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# COMPANY POLICY NEWSLETTER

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## Foreword

Dear Colleagues,  
Dear Reader,

The adoption of the [directive 94/45/EC on European Works Councils](#) was regarded by the European Metalworkers' Federation and its affiliates as a significant step in the trade unions' effort to achieve greater employee participation in company decision-making processes. With an ever-deepening and widening single market, it is now evident that national information and consultation procedures are no longer sufficient to adequately counter European multinationals' strategies.

As early as 1996, the EMF strived to use the directive as a tool to serve workers' interests in Europe. It established [binding guidelines](#) in an effort to create strong co-ordination among national metalworkers' unions and also established common rules of procedure and guidance with regard to the content of new agreements. In addition, the EMF has also made every effort to increase the number of EWC agreements and secure trade union participation in the work of EWCs.

This second issue of the Company Policy Newsletter aims to give a summarized view of national legislation that transposed the EWC directive's articles on the designation of members of the Special Negotiating Body and European Works Councils. Our intention is also to provide an introduction to various employee representation cultures and remove some of the misunderstandings surrounding the procedure for designating SNB or EWC members at national level. We trust you will find this useful and that it will contribute to the EMF's aim to make European Works Councils work for workers.

Peter Scherrer

## Overview of national laws regarding the designation of Special Negotiating Bodies and European Works Council members

Since the adoption in 1994 of directive 94/45/EC on European Works Councils, all 30 Member States of the EU and of the European Economic Area (EEA) had to transpose the directive into their national legislation. The latest transpositions of this directive are those of Romania and Bulgaria, which implemented the EWC directive respectively in 2005 and 2006 as part of the "*acquis communautaire*".

**Article 5 of the EWC directive** provides that a **Special Negotiating Body (SNB)** must be set up in order to negotiate the establishment of a **European Works Council** or an information and consultation procedure.

**Article 5, paragraph 2.** details how the SNB should be constituted :

*"The Member States shall determine the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territories. Member States shall provide that employees in undertakings and/or establishments in which there are no employees' representatives through no fault of their own have the right to elect or appoint members of the special negotiating body".*

The directive states that the same provision applies to the designation of European Works Council members.

EU Member States were therefore given a great deal of latitude regarding mechanisms for designating members of the SNB and the EWC.



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This led to a variety of designation mechanisms reflecting the variety of worker representation traditions.

Indeed, national legislations transposing the directive draw on existing workers' representation structures at national level to guarantee the most effective implementation possible.

It is important to note that all the national EWC transposition legislation guarantees the democratic nomination of SNB and EWC members by employees or their representatives: in no country is management allowed to nominate or designate members of the SNB or the EWC.

## Some similarities amid a variety of designation mechanisms

In spite of the existing variety there are similarities to be found between countries. We have therefore tried to group together the countries which share some similarities in terms of designation mechanisms for SNB and EWC members: :

- 1. Group of countries n°1:** Austria, Belgium, Denmark, Germany, Hungary, the Netherlands.  
Members of the SNB and EWC are appointed/elected by existing works council structures.
- 2. Group of countries n°2:** Cyprus, The Czech Republic, Finland, France, Greece, Italy, Latvia, Poland, Portugal, Romania, Slovakia, Spain, Sweden.  
Members of the SNB and EWC are appointed/elected by the employee representatives (trade unions in most cases).

- 3. Group of countries n°3:** Bulgaria, Estonia, Malta, Norway, Slovenia, The United Kingdom.

Members of the SNB and EWC are directly elected by the employees, by secret ballot.

For the first and second group of countries, the transposition laws always foresee alternatives when either a works council or other forms of employee representation are non-existent in a specific establishment or company. Alternative mechanisms are then provided by law. However, not all transposition laws make the provisions for direct elections by the whole workforce in the absence of works councils and/or employee representations. This gap in the transposition laws concerned can create problems.

In the following pages we present each country's national legislation according to the group to which it belongs:



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## I. GROUP OF COUNTRIES n°1

According to the legislation of the following group of countries, members of the Special Negotiating Body and the European Works Council are appointed/elected by works council members.

In most of these countries, a distinction must be made between the **different levels in the works council structure:**

1. The works council at a plant or establishment level.
2. The central works council at company level if the company operates several plants/establishments in the country. (A company may have several works councils but no central works council however.)
3. The group works council at the group level if a multinational group has several companies in the countries concerned operating in different branches.

In most cases (i.e. in Austria, Germany, the Netherlands or Hungary) there is a clear hierarchy in these structures: **group works councils prevail over central works councils and central works councils prevail over (establishment-level) works councils.** It is the broadest works council structure which has the duty to designate SNB and EWC members.

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### - AUSTRIA

Federal law N° 601 of 17th October 1996 transposed the EWC directive 94/45/EC. §180 of the federal law details the method of designation of the SNB and EWC members.

Austrian federal law provides that where works council structures exist they are responsible for appointing the members of the SNB and of the EWC.

#### General rule :

**Members of the SNB and of the EWC are appointed by a decision of the group-/central- or establishment-level works council by a simple majority vote.** The adoption of the decision requires the presence of at least half of the members of the works council.

#### Subsidiary solution n°1:

If, in a group of companies or in a single company, several central works councils or several establishment-level works councils exist, the chairman of the central works council or of the establishment-level works council with the largest number of employees should convene **a meeting of all the relevant works council bodies to jointly agree on the appointment of the members of the SNB or EWC.**

#### Subsidiary solution n°2:

If, in addition to one or more central works councils, there also exist at least one (establishment-level) works council which is not represented on any central works council, the chairpersons of the works councils and their deputies shall be invited to the meeting at which representatives of the SNB and EWC will be elected/appointed.



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## - BELGIUM

The national collective agreement n°62 of 6th February 1996 transposed the EWC directive 94/45/EC.

Articles 13 and 29 of the collective agreement detail the method of designation of the SNB (art. 13) and of the EWC (art. 29) members.

### General rule :

**Members of the SNB and EWC are appointed by and from among the employees' representatives who are members of the works councils on the basis of a unanimous agreement.**

If no agreement is reached, the works councils vote and the candidate with the majority of the votes is then appointed.

### Subsidiary solution n°1 :

In the absence of a works council, the member(s) of the SNB and EWC are appointed by the members of the workplace health and safety committees on the basis of an agreement.

If no agreement is reached then the committees vote and the candidate with the majority of the votes is appointed.

### Subsidiary solution n°2 :

In the absence of a works council and a workplace health and safety committee, trade union delegations in the plant or companies may be authorised to designate the members of the SNB and EWC.

### Subsidiary solution n°3:

Should none of the above apply an election will take place at company level to elect the SNB and EWC members.

**NB:** In the metal sector, Belgian trade unions have reached an agreement on the procedure for appointing SNB/EWC members when several unions have membership in one company.

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## - DENMARK

Act n°371 of 22nd May 1996 transposed the EWC directive 94/45/EC.

Chapter 4, § 13 of the Act details the method of designation of the SNB and EWC members.

Danish law provides that:

1/ **In the first instance, the members of the SNB and EWC are elected from among the employees by the employees' representatives on the works councils ("co-operation committee").** Members of the works councils are usually trade union members.

2/ In the absence of a works council, the members of the SNB and of the EWC shall be elected by the shop-stewards or, if agreed, between the management and the employees' representatives.

3/ Otherwise, **the members of the SNB and EWC are** elected by all the employees.

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## - GERMANY

Act of 26th October 1996 of the Bundestag transposed the EWC directive 94/45/EC.

Section 11 of the Act details the method of designation of the SNB and EWC members.

The most encompassing level of the works council structure has the responsibility to nominate SNB and EWC members:

a/ If there is a group works council covering several sites and company holdings within the country, it is this body which will appoint members of the SNB and EWC on behalf of all sites.

b/ If there is a central works council covering several sites, then it is this body which will appoint members of the SNB and EWC on behalf of all sites.

c/ If there is only one site in Germany, then members of the local works council shall appoint the members of the SNB and EWC.

### Subsidiary solution n°1:

However if, **in the case of groups of undertakings**, some works councils or central works councils are not represented in the group works council, then the chairpersons and deputies of the unrepresented works councils are deemed to be members of the group works council and take part in the appointment of the members of the SNB and EWC.

### Subsidiary solution n°2:

If, **in the case of groups of undertakings**, there is no group works council, but if:



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a/ there is more than one central works council, the members of the SNB are then appointed at a joint meeting of all the central works councils.

b/ a local works council is not represented in the central works councils, then the chairperson and his/her deputy should be included in the central works council and take part in the appointment of the members of the SNB/EWC.

c/ there are several works councils, the members of the SNB and EWC will be appointed at a joint meeting of the works councils.

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## - HUNGARY

Act XXI of 2003 transposed the EWC directive 94/45/EC. Article 5 and 10. detail the method of designation of SNB and EWC members.

The designation of the SNB or EWC members representing employees takes place either:

- 1/ In the first instance, jointly **by all central works councils** (if several of these exist),
- 2/ or **by the central works council** (if there is only one),
- 3/ or by **the establishment/plant-level works council** (if there is no central works council).
- 4/ Should none of the above representation structures exist, but where trade unions are present, the trade unions initiate the setting up of an election committee to elect the EWC representatives.
- 5/ Where no trade unions or other representation structures exist, employees have to set up an election committee whose members will organise a secret ballot for the election of EWC members.

In accordance with article 5, §2 of directive 94/45/EC, Hungarian law suggests that the designation of SNB or EWC members offers an opportunity to set up works councils or central works councils in order to ensure the representation of workers' interests at national level too, i.e. within companies that had not established such structures before.

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## - THE NETHERLANDS

Act of 23rd January 1997 transposed the EWC directive 94/45/EC.

Section 10 of the Act details the method of designation of the SNB and EWC members

As under Austrian, German or Hungarian law, Dutch law recognises **a hierarchy among the works council bodies** that are entitled to appoint SNB or EWC members.

1/ If **a group works council** exists, then it is this body whose members will elect members the SNB or EWC members.

2/ If **there is no group works council, but a central works council**, then the latter will appoint the members of the SNB or EWC.

3/ If **no central works council** exists then the designation will take place at works council level.

In order to ensure that all the employees' representatives of a company participate in the designation of members of the SNB or EWC, the law also foresees that whenever a plant/ establishment works council of a company or a group is not represented at the higher level, i.e. in a central or group works council, the designation of the members of the SNB or EWC will take place at a joint meeting of all the company's existing works council bodies.

If no works council structure has been set up at all, then employees will elect their SNB and EWC representatives by secret ballot.

## II. GROUP OF COUNTRIES n°2,

In the following group of countries members of the SNB and of the EWC are appointed/ elected by the employees' representatives.

## - CYPRUS -

The Law 68 (1) of 2002 transposed the EWC directive 94/45/EC.

Section 8 of the Act details the method of designation of the SNB and EWC members.

Cypriot law provides that:

- 1/ Members of the SNB and EWC are elected **by the existing trade unions** in the company or group of companies.





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2/ **In the absence of trade unions, employees can directly elect their SNB and EWC representatives** by secret ballot.

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## - CZECH REPUBLIC

Sections 288 to 299 of the Labour Code transposed the EWC directive 94/45/EC.  
Section 290-4 and 296-2 details the method of designation of SNB and EWC members.

Czech law provides that:

1/ If there is one or more trade unions in a company, then they will elect the SNB and EWC members on behalf of the employees they organise. Employees who are not members of a trade union will be represented by the trade union with the largest number of members, unless they decide otherwise.

2/ If the absence of a trade union, the members of the SNB and EWC are appointed from among the employees' representatives at a joint meeting.

3/ If there are no employee representatives or if they fail to carry out their functions in a company, then employees of the company may elect representatives who will participate in a joint meeting to elect one or more members of the SNB or EWC.

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## - FINLAND

Act of 9th August 1996 transposed the EWC directive 94/45/EC.  
Section 11e details the method of designation of the SNB and EWC members

Finnish law provides that the **members of the SNB are appointed on the basis of an agreement among the employees' representatives** (usually among trade union delegates in the company).

However, with regard to **the designation of EWC members**, the law gives some latitude to employees to decide whether they want to appoint their representatives on the basis of an agreement or elect them.

If no agreement is reached then the election is held by the "*industrial safety delegates*" in the company.



## - FRANCE

Act n°96-985 of 12th November 1996 transposed the EWC directive 94/45/EC.

Section 5 details the method of designation of the SNB and EWC members.

French law provides that:

1/ Members of the SNB and EWC are primarily appointed **by the employees' trade union organisations from among their members elected to the works council of the company or the plant/establishment**, or among trade union representatives in the group **on the basis of the results of the most recent elections**.

2/ **Seats on the SNB or EWC are distributed among electoral bodies** (blue-collar/white-collar) in proportion to the numerical size of each.

3/ In the absence of a trade union organisation in the company or the group, elections are held in the company.

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## - GREECE

Presidential decree of 22nd September 1994 transposed the EWC directive 94/45/EC.

Articles 6 and 15 detail the method of designation of the SNB and EWC members.

The Greek presidential decree provide that members of the SNB and EWC and their deputies are elected according to the following order of priority :

1/ In the first instance **by the existing trade union organisations** (where they exist);

2/ by the works councils which operate where no union bodies exist; and

3/ directly by the employees, by a direct ballot, should the above not apply.

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## - ITALY

National multi-industry agreement of 6th November 1996 transposed the EWC directive 94/45/EC.

Articles 6 and 9.6 detail the method of designation of the SNB and EWC members.



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Italian law makes a distinction between the designation of the SNB members and the EWC members.

The law provides that

1/ **Members of the SNB are appointed by the trade union organisations that are signatories to the national collective labour agreement** applying in the multinational company or group concerned **and by a joint trade union body in the company.**

2/ **In the absence of trade union representation** in the plant/establishment or company, the trade union organisations that have signed the relevant national collective agreement should agree with the management on the procedure for the participation of the employees from that plant or company in the appointment of the representatives of the SNB.

**In the metalworking sector however, the practice is as follows:**

**SNB and EWC members are chosen from among the union representatives at the workplace.**

The three Italian union federations have agreed on a procedure to nominate SNB and EWC members according to the level of membership.

For example, if three members are to be appointed to the SNB or EWC for Italy, then each organization will appoint one member.

Should only two members have to be appointed, then the largest organisation in terms of membership in the company can appoint its member and the second seat will be appointed on a rotational basis by the other two organisations

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## - LATVIA

Law of 29th March 2001 transposed the EWC directive 94/45/EC.

Chapter III, section 18 details the method of designation of the SNB and EWC members.

Latvian law provides that the SNB and EWC members are elected by employees or by their "authorised employees' representatives" from among their members. Therefore members

are either elected directly or indirectly through the "authorised employees' representatives".

The law however is unclear about whether direct or indirect elections should prevail in the company.

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## - POLAND

Law of 5th April 2002 transposed the EWC directive 94/45/EC.

Section 2, article 8.1 details the method of designation of SNB and EWC members.

The Polish law provides that:

1/ Members of the SNB or EWC are **appointed by a representative local trade union organisation.**

2/ **In the absence of any such trade union organisation**, members of the SNB and EWC should be elected by the employees directly.

In companies where there is **more than one trade union organisation:**

1/ **the trade union organisations shall jointly appoint members of the SNB;**

2/ should no agreement be reached by the trade union organisations, employees shall elect members of the SNB and EWC from the candidates proposed by such organisations. Candidates will be elected by a simple majority vote.

The election is only valid if more than 50% of the workforce participates.

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## - PORTUGAL

Law of 1996 on European Works Councils in community-scale undertakings and groups of undertakings transposed the EWC directive 94/45/EC

Article 31 details the method of designation of the SNB and EWC members

Portuguese law proposes two modes of workers' representation since it provides that:

1/ **Members of the SNB and EWC are appointed by an agreement between the employees' committee and the representative trade union organisations.**

2/ In the absence of an agreement, employees' representatives are elected from



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among the proposed candidates by a direct, secret ballot.

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## - ROMANIA

Law n°271/2005 transposed the EWC directive 94/45/EC. Articles 12 and 24.1 detail the method of designation of the SNB (Art.12) and EWC (art.24.1) members.

Romanian law stipulates that:

1/ **The members of the SNB and EWC are appointed by the employee representatives in the company or the group.**

2/ In the absence of such representatives, employees can elect their representatives directly by a simple majority vote.

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## - SLOVAKIA

Sections 244 and 247 of the Labour Code transposed provisions of the EWC directive on the designation of the SNB and EWC members

1/ The members of the SNB and EWC are **appointed by employee representatives** (they can either be trade union representatives or works council representatives) **as a result of a joint negotiation.**

2/ **In the absence of employee representatives, employees elect representatives to participate in the joint negotiations on their behalf.**

The distribution of votes in such joint negotiations shall be determined on a pro rata basis according to the number of employees represented in the plant/company.

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## - SPAIN

Law of 10th April 1997 transposed the EWC directive 94/45/EC.

Article 27 details the method of designation of the SNB and EWC members.

Spanish law provides that:

1/ Members of the SNB and EWC are appointed on the basis of a **majority decision taken by trade union organisations which, as a whole, represent a majority of the**

**members of the works council or staff representatives.**

2/ The law specifies that in the case of **the EWC, the appointed member must either be a works council member, a trade union representative or a staff representative in the company.**

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## - SWEDEN

Act n°359 of 9th May 1996 transposed the EWC directive 94/45/EC.

Section 16 details the method of designation of the SNB and EWC members.

Swedish law provides that:

1/ SNB and EWC members are **appointed by the local trade union organisations which are bound by collective bargaining agreements** to the multinational company or group concerned.

2/ Where **several local employees' organisations are bound by collective bargaining agreements, the local employees' organisation which represents the largest number of employees in the multinational company/group is entitled to appoint the first member of the SNB or the EWC.**

However:

i- If the employees' organisation represents more than four-fifths of the employees in the company, then that organisation can appoint all the SNB/EWC members.

ii- If no organisation represents more than four-fifths of the employees, the two local employees' organisations which represent the largest number of employees may appoint one member each and one deputy member.

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## III. GROUP OF COUNTRIES n°3

In the following group of countries, the members of the SNB and of the EWC are directly elected by the employees, by secret ballot.

### - BULGARIA

Act promulgated in the State Gazette n°57 of 14th July 2006 transposed the EWC directive 94/45/EC.  
Article 5 and 10 details the method of designation of the SNB (art.5) and EWC (art.10) members.

Bulgarian legislation provides that:

1/ SNB and EWC members are **elected in the first instance by a general assembly of all employees in the company.**

2/ However, **the general assembly may also decide to concede the functions of SNB and EWC members either to representatives appointed by the leadership of the local trade union organisations or to employee representatives who may have been previously elected for the purpose of information and consultation by a two-thirds majority of the employees in a general assembly.**

### - ESTONIA

The Involvement of Employees in Activities of Community-scale Undertakings, Community-scale Groups of Undertakings and European Companies Act of 12th January 2005 transposed the EWC directive 94/45/EC.

The Estonian act provides that members of the SNB and of the EWC are elected by a general assembly of all employees.

The procedure for the election of a member or members of the SNB is approved by the general assembly of employees.

However, in cases where a group operates several companies or plants in Estonia, the employees' representatives of these companies shall meet and jointly elect a member or members of the SNB and EWC.

### - MALTA

Act n°XXII of 2002 transposed the EWC directive 94/45/EC.  
Article 4 details the method of designation of the SNB and EWC members.

Maltese legislation provides that any employee of a company who satisfies the minimum requirements (not being employed for a probationary period, etc.) is entitled to elect SNB and EWC members **by a secret ballot.**

The central management of the company appoints a responsible person to act as a ballot supervisor to oversee the nomination and election process.

### - NORWAY

Agreement of 30th November 1996 between LO (Norwegian Confederation of Trade Unions) and the NHO (Confederation of Norwegian Business and Industry) transposed the EWC directive 94/45/EC.  
Articles 4, c/ and 6 detail the method of designation of the SNB (art. 4) and of the EWC (art. 6) members

The national agreement on the establishment of European Works Councils provides that **members of the SNB and EWC are elected by secret ballot by all employees of the company under the direction and supervision of the shop-stewards.**

### - SLOVENIA

European Works Councils Act promulgated by presidential order on 28th June 2002 transposed the EWC directive 94/45/EC  
Articles 9 and 20 of the act detail the method of designation of the SNB and EWC members.

The Slovenian European Works Councils Act provide that **SNB and EWC members are directly elected by all the employees of a company by a secret ballot.**

The law further specifies that representative trade unions within the undertaking shall have the right to propose candidates for membership of the SNB and EWC.



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## - The United Kingdom

Statutory Instrument 1999 No. 3323, The Transnational Information and Consultation of Employees Regulations 1999 transposed the EWC directive 94/45/EC into national law.

Art. 13 of the regulation details the method of designation of the SNB and of the EWC members.

British law provides that **members of the SNB and EWC are elected by all UK employees through a ballot system**

The ballot procedure is organised by the management of the company and may be carried out as follows:

1/ Either by a single ballot for all employees,  
2/ or separate ballots for employees according to existing categories of employees if the management so decides.

The second option is applied when more than one member has to be designated or when the management decides that separate ballots would better reflect the interests of UK employees as a whole.

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**SIGN THE ETUC PETITION AND HAVE IT SIGNED!**

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