

# European Works Councils - law and practice

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This article examines the implementation into Maltese law of the EU Directive on European Works Councils (EWCs), and the country's experience of EWCs, as of autumn 2004..

## Implementing legislation and debate

EU Directive [94/45/EC](#) on the establishment of a European Works Council (EWC) or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees was transposed into Maltese law through the enactment of the [European Works Council \(Information and Consultation\) Regulations](#) in 2003. The Regulations supplemented the [Employment and Industrial Relations Act](#) (EIRA) 2002, Malta's main item of labour law. The Regulations are intended 'to improve the right of employees, in Community-scale undertakings and Community-scale groups of undertakings, to be informed and consulted through the establishment of a European Works Council or equivalent arrangements to cater for the information and consultation of employees in every such undertaking and group of undertakings and to implement the provisions of EU Council Directive 94/45/EC'. The Minister for Social Policy established 5 April 2004 as the date when the Regulations came into force (Malta joined the EU on 1 May).

Issues concerning labour legislation and the establishment of the national minimum conditions of employment are discussed at the Employment Relations Board, which is a consultative body set up by government under the EIRA 2002. The Board comprises four representatives of employees and four representatives of employers, together with four members appointed by government. The EWCs Directive was transposed into Maltese law following recommendations made by the Board. The secretary of the Board confirms that the Board kept the implementing Regulations very close to the Directive. Unlike the situation after the transposition of other EU Directives, the Board to date has not receive any enquiries from Maltese organisations about the interpretation of the Regulations.

There has not been any national debate on the issue of EWCs, and there have been no position papers or reactions from the social partners on the Directive. As an issue, its implementation did not feature much in political debate nor in the press. When contacted, Malta's two largest trade unions, the General Workers' Union ([GWU](#)) and the Union of United Workers (Union Haddiema Maghqudin, [UHM](#)), confirmed that they had never made public statements about the law, as it is not seen as a major issue in Malta. Both unions are aware of the law and their officials have participated in meetings abroad regarding the EWCs Directive.

## Key provisions of the legislation

The implementing legislation (as in all Member States) largely repeats the content of the Directive (the Maltese Regulations also follow the same structure), while also 'customising' a number of provisions to fit the Maltese industrial relations system, as provided for by the Directive. The main such provisions are set out below.

The members of special negotiating bodies (SNBs) representing Maltese employees are directly elected by and from among the employees concerned, with the Regulations laying down detailed balloting rules. The same selection method applies to the Maltese members of 'statutory' EWCs - ie those based on the Directive's subsidiary requirements, essentially where no agreement can be reached by management and SNB.

In SNBs in multinationals based in Malta, the SNB seats are to be allocated among countries - in addition to the basic allocation of one representative from each Member State where the multinational has an establishment or undertaking - in line with the following criteria: one additional member from each Member State where at least 25% but less than 50% of the multinational's total workforce in the Member States is employed; two additional members from each Member State where at least 50% but less than 75% of the multinational's total workforce is employed; and three additional members from any Member State where at least 50% but less than 75% of the multinational's total workforce is employed. The same allocation criteria apply to statutory EWCs in multinationals based in Malta.

Employee representatives from countries that are not Member States are permitted to participate in EWC meetings and activities, if there is agreement between the central management and SNB to this effect, but are not entitled to vote.

Other specific Maltese provisions include the following:

- persons may make a written complaint in relation to any aspect relating to the election of SNB representatives to the Director responsible for Industrial and Employment Relations, who after investigating the complaint, may direct that appropriate measures be taken by any person involved to eliminate any grounds of well-founded complaint;
- members of SNBs and EWCs, or of any other body established under the Regulations in order to facilitate informing and consulting employees, as well as any persons who assist them, shall not reveal any information which has been provided to them in confidence. This prohibition applies even after the expiry of the term of office of the persons concerned. However they may, in accordance with their duties as an SNB/EWC member, expert or employees' representative in an alternative information and consultation procedure, disclose such information to the body or council of which they are a member, to another employees' representative in a procedure, or to the members, body or person they are employed to advise;
- central management shall not be obliged to transmit certain information to the SNB or EWC, or in connection with an alternative information and consultation procedure, where it can show that such disclosure would adversely affect the position of the organisation, or where the information is of a kind that meets objective standards for determining that it should be withheld agreed between the central management and the SNB, EWC or the employees' representatives in an information and consultation procedure; and
- any person who fails to comply with any obligation imposed under the Regulations shall be liable to a fine - of between MTL 10 and MTL 50 for every employee of the organisation concerned - in relation to a failure by central management to provide information on the number or status of employees, or to properly establish an SNB, EWC or an information and consultation procedure in accordance with the Regulations. Any other offence under the Regulations will lead to a fine between MTL 500 and MTL 5,000.

## Companies covered

Most Malta-based companies tend to be small and medium-sized enterprises. Nearly all companies with their headquarters in Malta that have operations abroad do not employ sufficient workers outside Malta to come within the scope of the Directive. There is only one group of companies headquartered in Malta which is known to come within the scope of the Directive - the Corinthia Group, which operates in the hotel industry and has hotels in various European (namely Belgium, Czech Republic, Hungary, Portugal, and Russia) and African countries.

There are a number of foreign-based firms with operations in Malta that come within the scope of the Directive, notably in the manufacturing and hotel industries.

## Experience to date

No Maltese-based multinational has yet established a EWC, a point confirmed by the GWU and UHM trade unions. As mentioned above, the only group headquartered in Malta covered by the EWCs Directive is Corinthia. Many of its Maltese employees are represented by the Hospitality and Food Section of GWU, Malta's largest union. The section is currently holding talks with management on how an EWC should be set up and what it should involve. Talks are yet at an early stage and no date has yet been set for the launching of the EWC.

Maltese trade union representatives have been involved in the EWCs of some foreign-based multinationals with operations in Malta, since before the transposition of the Directive.

## Commentary

Considering the current size and focus of the Maltese business activities, it is unlikely that in the foreseeable future there will be a significant increase in the number of Maltese organisations that are affected by Directive 94/45/EC.

The Maltese industrial relations system does not seem to be conducive to taking on board the concept of EWCs. Maltese industrial relations are based on the British model where shop stewards are the main link between trade unions and management. Shop stewards are thus the core element of the Maltese idea of employee participation in the workplace. There is no tradition of institutional representative bodies at the workplace and works councils are virtually non-existent. Employee representation on companies' boards exists but is not widespread - in fact, there are only 14 worker directors in Malta, 12 of whom are in government-owned or -run enterprises. The other two are in organisations owned by GWU. (Manwel Debono, Workers' Participation Development Centre)