



## THE EUROPEAN COMPANY – SE

### EMF guidelines

*Approved by the EMF Executive Committee  
(Prague, 12<sup>th</sup> June 2003)*

Adoption of the Regulation n°2157/2001 of 8<sup>th</sup> October 2001 on the Statute for a European company, together with the Council Directive 2001/86/EC of 8<sup>th</sup> October 2001 supplementing the Statute for a European Company with regard to the involvement of employees, poses a considerable challenge to the EMF and its member organizations who have to develop a common strategy on the procedure for negotiating information, consultation and participation agreements and their content.

The purpose of these guidelines is to present a comprehensive EMF approach which can be implemented as soon as the ECS Directive enters into force in 2004 but can also be used before on a voluntary basis.

#### 1. Basic principles

##### 1.0. Transposition of the Regulation and the Directive

The EMF will pay special attention to the transposition of the Regulation on the SE and of the Directive on the involvement of workers since major aspects of the legal provisions will be left to the discretion of the Member States. In this respect, the EMF urges the ETUC to take the necessary steps to arrive at a single trade union position on the transposition which could be pushed through Europe.

The EMF believes that it is important for all national trade union organizations to approach and put pressure on their respective governments in order to achieve a rapid transposition that does not allow any discrepancies between national legislations.

##### 1.1. No opt-out on participation

The EMF is in favour of participation in the SE, which means that we do not choose to opt out of participation rights.

## 1.2. Level of participation

In negotiations on participation, the EMF will choose the highest level of participation. This means that we will refer to the national system that offers the largest number of seats to employee representatives, regardless of whether the dualistic or monistic system is being negotiated. This will be requested not only during negotiations but also in case standard rules apply.

The qualitative aspect of participation is described in § 4.4.

## 1.3. United union approach in negotiations

Before negotiations begin, all unions and/or SNB employee representatives concerned should strive to agree common demands for information, consultation and participation rights. Where differences of opinion arise, the EMF shall be consulted and requested to take a decision.

## 1.4. SE Board members : European mandates

The mandate in a cross-border company on the basis of ECS is a European mandate with strong national roots. It is a European trade union mandate that has to cover the complete area of the company and not only those Member States from which the board members come.

This means that there must be a democratic, legitimated, transparent and representative procedure to select worker representatives as Board members. Management shall not be permitted to nominate employee representatives to the Board. The procedure is defined in point 4.2.

Proposals for Board membership have to be developed in close cooperation between the Representative Body, EMF affiliates and the EMF. There will always be a need for committed and motivated representative candidates who have the trust and confidence of both the national level and the European level.

## 1.5. Experts for the SNB

- The SNB should request the assistance of at least one trade union expert during negotiations with management. This trade union expert is entitled to attend all SNB meetings with full authority to speak. The company shall cover the costs of the experts.
- The decision about the EMF expert should equally take into consideration the following :
  - the currently applicable standard and existing experiences with participation rights at national level
  - the distribution of employment across countries
  - the country in which the company has its headquarters

Should the decision not be clear, the EMF shall be consulted and requested to take a decision.

- See also : EMF EWC Binding guidelines

#### 1.6. EMF Coordinators in SE Companies

For each SE company, a trade union coordinator will be appointed who will be the point of contact between the SE and the EMF. The nomination procedures and role will be as defined in the EMF resolution on the role of trade union EWC coordinators.

#### 1.7. Protection of employee representatives

Members of the SNB, Representative Body and supervisory or administrative bodies should enjoy the same protection and guarantees provided for employee representatives by the national legislation.

Employee representatives in the supervisory or administrative bodies should be covered by an insurance, which limits their personal responsibility (Ltd. responsibility).

#### 1.8. Confidentiality

- In the Representative Body : The rules of confidentiality can only cover such information which constitutes a business secret and has been explicitly declared as such.. Confidentiality should be defined in such a way that transmission of information remains possible for the RB members.
- In the supervisory or administrative body: see 4.4.

#### 1.9. In the case of restructuring (mergers, acquisitions, ...)

If an SE acquires another company or merges discussions should be launched on how employee representatives of the acquired or merged company can be integrated in the existing RB and/or participation body structures. The way of dealing with this point should be part of the agreement reached between the SNB and management.

In the case of restructuring, the RB should be informed and consulted in full conformity with the spirit and content of consultation as defined in the SE directive on employee involvement. The EMF will pay special attention to consultation of the RB prior to management's final decisions.

#### 1.10. EMF responsibility: establishing an appropriate working structure and ensuring coordination between the members of the RB, the members of the supervisory or administrative organ and the Trade Unions.

An appropriate working structure should be established which allows regular exchange of information between RB members and Board members, before and after any Board and RB meeting, with the inclusion of the EMF coordinator and the trade unions involved.

This working structure should also be integrated in the agreement reached between the SNB and management so that financing by management is secured.

The EMF Task Force will collect and monitor the systems of communication within the different SE.

#### 1.11. The need for a financial regulation

Employee members of the Board have the same rights and duties as those Board members who are appointed by the shareholders. Costs arising from their duties shall be covered by the SE .

A commitment to pay over part of the board remuneration shall be developed by the EMF affiliates and the EMF. An EMF working party shall be set up for this purpose.

#### 1.12. ECS and Candidate countries

The EMF and its affiliates attach the greatest importance to the inclusion of worker representatives from Switzerland, as well as representatives from accession countries, as full members in the SNB, the RB and the supervisory or administrative organ.

#### 1.13. Link with existing EWCs

- Where an EWC (or EWCs) exists, it (they) should remain in place as long as no new agreement on the Representative Body has been reached.
- Existing EWCs should be kept informed about progress in the SNB negotiations with the SE.
- Should an SE be created at the level of a subsidiary (for instance in the case of a joint venture), a clear link should be established between the RB of the SE and the EWC at group level.

1.14 If the establishment of the SE leads to the disappearance of national level management structures then the SE is to nominate a management representative who is empowered to act opposite the national level employee representative bodies in so far as this is necessary.

## **2. Special Negotiating Body**

2.1. The EMF should be informed by the national affiliates of any company intention to establish an SE. Steps will be immediately taken by the EMF to ensure notification of employee representatives/unions concerned.

2.2. Information about the structure of the company, the countries involved, the number of employees as well as the existing systems of participation within the company should be made available rapidly to the employee

representatives and the unions involved. A clear demand should therefore be addressed to the company in order to obtain that information.

The company should at the same time deliver information on the current state of the SE Statute of the company.

- 2.3. Once the company has officially declared its intention to establish an SE, the unions concerned or/and the SNB or/and the EMF should announce their willingness to conclude an agreement covering information and consultation as well as participation rights.
- 2.4. The EMF should make sure that the allocation of seats and the union representation within the SNB are in conformity with the legal provisions of the Directive.
- 2.5. The SNB should make the best use of the negotiation period in order to reach an acceptable agreement, not only on information and consultation rights, but also on participation rights. This objective is certainly important in those cases where participation rights will not be reached by automatic implementation of the standard rules on participation.
- 2.6. A clear timeframe as well as a schedule of SNB meetings should be agreed with management when the negotiation process commences.
- 2.7. Regarding the voting rules within the SE SNB, there is a need to analyse the size of the workforce which each SNB member represents. This could be particularly important in cases where several SNB members are from the same country but vote differently. Where there is a disagreement of this kind, it will be necessary to define a method of calculation of the size of the workforce represented by each SNB member.  
This calculation is important to define whether a majority or two-thirds majority is reached, not only among the SNB members but also with regard to overall workforce figures.
- 2.8. If foreseen in the national transposition law, trade union officials could be elected as full SNB member. It is up to national unions to use this possibility or not. However should the EMF encounter difficulties in getting an EMF expert accepted by the SNB, the EMF strongly recommends to the national affiliated trade unions that they use this legal possibility. This could be a second way of securing trade union involvement in the SNB. National affiliated unions should try to use this legal possibility in those cases.
- 2.9. The SNB, with the support of the EMF expert, should also analyse the existing participation rights in the different national companies involved. This is important to avoid a reduction of participation rights in the final agreement between SNB and management.
- 2.10. Simultaneous interpretation from and into all relevant languages must be provided for the official RB meeting as well as for the pre-meetings and meetings with the Board members. Long-term plans to achieve one major

working language with suitable language teaching may not be used to restrict simultaneous interpretation and translation where this is necessary. Translation of all meeting documents will be taken in charge by management.

- 2.11. Training of SNB members and trade union officials prior to the SNB negotiations will be a high priority. Agreement with the future SE should be reached to secure management financing for this training.

### **3. Information and consultation: setting up of the Representative Body**

- 3.1. EMF guidelines for EWCs remain valid. However, given the specificities and the improvements contained in the Regulation and the Directive, a number of improved rights should be taken into consideration:
- Improved definitions of information and consultation rights as provided in the Directive on the involvement of employees in the SE
  - Competence of the representative body: questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State.
  - In case of exceptional circumstances the parties should seek agreement
  - Right to training
- 3.2. Level of information and consultation: the RB should be set up at the level at which strategic decisions are taken. If the size and different activities of the SE make it necessary and useful, provisions could be made to also have RB's at divisional level.
- 3.3. The term of appointment to the RB shall not exceed 4 years.
- 3.4. A structure for information and consultation between employees and RB members at national level must be set up. This structure should be available at national but also at divisional or regional level where appropriate.
- 3.5. The new definition of consultation in the directive on workers' involvement in the SE, will give negotiation responsibilities to the RB, certainly in the case of restructuring issues, acquisitions, mergers, etc... In this respect the EMF will have to clarify how trade unions will be integrated in this negotiation role of RB's.

### **4. Participation**

#### **4.1. Highest level of participation**

The SNB, trade unions or EMF will, according to the Statute, not be directly involved in the company choice between the monistic and the dualistic system. In any case we will try to achieve the highest level and quality of participation during the SNB negotiations, and this in accordance with existing national participation rights (see 1.2.).

## **4.2 Election**

When employee participation is secured, the SNB will negotiate with the SE the procedure for election of board members.

The following provisions will be taken into account by EMF affiliates and in the SNB negotiations :

- The representative body shall in close cooperation with the EMF endorse those employee representatives who are appointed or elected in accordance with respective national systems and proposed by local and/or national unions.
- In accordance with national traditions at least one-third of the employee representatives on the Board can be proposed by the trade unions involved in the company.
- An employee representative of a principal or parent company shall also be taken into consideration for representation in the board of the subsidiary SE.
- In order to secure cross-cultural experience and influence employee Board members shall always be from at least two countries.

For each full member in the Board, a deputy should be elected.

If the negotiation between the SNB and management fails, and if a sufficient number of workers are already covered by participation prior to the agreement, the standard rules leave it up to the Member States' transposition laws to define the election procedure for Board members.

Board membership is accessible to employee representatives as well as to trade union officials. This will depend on the SNB agreement or, in case standard rules apply, the applicable national transposition law.

The election of board members must not be influenced or decided by the company management.

## **4.3 Term of office**

As provided for in the regulation, the term of office for an employee representative shall be determined by the RB/SNB which has appointed him/her.

The term of office may not exceed four full financial years. The term of the mandate shall always be fixed in such a way that it concludes with the annual general meeting.

#### **4.4 Role and duties in the board**

The Board is to be informed and consulted on all economic, financial, social and strategic discussions and decisions of the SE. In all context of consultation and decision-making processes, is the duty of the employee representatives to represent the interests of the workforce.

The SE board members also have a responsibility to shareholders within the company.

The roles and duties of board members are described in the annex. This is a first attempt to describe these functions in the existing monistic and dualistic systems.

#### **4.5 Confidentiality**

The employee representative shall have the right to transfer confidential information to the body which appointed him/her, as well as to officials in his/her member organisation and to other legal advisers, provided that he/she informs the recipients at the same time that the information is confidential and may not be disclosed to anyone else.

#### **4.6. Facilities**

Employee representatives in the participation board must have all facilities to fulfil their tasks as board members.

The employee representative shall have the right to visit all the company's plants and other facilities with no restriction on meeting local shop stewards etc...

Employee board members should have the right to invite external experts to Board meetings.

### **5. Training**

- 5.1. Trade union training should be organised as from now. It should be organised not only for employee representatives but also for trade union officials at all levels. It is important that all countries/trade unions understand all existing participation systems in Europe.
- 5.2. This trade union training program has to be elaborated by the trade unions/countries in close cooperation with the EMF Task Force. The EMF also has to monitor and, if possible, organise bilateral or European trade union training programmes. The Secretariat will be informed and insure coordination of training programmes organised by affiliates.
- 5.3. Training has to be organised for SNB members (prior to and during SNB negotiations), the RB members and the Board members.

- 5.4. The training for these different groups should be an intensive and continuous programme.
- 5.5. This training programme has to be part of the SNB agreement. The content of the training should be an exclusive decision of the employee representatives and the trade unions involved. All costs should be covered by management.

## **ANNEX to point 4.4**

### **Role and duties of employee representatives in the European Supervisory Board**

#### **Appointments**

- Appointment of the CEO and the entire management board may not be made against the will of the employee representatives on the Supervisory Board
- Appointment of an executive director for “labour and social affairs” (the right to nominate a labour director as a consultation and negotiation partner for the national bodies in order to replace the defunct national management structures).

#### **Reports to the Supervisory Board**

- Corporate strategy (and possible changes)
- Planning, medium-term planning
- Changes in the annual business plan
- Budget for the next business year, in particular investments, R & D, manpower planning etc.
- Changes concerning the budget
- Risk management, profitability
- Management decisions with a possible high impact on profitability and liquidity
- Extension of the report to include coverage of the operations of affiliate companies

#### **Annual accounts and audit of the accounts**

- Appointment of an independent auditor
- Auditor’s report on the annual accounts
- Approval of the annual accounts

#### **Business matters requiring approval**

- Budget for the next business year
- Strategic plans concerning production, turnover and results
- Investment planning of production, turnover and results
- Planning of important cost reducing programs and rationalization
- Questions concerning the location (closure/opening, substantial changes in the size of plants and/or the workforce)
- Transfer of the entire or important parts of the company to other companies within- or outside the SE
- Changes in the corporate structure (sales/acquisitions) including new production and development programs and new branches or the close down of existing structures
- Acquisition or sale of properties
- Changes in the business organization
- All kind of company business contracts
- Credits, guarantees
- Power of attorney

## **Competence and duties of the Board of Directors in a monistic system**

1. A deputy for an employee representative is entitled to be present and express his view at meetings of the board of directors and the company's shareholders meetings, notwithstanding that the members are present.
2. The board of director shall be charged with the organisation of the company and the management of the company's operations.
3. The board of directors shall ensure that the company's organisation in respect of accounting, management of funds, and the company's financial position in general includes satisfactory controls.
4. The board of directors shall issue written instructions setting forth the allocation of duties between the board of directors and the CEO and any other bodies which the board of directors may establish.
5. The Board of Directors shall regularly assess the company's financial position and, where the company is the parent company for a group of companies, the group's financial position.
6. The board of directors shall, on an annual basis, adopt written work procedures governing its work. The work procedures shall set forth the manner in which the work, where applicable, shall be allotted among the members of the board of directors, the frequency of meetings of the board of directors, and the extent to which alternate members shall participate in the work of the board of directors and receive notice to attend meetings of the board of directors.
7. Where the work procedures contain instructions regarding the allocation of work among members of the board of directors, the board of directors shall regularly monitor that the allocation of work can be maintained.
8. One of the employees' representative may be present and participate in deliberations when a matter, which is later to be dealt with by the board of directors, is considered by members of the board of directors, or representatives of the company, specifically appointed for that purpose.

Where a board of directors consists of more than one director, one of the directors shall serve as chairman. The chairman of the board of directors shall lead the board in its work and shall monitor that the board fulfils the duties set forth.

9. The chairman of the board of directors shall ensure that meetings are held when necessary. Where a member of the board of directors or the managing director so demands, a meeting of the board of directors shall be convened.