

Common Standards for Trade Union Approval of EWC Experts

Introduction

There is a clear need for experts to work with EWCs and overstretched trade unions and their EIFs can't provide all this expertise themselves directly. About 800+ European works councils are currently dealing with all sorts of topics and facing diverse challenges under very different conditions. New EWCs need advice and training on how they go about their work. Members need to understand each other's backgrounds and cultures and they need to get to grips with the legal framework in which they are operating. Many EWCs will be faced with restructuring, where they will have to deal with complex legal and financial arguments. Others may need to get to grips with supply chain initiatives or questions of environment or health and safety. Of course, there are a number of bodies such as the ETUI and SDA that have been created by trade unions to provide exactly the sort of services that many EWCs require but their precise status when unions are in the business of choosing EWC experts is not clear at the moment. Some individuals with links to the unions but no formal trade union status or endorsement have also set themselves up as external consultants and have worked with EWCs giving satisfactory results. This can be a useful resource but we do not have an official position on how to deal with or indeed identify them. Other experts outside the unions have proven to be less helpful, working against the interests of workers or simply failing to provide the expertise required. At the moment neither the trade union organisations, nor the EWCs we coordinate have an official and reliable way of choosing (or avoiding) the experts they work with on EWC issues. This paper seeks to address some of the issues that must be dealt with in seeking to rectify this situation and to suggest some possibilities for forming a common policy on the issue.

Overview of Third Party Experts

Many different sorts of people performing very different functions may be described as experts for EWCs. The most common type is probably the EIF coordinator. This is usually a trade union officer who is charged with representing the coordinating European industry federation. These officers will normally be permanently attached to an EWC (ideally they will be present during all meetings of the EWC and its sub-groups) and they will play a dual role there: firstly they are the trade union representative and liaison officer and secondly they can act as expert support for the employee side of the EWC.

However, there are also third party experts (i.e: not from the company or the unions) working with EWCs in a permanent capacity. Some EWCs are set up without the entitlement to a European trade union representative attending in any capacity but do have an entitlement to an external expert. In other cases the relevant European industry federation and its key affiliates in the company may have the entitlement to have an officer attend but decide for some reason to use a trusted third party expert in the role of the traditional EIF coordinator. Some EWCs have external experts in addition to the European trade union representative. In these situations the trade union officer will often not be counted as an 'expert' for the EWC in question. Such 'additional' permanent experts are often generalists but some EWCs (especially under the French model) have a

specialist expert who is more or less permanently attached to the EWC to audit company information and examine the accounts.

Ad hoc experts are also engaged to work with EWCs. These will normally be asked to provide training, to give a presentation, to give advice on a specific issue faced by the EWC or to act as part of a project being run by the EWC. Sometimes these experts will be generalists, particularly during the early stages of an EWC. Even when a permanent generalist expert is already in place, an *ad hoc* generalist expert may be brought in (perhaps because the management side want someone who is not aligned to the workers representatives or because the EIF coordinator does not have the knowledge and experience necessary and needs this to be supplemented). More often EWCs will bring in ad hoc experts because they have additional specialist skills needed for a specific purpose. For example, it might be that they are trainers, lawyers or accountants, or they may be experts in things such as health and safety, logistics, restructuring, the environment or finance.

Potential Problems

In all the cases set out above there are potential problems that can arise from selecting experts which turn out to be unsuitable for the task they are given. Perhaps the most significant of these is undisclosed bias. This is at its most dangerous where external experts are engaged as permanent experts to an EWC in the absence of an EIF appointed coordinator. It should be kept in mind that any permanent expert to an EWC is likely to develop an authoritative position and to have real influence with EWC members as they establish relationships with them, even when there is an EIF coordinator present. However, even for the shortest engagement it is important to be clear about what status an expert is claiming to have. Some will claim to be acting in the interests of the employees. Others will claim to be 'neutral' and say that they act in the interest of both management and employees. (Only very few third party experts admit to being firmly on the side of the employers - usually only during SNB negotiations). In any case it is important that the partiality (or otherwise) of experts is made clear and backed up. This is especially the case when experts are being employed directly by the management. This point also leads to the importance of ensuring that the parameters within which the expert is expected to operate are clear to all sides. Is the expert subject to confidentiality by either side against the other? Does he or she have an accepted role in any kind of arbitration or dispute resolution in the event of a disagreement between workers and management?

Perhaps the other significant problem that can arise from choosing the wrong experts is that they turn out not to have the expertise they have been engaged to provide. This may be somebody who simply sets themselves up as 'an expert' without experience or qualifications to justify the claim, or it may be that an expert in one area fails to acknowledge his lack of expertise in other that he is expected to address. For example, experts who work with works councils at national level may be very good at that - but they may also have little or no understanding of other European systems of employment relations and labour law that they are expected to address.

Priority and Selection Issues

Clearly the key issues for EWCs in the selection of experts are those of bias and competence mentioned above. However, when dealing with trade union policy there is a further question to deal with. What is the role of the bodies of expertise set up by the trade unions? At the European level the ETUI-REHS and the SDA are clearly important providers of expertise for EWCs. At national level many trade union related bodies such as FNV-Formaat and Syndex which have provided expertise to national works councils for years are increasingly also acting as providers of expertise to the EWCs of multinationals based in their countries. We must address the question of whether some or all of these bodies should have a special status or priority when trade unions are approving or selecting outside experts.

Suggestions for Further Action

“Approved” & “Non-Approved” Lists

The need for a trusted list of potential sources of external experts is pretty clear. We therefore suggest that such a list should be developed and that it should include the name and contact details for potential experts with their areas of competence, qualifications and any trade union links. The EWC Coordination Group should consider how the list should deal with organisations and individuals (as individual ‘experts’ within one organisation may have different levels of competencies or bias) and whether some should have privileged status (see below). We may also want to indicate whether these experts are ‘trade union friendly’ or merely competently neutral.

In addition to the above we suggest that the group considers the introduction of a similarly managed ‘non-approved’ list. This would indicate external experts with whom trade unions have had particular problems (especially those who have worked against the interest of the workers side) and which are therefore not recommend for EWCs or trade unions to work with.

We propose that members of the EWC Coordination Group should be responsible for approving both lists, including all additions or removal of entries. The list could be administered (checking details, finding proposals drafting etc) by a member of the group (maybe ETUI-R). We may want to consider whether it would be useful to have any other measures to identify potential experts to be considered for addition to the list.

Advice on Selecting Experts for EWCs

The EWC Coordination Group may also want to consider whether it would be desirable to draw up a short document giving common advice from the European trade unions to EWCs and others about the use of experts and some of the issues that come up. The following is a list of questions that could be used as a check list in expert selection:

- Is the expert to be engaged on a permanent or an *ad hoc* basis?

- Is there an EIF coordinator already present in the EWC?
- In whose interests (workers, employers or both) is the expert being engaged to act?
- What are to be the expert's agreed areas of competence?
- What are his qualifications?
- Does the expert have any pre-existing links to trade unions or employers?
- How much say do the workers representatives have in the appointment?
- Do the workers representatives have access to the expert's contract and information about the fees to be received?
- Who will the expert be answerable to for his work and how?
- Will the expert be involved in any sort of arbitration or dispute resolution in the event of a disagreement between workers and management?

These questions may also be of use in drawing up an 'approved list' as mentioned above.

The Role of ETUI-REHS, SDA & Others

We suggest that the EWC Coordination Group discusses the issue of whether officially trade union sponsored bodies such as the ETUI-REHS and/or SDA should have a special status as 'first port of call' for EWC expertise when the ETUC or EIFs has a say in it?

Some possibilities for consideration are:

- All EWC training requests should first go to ETUI-Education (and the same for Research and H&S)
- All experts for EWC '03 projects should all first be referred to the SDA.
- All bodies with formal links to ETUC or EIF trade unions should be privileged and approached before non-union organisation when EWC external experts are required.
- Union organisations providing expertise should be given a special recommended status on the 'approved list'

Of course, it should be kept in mind that the ETUC and the EIFs have limited capacity to insist on any such policy being adopted by affiliates and/or EWCs. It is also important to note that referring such requests to trade union controlled bodies such as ETUI would certainly not exclude the possibility that the expert finally used would be from an independent agency or other unrelated body. Both ETUI and SDA work extensively with outside experts. However, as there seem to be more and more outside agencies coming onto the market it is important to address the issue of how we evaluate and respond to them in the context of our existing networks.

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January 2008