European Works Councils: Moving Forward with Employee Consultation *(July 1998)*.

A guide to good practice

The EWC Directive: key provisions apply to undertakings with at least 1,000 employees in the European Economic Area (EEA) and at least 150 employees in each of at least two of these countries. Since December 1997, this has included the UK.

Setting up an EWC: central management is responsible for creating the conditions and means necessary for setting up an EWC or an information and consultation procedure.

Special negotiating body (SNB): to be set up on the initiative of central management or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in two or more countries.

Content of the agreement: coverage and composition of the EWC; how it will operate; venue; frequency and duration of meetings; financial and material resources; duration of the agreement and procedure for its re-negotiation. By agreement, alternative arrangements to an EWC may be established.

Subsidiary requirements: this default model applies if no agreement is reached within three years. It sets out a basic framework for an EWC agreement.

Confidentiality: negotiators, EWC members, employee representatives and experts who assist them may not divulge information that has been provided to them in confidence.

Protection of employee representatives: the same protection and guarantees shall apply as are provided for by national legislation or practice in force in the country of employment.

Voluntary agreements: the Directive did not apply where qualifying companies had agreements in force before 22 September 1996. A similar period is allowed for companies which now qualify, following the opt-in of the UK. They have until 15 December 1999.

Introduction

In 1996, the IPA set out in a programme of seminars to identify the concerns of companies which were already grappling with the European Works Councils (EWC) Directive. Those seminars led to the popular booklet "European Works Councils: a guide to effective consultation and representation", which is not superseded by this study.

A number of areas of concern emerged during that programme; agenda-setting, effective meetings, dialogue between meetings and linking in other forms of participation. It was those issues which formed the starting point for this second project.

The research is largely qualitative, based on loosely-structured interviews in most of the sample companies, with representatives both of management and of EWC delegates. It sought to identify common and best practice as well as individual successes and problems.

It is hoped that by sharing their experiences so far, companies can learn from each other. These studies should also be of help to the next wave of EWCs, which will be introduced following the UK opt-in to the EWC directive.

Two key points have emerged. The first is that there is enormous variety in EWCs as implemented. If there are no striking trends in the areas which seemed to be so potentially contentious before implementation, it is because of the period of flexibility under the directive, which allowed most companies to implement voluntary, tailor-made EWCs.

The second is that it is still early days for the EWC. Clearly, most of them are in their infancy and the people involved are still in the foothills of a fairly steep learning curve.

It was very clear from interviewing so many people that EWCs had posed common problems and reaped common benefits, despite the variety of interpretations of the directive and the range of approaches taken to its implementation.

In some cases, interviewees made comments which on paper look the same but which were given opposite meanings by the tone of voice.

Perhaps the most striking of these was "Knowing that I have to face the EWC means that I have to think through issues of our European strategy in great detail." This was said by two very different executives: the one with a tone of deep irritation, as his authority was being questioned; the other with the excitement of someone who was given an extra motivation to do his job well.

Another was the stated hope of "getting through the EWC meeting without any really awkward issues coming up." From one interviewee this meant, in effect, getting away with avoiding important issues. From another it meant that the ongoing process of consultation in the company was working.

The sample companies

The TUC has tracked the progress of EWCs in the UK and produced a list of companies which meet the qualifications of the EWC directive. Taking from that list those organisations which were also IPA members, a target group of thirty-seven companies was drawn up and approached with a request to take part in this research.

Of those, twenty-six agreed. They are listed in the acknowledgements. Companies are not identified in the text as responses and interviews are treated confidentially. Although in practice many respondents were more than happy to be identified, some would have been more guarded knowing their comments would be attributed.

The sample group covers a good spread of service and manufacturing companies in several sectors. Between them, they cover all of Europe and probably much of the world. Their histories and cultures are equally varied.

The research

Of the twenty-six companies, twenty agreed to interviews with a senior manager and one or more employee EWC representatives.

In four companies interviews took place with managers only (two declined access to employees and two simply did not arrange it.) One company submitted written answers and one was not taken further because its arrangements do not include the UK employees.

The same set of questions was used for all interviews. It was felt important to allow interviewees to concentrate on areas which were of particular interest to them. For this reason, very detailed questions were avoided and no possible answers were suggested.

Most interviews were conducted face to face, although time and distance constraints dictated that several had to be conducted by telephone.

The nature of the inquiry means that the information presented here is limited by what the interviewees were prepared to talk about. In most cases there were no limits and the fact that at least two people per company gave their views helped to offset any personal bias. In the case studies, those companies in which only one interview was made are less fully reported.

The Issues

Agreement

As figure 2 shows, most companies in the sample had chosen to beat the deadline of 22 September 1996 for introducing their own European consultative forum.

This allowed them to fit it to their own organisation, culture and requirements and to keep control of the process. Only two companies already had consultative arrangements at the European level before the directive and few interviewees said that they would have invented them had they not been forced to do so.

The EWCs cover between two and eighteen European countries. The countries covered in the sample are shown in figure 3. What is interesting is that not only is the UK covered, but also Switzerland, which does not come under the directive, and a smattering of Eastern European and other countries.

Members

Companies calculate how many representatives are to be sent from each country or business unit according to a formula set out in their agreement. These formulae vary according to the size of the organisation, spread of employees and diversity of the component companies. The nature of the organisation is also an important factor in determining what formula will be suitable. Portfolio organisations which frequently buy and sell their component companies find this especially problematic.

The decision as to how the delegates are then selected is left to local management and existing structures of consultation.

In countries such as Germany and the Netherlands this has been the prerogative of national works councils, which are well-established in law. Other countries have strong trades unions, which usually nominate delegates from their ranks.

In the UK, their has been a variety of election and selection procedures. This reflects the variety of employee relations systems, from direct to indirect representation. These can vary within companies.

Difficulties have emerged where countries have only small employee numbers and they have been grouped together under one representative. Political sensibilities have not always been observed. In some cases, for example, trouble has arisen by grouping together Spain and Portugal and, in one case, Greece and Turkey.

In several cases, the representatives who made up the negotiating body which agreed the EWC simply continued in their seats as EWC representatives. This is generally believed to be good for continuity but it may mean that the wider workforce has no idea what they are doing. It also defers the business of deciding how to elect or select members.

Terms of office need to be decided, which are long enough to provide continuity and short enough to prevent stagnation. Three or four years are the most common. Most companies have not yet had to face the issue of staggering elections to avoid having completely new delegates in one year.

EWCs are allowed to invite experts to their meetings and pre-meetings; from consultants to trade union officers. Practice varies depending on the culture of the company and unions involved as well as the personalities in question on both sides. In one case this was a major stumbling point in negotiations, with the company refusing point blank to allow external observers. In many other cases, union experts have been welcomed. In general, this has been a less contentious area than was expected before the councils were set up.

Agenda

In fourteen of the companies, the agenda was set by a committee of elected delegates and management. In the rest, management alone was responsible.

Items suitable for the agenda are outlined in all agreements. They have to be of transnational interest and to relate to the business, rather than local issues or specific terms and conditions of employees.

Most of the companies in this sample had initial difficulties persuading delegates that this is a new forum, not a larger version of either their negotiating or their co-determination structures. Some delegates have dismissed the value of the EWC because it will not address the issues with which they are accustomed to dealing, such as pay and benefits. On the other hand, some continental delegates have been scathing about the EWC's lack of decision-making power on important strategy issues.

The reactions of management to these criticisms varied enormously. Some managers took note of repeated requests to discuss local issues. As well as explaining why they were inappropriate, checked that the local mechanisms for dealing with those problems were in fact in order.

Some companies have gone so far as to introduce new local or national forums precisely to deal with these questions. In other companies, this issue is unresolved and managers and delegates just get cross with each other.

The main complaint about the agenda from delegates has been that companies are too quick to invoke stock market regulations as a reason for not sharing information with them. The delegates interviewed did seem to understand the importance of this issue and felt that their managers were not sufficiently trusting. In companies where this was not an issue, there had been no breaches of confidentiality by EWC members.

It is already clear in some companies that failure to address important questions at the EWC level is having a negative effect on employee relations. In two companies, major decisions had been taken without reference to the EWC and in each, delegates were considerably less happy about this happening than the management thought they were, reporting a lowering of morale among EWC delegates.

In companies which are taking a constructive line on the EWC, training and education are given and even after this short time improvements are being made. Some of the trade unions which have taken a pro-active stance nationally on EWCs have themselves provided training for shop stewards.

A few companies report difficulty finding enough items to fill an agenda. Whether this is because they have no transnational issues, or simply do not want to consult on them with employees, is debatable and probably depends on management style as much as anything else.

In one or two conglomerate companies, it is the diversity of the component business units which seems to restrict the number of issues which are common to them. Others with similarly diverse portfolios have either set up more than one EWC along divisional lines or have concentrated one EWC on the core business. Not addressing this issue makes employees question the coherence of the group and its strategy.

The EWC does give employees access to top management and information about the company's position in its broader markets. In many cases, a good deal more communication has to be done to explain why this is of interest to employees, otherwise delegates and their constituents can fail to see the point.

The converse of this is that the top executives have access to a group of employees without any filtration by intervening layers of management. Apart from any other benefit from good participative practice, it is seen as a sounding board for important strategy discussions.

The meeting

There is no one model for the EWC meeting. They range in length, format, content and many other variables. One unifying feature is that they are not cheap. Few companies have the facilities in-house, so conference rooms need to be hired. Most delegates will need flights and hotel accommodation for at least one night. Only four of the companies in this sample were able to hold their meetings without hired-in interpreters. Companies also need to recognise that it takes many person hours to set up an EWC meeting.

It is not intended here to make value judgements about different companies' approaches to the EWC. The important thing is that the type of meeting should fit the intentions of the company and its culture.

Meetings vary in length. The shortest last only a couple of hours, the longest last three days.

A majority start off with a pre-meeting of employee delegates only, at which they have a chance to go through the agenda and co-ordinate their questions. In several cases, the delegates interviewed reported that the first of these pre-meetings had lacked structure and failed to prioritise issues. This was an area where prior works council or trade union training and experience had been especially valuable, helping delegates to set and keep to an agenda.

A handful of companies also have delegate-only post-meetings to evaluate the EWC and consolidate delegates' opinions before they return to their own countries. Where these take place, they are seen as an extremely valuable part of keeping the EWC alive during the year. Where they do not, delegates frequently reported a feeling of anti-climax at the close of the meeting.

A couple of companies take advantage of the fact that they have everyone together and lay on training sessions or group activities such as plant visits immediately before or after the EWC. This reportedly helps to bond the delegates as a group.

In one company, each meeting is given a theme and delegates are required to come prepared with local information relating to that theme. An exhibition is mounted outside the meeting room, where delegates can share information. This has proved to be both interesting and beneficial in identifying best practice.

It is important not to underestimate the effect that cultural and skills differences have on the effectiveness of a meeting. Each delegate brings a different set of experiences and expectations to the table, which determine to some extent how they behave.

The style of meetings ranges along with people's understanding of 'consultation'. In a minority of companies, a minimalist definition requires only that delegates sit as in a theatre and listen for a couple of hours to what the company chooses to tell them. At the other end of the spectrum, delegates sit around in a horseshoe or open square, presentations may be interrupted with questions and syndicate and plenary discussions are built into the agenda.

There is some evidence of evolution from the first position towards the second. This is not really surprising given that all involved are learning together what it is possible or desirable to achieve through the EWC process. It is, as yet, early to tell how the average EWC will look once it is bedded down.

Most companies time the EWC meeting to come as soon as possible after the announcement of annual results. This enables them to discuss up-to date financial information.

In almost every case, the opportunity to mix socially is valued by delegates and executives alike. It breaks down barriers of habit, rank and language.

The follow-up

The meeting may have a stand-alone role as a sounding board or focus group for management on the company's policies and positions, but to have value for employees, there needs to be some tangible effect. All too often, delegates reported that their co-workers made light-hearted accusations of them being off on 'another jolly'. Often, they lacked the tools or the time to rebut that.

Communications are extremely important in the follow-up to the EWC, both to keep the thing alive and to make it meaningful to the wider workforce.

In the best examples, the EWC process starts with a wide ranging communication about the council to all employees. This is most often bypassed where unions are given the right to nominate all of the delegates because no-one other than the shop stewards needs to know about it. Good communications at that stage are likely to lead to seats being contested at election. This of course means extra work but it also means that later communications will have some chance of being considered interesting because employees have some idea of what to expect.

Some interviewees, both management and delegates, said that the EWC had created a couple of dozen extremely well-informed employees but that very few people outside the EWC were any wiser. Some companies accept this but it is certainly not tapping the potential of the EWC.

For many people - on the management and employee sides - it is difficult to get beyond the fact that they have an EWC only because they have to. Had there been a felt need for sharing of information on European strategy before the directive, the level of engagement by all participants in the EWC process might have been very different. The majority of interviewees report that unless a decision affects employees directly, they muster very little interest - even in the most open of companies.

Surprisingly few companies had managed to get the EWC reported in existing internal magazines, although a handful had published special editions and produced highly professional written materials. The best of these summarise events and identify the EWC members as points of contact for further information. This hits the middle ground between a one page communique and a full set of minutes - the one too slight and the other too cumbersome to be useful. Effective communications should be well-presented, have a relevant level of content and be produced as quickly as possible after the meeting to keep the issues lively and fresh.

Delegates use existing channels of communication where available to pass on the information gathered through the EWC.

This can mean cascading back through a works council system, addressing shop stewards meetings or using the company team briefings. The shop floor notice board is also very popular, as is its modern equivalent the intranet.

There are EWC delegates who do not feed back at all to their constituents; because they are not encouraged to, or they do not know how, or they simply do not think there is anything worth talking about.

Of course, it is not to be expected that any amount of communicating will work miracles overnight. The EWCs will take years to bed down and find a meaningful role within the organisation and in the eyes of employees. As yet, very few companies believe that they have succeeded in explaining the EWC and its activities to the wider workforce. Employees cannot be forced to take an interest in the EWC even if it seems sensible to encourage them.

Some delegates reported problems with resentful middle managers as their greatest block to communicating. Three companies recognise this and communicate with their middle managers directly after the meeting so that they do not feel their positions undermined by selected employees being better informed than themselves.

The most lively EWCs are those with sub-committees or elected employee co-ordinators who have a role between meetings in keeping the thing going. These committees or co-ordinators may meet twice a year or even every month and keep abreast of the issues which have featured in agendas. They also form a focal point for feedback and questions, both from management and employees.

Where delegates have easy access to each other and to management between meetings, there seems to be more interest in building up a constructive forum and taking that constructive attitude into the wider company. This can be effected by access to internal and electronic mail and, where there is no language barrier, by telephone.

In the least effective cases, delegates turn up, eat, listen, eat again and go home. The companies complain about the expense of hotels, flights and interpreters but seem to make little attempt to offset that with any of the benefits which others believe can accrue from participative management.

Employee involvement and representation

This varied enormously both across the sample and within individual companies. An observation amongst this sample is that the more progressive the employee involvement policies generally, the more effort tends to have been put into the EWC and the more meaningful it seems to be.

The companies most hostile toward the EWC are those which are doing least to give it a role which is acceptable and complementary to the company.

Where EWC delegates have other roles in the spectrum of employee relations vehicles, it helps if each is clearly defined, so that the individual knows which and how many 'hats' she is wearing at any time. Many of the managers doubted the EWC members' ability to make that distinction, although they believed themselves quite capable of making it.

It is true that a minority of the delegates interviewed did confuse their negotiating powers with their EWC role or fail to see the point of the EWC at all. However, for most people this was not the case.

There seems to be at least as much cynicism and hostility towards EWCs among trade unions as among the business community. In some cases it seems to be the result of a feeling that hard-won roles - particularly as negotiators - could be threatened. In some companies there was an impression of collusion between (particularly trade union) delegates and management to maintain the status quo and not let the EWC have any effect at all.

A large number of those interviewed on the management side expressed initial resentment but many, although certainly not all, have come to the view that the EWC is a worthwhile addition.

National differences

Certain historical differences in industrial relations across Europe lead to patterns of expectations and behaviour at EWC meetings. In some cases, this has led to acrimony. In others, delegates have clearly shared and learned from each other, with or without training.

Delegates from countries with existing co-determination or works council procedures, can expect the EWC to have similar high-level powers and get frustrated with its lack of teeth.

In countries with very adversarial industrial relations, employees can be deeply suspicious of any management which chooses to gather all the representatives together in one room.

Several companies have benefited from educating all delegates about these differences, in order to even out their expectations to a level where they can co-operate. One or two national and european trade unions have produced educational materials which explain the background.

When is an EWC working?

All interviewees were asked what measures of success they would use for an EWC and how they felt their council was faring. Several people could not answer the question because it is so hard to find any measurable effects.

For both employee delegates and managers, their answers depended largely on how the EWC fitted in with the company's more general ambitions.

On both sides, the most common answer was that the EWC could be considered a success 'if we feel that there has been a real exchange of views', in terms of frank and full disclosure of information, informed discussion and executives listening to and taking on board opinions. Many also hoped that the EWC would break down barriers and improve employee relations.

In one or two cases, no more was wished for than that the company fulfilled the letter of the directive. Others expressed concern that the EWC should not take on a life of its own and reinforce divisive practices.

More commonly, managers hoped that the EWC would lead to a better informed workforce and a greater willingness to understand and participate in change.

Delegates most frequently hoped to achieve something tangible that they could take back to the workforce, such as a changed decision or a new or improved policy. They also wanted to learn more about the business and how to pose informed questions and contribute to decision-making.

The attendance of top executives at meetings was seen as a good sign of the importance which the company gave to the EWC.

A minority of interviewees wanted the EWC to evolve into something resembling a German or Dutch works council, with at least some level of co-determination. For the most part, though, this was seen on both sides as undesirable.

Conclusion

It is evident from the study how many companies were still at a very early stage of implementation. Much was still to be learnt about agenda setting, dealing with difficult issues, feeding back to staff and managing the process between council meetings. Local issues are surfacing, often as illustrations of the impact of strategic decisions. A strategic level focus can only emerge as the result of a growing understanding of the business by delegates. This depends, in turn, on the quality of dialogue taking place within the council meetings.

Some issues appear to be less problematic in practice than had been anticipated. The processes for electing or selecting delegates have been relatively trouble free, at least within the UK. The involvement of experts and external observers, such as union full-time officials, appears to be settling down as well.

Overall, there is still considerable scepticism about the value of these councils. Scepticism on the part of management was expected. What was not expected was the degree of doubt on the part of union delegates about how much of value they felt was being achieved in the EWC meetings.

It has become clear from the interviews that EWCs are working best in those companies where there is a clearly thought-out policy on the role of the council. That policy can be a highly participative one or it can be a minimalist and restrictive one. The content of the policy matters less than the existence of a clear and coherent framework which is linked to the culture of the organisation.

The operation of the European Works Council is less successful where there is confusion about its role, doubts about the degree of open disclosure, appropriate level of consultation, or even legitimacy of the EWC and its participants within the corporate decision-making processes.

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The original report summarises twenty-five companies in which an EWC covers UK employees. These have been omitted here, however you can order a copy of the full report by clicking **here**. (link to order form for publications)