and consultation of the European Works Council include especially:

1. employment situation and its development prospects
2. investments
3. significant organisational changes
4. introduction of new work and production methods
5. transfers of production, mergers, the reduction or closure of the production of the undertakings, operational units or any significant parts thereof
6. pursuant to the provisions of national legislation of the state in which each of the undertakings of the community-wide group of undertakings or the operational units of the undertaking are located, redundancies of employees

Also other situations can occur and this list is not exhaustive.

The consultation shall be conducted in such a way that the employees' representatives can meet with the central management and obtain a response, and the reasons for it, to any opinion they may express. Prior to the regular meeting the members of the European Works Council are entitled to assemble among themselves.

#### Extraordinary meetings in exceptional circumstances (§ 34)

Central management must present the working committee with a timely report, for the exchange of opinions, of such exceptional factors or decisions which significantly affect the position of the employees. In particular, such factors include the relocation of operations, the closure of an undertaking or operational unit, and redundancies as referred to in § 33(4).

On request of the working committee the central management or other management with decision-making power in the discussed matters, is to organise a meeting where it informs of the above mentioned matters and exchanges opinions thereof with the working committee. Those members of the European Works Council who do not belong to the working committee have a right to participate to the meeting provided that the employees they represent are directly affected by the matters referred to.

The extraordinary meeting has to be called as soon as possible after the report has been issued. Management of the community-wide group of undertakings or the undertaking shall prepare for the meeting an account of which the working committee may issue an opinion at the conclusion of the meeting or within a reasonable time from the conclusion of the meeting.

The working committee, if necessary supplemented in the above mentioned manner, is entitled to convene without the management of the community-wide group of undertakings or the undertaking being present.

What is prescribed of the working committee above shall apply to the European Works Council if it has not selected a working committee from among its number; neither in this case can the employer neglect his/her obligation to information and consultation.

#### Right to use experts (§ 35)

The European Works Council and its working committee are entitled to, insofar as necessary, use experts of their choice in preparing for the meetings referred to in sections 33 and 34 above.

This expert is usually a trade union representative but, if necessary, it can also be a person who is well acquainted with business economics or related field of expertise.

The employer bears the travel and accommodation costs for one such expert.

#### The duty to inform the European Works Council and its select committee (§ 36)

The workers' representatives have the duty to inform other workers' representatives of a community-wide group of undertakings or undertaking or – in case representatives have not been elected, directly the workers on the content and results of the above described information and consultation, pursuant to other consequences from the confidentiality clause.

The EWC Act § 43 regulates matters which concern the obligation to keep confidentiality.

#### Liability for costs incurred by co-operation (§ 37)

Central management is liable for costs incurred by operation of the European Works Council and its working committee which include at least organisational and interpreting costs of the meetings as well as travel

and accommodation expenses of the members of the European Works Council and select committee unless otherwise agreed.

It is not recommendable to agree upon other matter unless on a higher level and even then the budget should not be limited to a certain amount but instead to agree for instance on a minimum level of costs.

The central management shall furthermore allocate to the members of the European Works Council and its working committee the financial and other material resources necessary for the due discharge of their duties. This includes time exempt of work, sufficient means of communication etc. The main thing is that the EWC representative faces as few complications as possible also from the practical point of view when tending to his/her duties.

The central management is liable for the travel and accommodation expenses of an expert used by the European Works Council and its select committee in the cases referred to in sections 33 and 34 unless otherwise agreed. Therefore it is not advisable to agree on any lower level than this with the employer.

#### European Works Council's evaluation of the agreement negotiations (§ 38)

The Works Council evaluates at the latest in four (4) years from its establishment whether negotiations on the agreement should be commenced with the central management.

If the Works Council decides with a single majority to propose negotiations to the central management, the working committee conducts the negotiations instead of the employees' negotiating body. The provisions of sections 22—26 in the EWC Act shall otherwise be complied with in the negotiations as appropriate. It is advisable to consult the Industrial Employees' Co-operation Council material on EWC.

#### **Adaptation of the information and consultation procedure**

In addition, it is good to note the following and discuss it in advance also in the EWCs under the Subsidiary Requirements. It is also possible to write something about this down between the parties (works council and employer) regardless of the existence of a EWC agreement.

Where the structure of the community-wide undertaking or community-wide group of undertakings changes significantly, and no provisions, established by agreement, are in place on such a change, or where the relevant contractual provisions conflict with one another, the central management shall initiate the negotiations on its own initiative, or at the written request of at least 100 employees or their representatives, in at least two undertakings or operational units in at least two different Member States.

In the negotiations at least three (3) members of each European Works Council shall be members of the employees' negotiating body, in addition to the members elected in the manner referred to previously.

During the negotiations the European Works Councils shall continue to operate in accordance with any arrangements adapted by agreement between the members of the European Works Council or Works Councils and the central management (§ 26b).

#### **Observe: The employees' own decision to end negotiations**

There is one difference, namely in the situation where the employees' negotiating body may decide by at least a two-thirds (2/3) majority not to commence the negotiations referred to in section 22 or to discontinue negotiations already commenced. To recommence the negotiations the employees' negotiating body may be convened earliest in two years from the decision unless the central management and the negotiating body have agreed or agree upon a shorter time limit.

If the employees' negotiating body has in this manner decided to discontinue the EWC negotiations, the subsidiary rules in sections 27—37 on the co-operation procedure shall not apply to a community-wide group of undertakings or an undertaking. In this case there is no EWC activity at all.

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