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IBM European Works Council, IWIS, international relations; 

## **IBM European Works Council Agreement as revised and amended by Amendment n 2 of 21 October 2009 and effective from 01 January 2010**

### **INTRODUCTION**

This Agreement, originally signed on June 28, 1999, is in application of the European Directive 94/45 EC of 22 September 1994 as subsequently revised and amended, which institutes European-level information and consultation procedures.

European Directive 2009/38/EC of 6 May 2009 provides for the recast of the 1994 Directive, which it repeals effective June 6, 2011. Article 14 of the 2009 Directive addresses existing EWC Agreements of which this Agreement is one.

Section XXV of this Agreement provides that this Agreement may be amended by mutual written agreement between the EWC and IBM management.

It is on the basis of the all of the above that the EWC employee representatives and IBM management have agreed to amend this Agreement with effect as from [1 January 2010], with a view to reflect in their revised agreement the spirit of the European directive 2009/38/EC.

IBM is active in the Information Technology industry, an extremely dynamic and rapidly changing industry requiring decisive management of its business and speed of execution of its decisions and actions.

IBM management believes that the success of its business will be improved by employees being involved in matters concerning the company and its workforce. IBM seeks to achieve this through direct communication with its employees and also through open dialogue, in a spirit of cooperation, and through effective information and consultation with such employee representatives designated by law for this purpose.

It is in this spirit that, in 1999, IBM management representing the relevant IBM organizations in Europe and the Special Negotiating Body, composed of relevant employee representatives, negotiated an Agreement on the European-level information and consultation procedure tailored to these needs and that subsequent amendments to the Agreement have been agreed with the EWC.

### **I- AIM OF AGREEMENT**

In order to implement the right of employees to information and consultation at European level a European Works Council shall be established. It shall be called the "IBM European Works Council" (EWC).

The EWC shall be competent for information and consultation on specific matters as defined hereafter (Sections VII & IX) which concern IBM as a whole within the geographic coverage of this Agreement as defined in Section II or IBM companies or groups of companies in at least two

countries within this geographic scope. According to the subsidiarity principle, the EWC will not involve itself in matters which can be adequately addressed by national or local consultative bodies and/or which concern only one of the countries represented.

Through this Agreement IBM seeks to provide the EWC with the conditions and means to fulfil its role and exercise its functions in collectively representing the interests of the employees in Europe on EWC matters as defined above.

## **II- COVERAGE AND ADAPTATION**

This Agreement shall cover IBM companies in all countries having implemented the Directive.

A list of the companies which are covered by this Agreement is included in the Annex to this Agreement. Each year the EWC will be informed of changes to this list which may result from changes in corporate structure.

This list includes all companies controlled by IBM as follows from the laws applicable to such companies.

If an IBM company acquires control over any new company in one of the countries during the term of this Agreement, the employees of such company will automatically be covered by this Agreement. If an acquired company or group of companies has an EWC agreement which is in conflict with the previous sentence, the provisions of the IBM Agreement will prevail. To facilitate the transition, if the acquired company or group of companies exceeds 10 % of the IBM population covered by this Agreement a meeting between the Select Committees of the EWCs may be arranged.

## **III- MEMBERSHIP**

The EWC is composed of the following members: the Chairman and the employee representatives.

The Chairman: the EWC will be chaired by a Vice-President, Human Resources, designated by IBM management. He/she may be assisted in EWC meetings by 3 staff members.

The employee representatives: Each country having implemented the Directive may have one employee representative if the law for designating EWC representatives has been enforced in that country and once its representative has been designated accordingly.

Furthermore, there will be additional EWC members in proportion to the number of employees per country, employed by the IBM companies included in the Annex to this Agreement. These additional seats will be allocated as follows: one seat per country with at least 20% of employees covered by this Agreement, two per country with at least 30% of employees, three per country with at least 40% of employees, four per country with at least 50% of employees, five per country with at least 60% of employees and six additional seats per country with at least 80% of employees.

The process for electing or designating individual employee representatives to the EWC, the duration of their mandate and the procedure for its renewal will be in accordance with national law and practice in each country. All employee representatives to the EWC must be employees of the companies listed in the Annex to this Agreement.

For each employee representative, one substitute from the same country will be designated in accordance with the above mentioned rules. The substitute may only attend a regular or

extraordinary EWC meeting to replace the regular EWC member if he/she is unable to attend. In that case, resources allocated to the regular EWC member shall be shared with the substitute employee representative.

In the event of an employee representative leaving IBM or resigning from the EWC, a new representative shall be appointed following the rules outlined above, unless the local law provides for the substitute to replace him.

Votes: Each member of the EWC has one vote. Decisions of the EWC require simple majority voting, except for the qualified majority indicated in Section XXI of this Agreement.

#### **IV- SECRETARY AND SELECT COMMITTEE**

The EWC shall elect from the employee representatives a Select Committee composed of the Secretary, his/her deputy and four

additional members. No country can have more than one member in the Select Committee.

The Select Committee has the right to meet as far as necessary to prepare the regular and extraordinary EWC meetings.

Two of these Select Committee meetings will be informative meetings to be normally scheduled respectively in the second half of the month of January and the second half of the month of July. In these meetings the Chairman will give a summary of the business results, trends and current priorities, including written information on financial results and actual resource numbers. Information provided in the January meeting will cover the preceding calendar year and information provided in the July meeting will cover the preceding two quarters of the current year. Summary minutes of these meetings in English will be prepared by the Chairman and jointly agreed by the Chairman and Secretary and will not be translated.

#### **V- EXPERTS**

The EWC may be assisted by experts of its choice, in so far as this is necessary for the accomplishment of its tasks. An expert is defined as a natural person possessing recognized professional qualifications appropriate to the mission for which he or she is being retained.

If the participation of an expert in a regular or extraordinary EWC meeting is necessary to perform his or her mission, he or she can be invited to report on the specific item of the agenda for which he or she has been appointed. Experts will not take part in EWC meetings on a permanent basis. Where an expert is invited, he or she must attend in person unless otherwise agreed between the Chairman and the Secretary.

IBM will bear the expenses of experts up to a maximum of 15,000 Euros per year. An annual budget of 15,000 Euros will, for that purpose, be allocated to the EWC. Unspent budget can be carried-forward by the EWC for the same purpose in the following year(s). A yearly statement of related expenses will be provided by the Secretary to the Chairman and the employee representatives. The expert budget will be revisited annually at the time of the budget discussion as defined in Section XIV and will normally be increased in line with inflation according to the Eurostat EU inflation index as defined in the internal regulation and up to a maximum of 3% per annum.

#### **VI- DEFINITION OF INFORMATION AND CONSULTATION**

## **VI a- INFORMATION**

Information means the transmission of data at such time, in such a fashion and with such content as defined in this Agreement to employee representatives in order to enable them to acquaint themselves with the subject matter at hand, to examine and assess it and, where appropriate, to prepare for consultation.

## **VI b- CONSULTATION**

Consultation means the establishment of dialogue and the exchange of views at such time, in such a fashion and with such content on the subjects and measures, and following the procedures, set out in this Agreement, such as to allow employee representatives to express within reasonable time an opinion on the basis of the information provided which may be taken into account and to which the employee representatives will receive a reasoned response from the Chairman in writing normally within a week, without prejudice to the responsibilities and prerogatives of management.

## **VII- REGULAR MEETINGS**

The content of the regular meetings will be information and consultation as defined in this Agreement on the following issues: the structure of the undertaking or group of undertakings, its economic and financial situation, changes in its activities, production and sales, research and development, human resources policies, the current status of and probable changes in employment, investments, substantial changes in organisation, the introduction of new working methods or new production processes, transfers of production and activities, mergers and acquisitions, reduction in size or closure of companies or establishments or major parts of them, collective dismissals, education and protection of health.

The regular meetings will primarily focus on the performance of IBM in Europe and on the trends of the business, including the general lines of major business and human resources strategies. Standard reporting information about human resources and financial data, in line with the current measurement system, will be addressed during the regular meetings.

Within this framework the Chairman and the Secretary will draw up the agenda. Should the Chairman and the Secretary not agree on the contents of the agenda, it is drawn up by the Chairman who will

communicate to the Secretary the reasons for his decisions. The agenda is sent to the EWC members two weeks before the meeting. Last minute changes to the agenda will be possible on the same basis.

Information for the regular meeting agenda items will be transmitted to the EWC representatives one week before the meeting. Last minute updates to the information will be possible.

Furthermore, if any exceptional circumstances requiring information and consultation of the EWC, as defined in Section IX below, arise, the Chairman and the Secretary may agree, where this is feasible, to discuss this in the regular meetings. In such cases, information will be transmitted in compliance with provisions of Section IX.

Management representatives, chosen by the Chairman for their expertise, may take part in the meetings to provide appropriate oral or written information.

The EWC may choose to deliver its opinion which, without prejudice to the responsibilities of

management, may be taken into account and to which the employee representatives will receive a reasoned response from the Chairman in writing normally within a week. If so, the EWC will deliver its opinion to IBM management by the end of the meeting, unless the consultation relates to an exceptional situation as defined in Section IX or unless the Chairman agrees otherwise, in which cases the employee representatives may deliver, through the Secretary, written opinions to IBM management within one week after the meeting at the latest, at which point the consultation process will be complete. If the employee representatives choose not to deliver an opinion the consultation process is complete at the end of the meeting.

Where business projects are implemented in phases over time, updates and opportunities for further dialogue will be provided through regular and/or Select Committee meetings.

The consultation process will in no way affect management's prerogatives and power to take appropriate decisions at the time required by the business and does therefore not necessarily have to take place before the decision is taken.

### **VIII- NUMBER OF REGULAR MEETINGS**

There will be two regular meetings of the EWC per year. The dates of these meetings will be announced by the Chairman with at least 3 months notice.

According to the IBM reporting cycle, the first regular meeting will normally be held in the first half of the month of May and the second regular meeting in the first half of the month of November.

### **IX- EXTRAORDINARY MEETINGS**

If any one of the following exceptional situations arises :

1. Transfer of activities and related jobs across borders,
2. Transfer of Manufacturing production across borders,
3. Transfer of undertaking out of IBM,
4. Closure or reduction in size of establishments,
5. Collective dismissals,
6. Mergers, acquisitions or insourcings,

affecting to a considerable extent the employment of - per each event - a total of more than 500 employees and of more than 100 employees (or more than 20% of the total country IBM population whichever is lower) in each of at least two countries covered by the Agreement within a period of 12 months, the Chairman will notify the Secretary in writing.

If the Secretary so requests within one week of the notification, the Chairman will arrange for there to be a meeting for the purpose of information and consultation on the exceptional circumstances in question.

Within one week after the request from the Secretary, a description of the main lines of the circumstances in question will be circulated by the Chairman to the EWC.

The meeting will take place within two weeks after the request of the Secretary has been received by the Chairman, unless otherwise agreed between the Chairman and the Secretary to utilize one of the already scheduled regular or Select Committee meetings.

The participants will be the Chairman, the Select Committee, an appropriate representative designated by the management responsible for the changes under discussion and in addition, the EWC representative(s) from each country significantly affected (i.e. in which arises an exceptional situation affecting to a considerable extent the employment of more than 100 employees or more than 20% of the total country IBM population within a period of 12 months).

Information on the exceptional situation will be transmitted to the EWC participants one week before the meeting. Last minute updates to the information will be possible.

The employee representatives may choose to deliver their opinion to IBM management by the end of the meeting. The employee representatives may deliver, through the Secretary, written opinions to IBM management within one week after the meeting at the latest. The consultation process is complete when the employee representatives deliver their opinion to the Chairman or if they choose not to deliver an opinion. Their opinion will be given due consideration by IBM management without prejudice to the responsibilities of the management. The employee representatives will receive a reasoned response from the Chairman in writing normally within a week.

The consultation process will in no way affect management's prerogatives and power to take appropriate decisions at the time required by the business. It will take place before the decision is implemented, unless significant circumstances did not permit to do so.

IBM internal communication tools will be used for the notification, the request and the description of the circumstances.

## **X- LINKAGE of information and consultation procedures between nATIONAL AND EWC LEVELS**

When required by applicable laws and regulations, information and consultation procedures will be conducted at both the national and EWC levels. National information and consultation shall follow the procedures set out in national laws and regulations. EWC information and consultation shall follow the procedures set out in this Agreement. With respect to the competencies and areas of action of the employee representative bodies, information and consultation procedures may be conducted concurrently and without dependence on each other. To the extent that EWC information and consultation applies, IBM may choose to share information with the EWC earlier or at the same time as with the national employee representative bodies.

## **XI- MINUTES**

The Chairman shall be responsible for preparing the minutes of the regular and extraordinary EWC meetings. The minutes will be jointly agreed by the Chairman and the Secretary and distributed to the EWC members within two weeks after the meeting.

## **XII- DURATION OF MEETINGS**

The duration of the regular meetings will be one day, preceded by one full day preparatory meeting of the employee representatives and followed by one day devoted to preparation and delivery of the opinion, discussion with the Chairman on the opinion and, where decided between the Chairman and the Secretary, for the November meeting an education module as defined in Section XVI.

The duration of extraordinary meetings will be one day, preceded by a half-day preparatory meeting of the employee representatives on the day before.

### **XIII- VENUE OF MEETINGS**

The EWC meetings will take place in an appropriate facility determined by IBM.

### **XIV- LANGUAGE**

English will be the working language of the EWC. All written material produced by IBM will be in English.

Each year, an annual budget, sufficient to provide for the required simultaneous interpretation of meetings and translation of documents, will be negotiated between the Chairman and the Select Committee and allocated to the EWC.

It is the intention of the EWC to keep this budget within reasonable limits.

### **XV- TIME ALLOCATION**

The time spent by the employee representatives taking part in the meetings mentioned in this Agreement and in agreed upon education, including the necessary travel time where applicable, is considered as working time.

In addition, the employee representatives may spend the time they require to fulfill their EWC responsibilities, which will not exceed 600 hours per year for the Secretary, 150 hours per year for the members of the Select Committee and 75 hours per year for the other EWC members.

Employee representatives must give their local management notice of their absence to fulfill their EWC duties in due time.

### **XVI- EDUCATION**

IBM agrees to provide English language education to those employee representatives needing it to fulfill their EWC responsibilities, and will advise local management to make the necessary arrangements.

IBM will offer education on IBM specific business matters and the interpreting of economic and financial data or other topics relevant to EWC matters within the usual IBM process of management approval for education.

If agreed to by the Chairman and the Secretary this education may be organized by adding sufficient time for education to the regular meeting of November as defined in Section XII.

### **XVII- DISSEMINATION OF INFORMATION**

The employee representatives may communicate the information received to their respective country representative bodies. If information has been classified as "IBM confidential", this classification must be maintained and also respected by country representative bodies. In countries where there is no country representative body, the respective employee representative may, in accordance with local laws and practice and with the exception of confidential information, communicate the information received to the employees of his/her country.



A Communique will be prepared and agreed upon by the Chairman and the Secretary at the end of each meeting.

An EWC web-page will provide employees with information on the EWC (such as the list of countries, the EWC members and their e-mail addresses, general description of roles and operation of EWC, dates of EWC meetings and the Communiqué, EWC opinions and management responses, and minutes of regular and informative Select Committee meetings with the exception of IBM confidential material).

The EWC web-pages will be posted on the European HR Intranet.

Information for the web-page must be approved by the Chairman and the Secretary prior to posting.

## **XVIII- INFRASTRUCTURE**

To the extent necessary for the fulfillment of their EWC responsibilities, the employee representatives may use IBM internal communication tools as available in their respective companies, in line with the IBM internal rules regarding the use of these tools, for communication between the EWC participants and towards their substitutes and their country representative bodies.

## **XIX- COSTS**

IBM Central management shall bear the costs for preparatory meetings of the Select Committee (Section IV), experts (as provided for in Section V), the regular meetings (Section VII), extraordinary meetings (Section IX), interpretation and translation (as provided for in Section XIV) and education (Section XVI).

Travel and accommodation costs will be borne by the employing company of each employee representative, in accordance with its business travel rules.

## **XX- CONFIDENTIALITY**

To fulfill its responsibilities, the EWC is given information as defined in this agreement. Such information is often sensitive. As a general principle, information given to the EWC should be kept within IBM. IBM may provide the EWC with information which it classifies as confidential information. Such classification will be applied only to information that is truly confidential.

All EWC participants shall be bound to respect the confidentiality of information and agree not to disclose confidential information at any time, including after the end of their mandate. Any involved expert shall sign a specific agreement to respect confidentiality.

Information considered as confidential information are business and trade secrets and any other information, which is designated as confidential by IBM. IBM shall not unreasonably designate information as confidential.

IBM is not obliged to provide information as far as this would violate mandatory regulations (e.g. Stock-Exchange, defence, medical records) or substantially harm its legitimate interests (e.g. business secrets).

Always within the framework of the European and respective national law, a breach of confidentiality obligations by an EWC participant will lead to legal and/or disciplinary action by IBM.

## **XXI- DURATION**

The duration of this Agreement shall be for a period of four years from the date of signature of this Agreement by the SNB and IBM. The EWC will be operational six months after this date. During that six months period, IBM will initiate the process of electing or designating individual employee representatives to the EWC and convene the elected/designated employee representatives for a preliminary session with the purpose of discussing the internal organization and functioning of the future EWC.

This Agreement will be automatically extended for additional six year periods, unless terminated by either party (EWC and IBM), by written notice at least six months prior to expiry, to the other party. During the notice period the Agreement shall remain in full force and effect. The EWC decision to terminate this Agreement requires a two-thirds majority vote.

If one of the parties does not agree to enter into a renegotiation, this decision shall be confirmed in writing to the other party prior to the expiration of the Agreement. Silence will mean acceptance to enter into renegotiation.

In case both parties agree to enter into a renegotiation of this Agreement after its expiry, the EWC will continue to fulfill its duties under the conditions of the expired Agreement and it will serve as the party for the renegotiation. If no new Agreement is reached within three years after the expiry of this Agreement, the subsidiary requirements of the Annex of the Directive will apply.

In case IBM does not agree to enter into a renegotiation, the subsidiary requirements of the Annex to the Directive shall apply.

In case the EWC does not agree to enter into a renegotiation, the subsidiary requirements of the Annex to the Directive shall not apply. Such decision can only be taken by at least two-thirds of the votes. A new request to convene the special negotiating body to set up a new procedure for information and consultation at European level may be made at the earliest two years after the above mentioned decision of the EWC.

## **XXII- APPLICABLE LAW AND COMPETENT COURTS**

The competent court will be the court competent for the location of IBM headquarters of the country which, within the geographic scope of this agreement, employs the greatest number of employees in companies controlled by IBM as defined in Section II. At the time of the 2009 amendments to this Agreement that country is Germany. A verification process is conducted as follows, on the basis of the list of the companies covered by this Agreement which is provided annually to the EWC in line with Section II of this Agreement. This list is provided to the May regular meeting. After discussions, at the November regular meeting of the same year conclusions on a change of competent court will be included in the minutes of that meeting. A change in the competent court will take place if a country exceeds the previous largest country by 500 or more employees and will come into effect as of the conclusion of the November regular meeting of the following year, provided that the threshold of 500 or more employees is confirmed in the data provided in the May regular meeting of that following year.

Any litigation initiated in the competent court will continue in that country's judicial system even if, in the course of the litigation, the competent court subsequently changes in application of the preceding paragraph of this Section of the Agreement.

The law applicable to this Agreement will be the law of the country of the competent court, except

The law applicable to this Agreement will be the law of the country of the competent court, except for disputes regarding individual rights and obligations of the employee representatives which will be subject to the national law governing and to the national court competent to decide about disputes regarding the employment agreement of such representative

### **XXIII- PROTECTION OF EMPLOYEES**

The employee representatives and their substitutes shall be protected in accordance with the national laws and/or practice in force in their country of employment.

### **XXIV- FORM OF AGREEMENT**

This Agreement shall be drawn up, and when applicable amended, in English. A certified translation in the languages of the EWC employee representatives will be provided by the management. The English version shall prevail.

This Agreement shall be signed by the SNB, the IBM representative in the negotiations and the IBM EMEA Chairman. Amendments to the Agreement shall be signed by the Secretary on behalf of the EWC and by the EWC Chairman on behalf of IBM management.

### **XXV- AMENDMENTS OF THE AGREEMENT**

In case of changes being adopted in the European Directive 94/45 of 22 September 1994 and/or the revised Directive 2009/38/EC of 6 May 2009 the Chairman and the Select Committee will review its implications for the Agreement.

This Agreement may be amended by mutual written agreement between the parties (EWC and IBM central management), without either party being obliged to enter into renegotiations about proposed changes by the other party, during the duration of this Agreement.

### **XXVI- INTERNAL REGULATION**

The EWC may draw up an internal regulation regarding its way of functioning. No provision of that regulation will bind IBM without prior acceptance of the EWC Chairman. That regulation may not contain any provision violating the terms and conditions of this Agreement.

Brussels, 21.10.2009

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Tim Stevens  
EWC Chairman  
on behalf of IBM Management

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Marc Born  
EWC Secretary  
on behalf of the IBM EWC

To this agreement is annexed, for information and ease of reference a document tracking the changes made in this Agreement versus the agreement as applicable between 29 October, 2002 and 31 December 2009.