EWCs: 10 Years-on

A review in two-parts

By Tom Hayes, BEERG

Introduction:

I started to put some thoughts together, from a management perspective, on how the 2009 European Works Councils Directive has played out, ten years after it became national law in June 2011. As I began to do so I realised that any such thoughts needed some context.

- Why was the original 1996 Directive revised – "recast" in the jargon, in 2008/9?
- Where did the original 1996 Directive come from in the first place? What problems was it designed to solve?

I have been involved with, and have been writing about, EWCs since the early 1990s, as the original Directive was making its way through the Brussels legislative process. I have been there from the beginning. Over the years I have advised on the negotiation and renegotiation of multiple EWC agreements. I have also worked with managements which have EWCs operating under the Subsidiary Requirements.

Because of that 30-year experience I know where things came from and why they are the way they are, as do many managers of my generation, the first to have had to deal with EWCs. But a great many of those managers are now gone, happy in retirement, taking their first-hand knowledge with them.

So, as I began to write about the 2009 Directive I thought I might as well try and also get down on paper some background and history which could be useful for those managers now charged with managing EWCs in their businesses.

As a result, this paper comes in two parts which can be read separately from each other.

Part 1 are my thoughts on how the 2009 Directive has worked out in practice and where we stand today. Part 1 is by no means a comprehensive guide to the 2009 Directive. Alan Wild and I wrote such a guide back in 2009/11 which needs to be updated. Maybe something for later this year.

Part 2 offers some historical context by looking at the long debate in the EU, stretching back to the 1970s about employee involvement, including the controversies around the 5th company law Directive and the "Vredeling" Directive, ending with the enactment in 1994 of the EWC Directive.

For those interested in deep-diving into all things EWC, we have our training program *Managing European Employee Relations in (Very) Challenging Times* running in Sitges, Barcelona in late October, covering that topic and a range of other challenges facing HRM today.here

Covid has changed the world of work forever. Remote working and virtual meetings will be baked into how we work from here on. EWCs cannot escape this change. But because we will work in a different way in the future from how we did in the past does not change the fundamentals of what needs to be done.

Pay attention to your EWC and always be guided by how best to "do the right thing".

No matter how we, as management, meet with EWCs, the advice and comments offered in Part 1 of this paper still hold.

Part One:

Ten Years On from the 2009 Directive

On 17th December 2008, the European Council of Employment Ministers approved the final text of the European Works Council Directive, 2009/38/EC. The European Parliament had already endorsed it the previous day. Directive 2009/38/EC "recast" the original 1994 EWC Directive 94/45/EC/.

The Directive opens the door for setting up a Works Council at European level where 'transnational' matters can be discussed through information and consultation meetings between management and employees' representatives elected or selected at national level. Issues are regarded as 'transnational' when they have a significant impact on a business's operations in at least two EU Member States.

The process for setting up an EWC involves negotiations with a 'Special Negotiating Body' of employee representatives from each EU country where the multinational has operations.

EU Member State governments were given two years from the date of formal publication of the official text, June 5, 2009, in which to transpose the updated Directive into national law, at which point it became legally binding. This meant the 2009 Directive became enforceable law on June 5, 2011, just over ten years ago.

Why?

The European Commission, pushed by the European Trade Union Confederation (ETUC), had come to believe that the original 1994 EWC Directive had shown itself to be deficient in practice. It was asserted that the European-level information and consultation procedures set out in the 1994 Directive were not robust enough. Employers disagreed, and while accepting that "tweaks" were possible, fundamental changes were not needed.

The Commission itself was also concerned that, under the previous rules, less than half of all businesses within the scope of the directive had set up an EWC. The process begins following a request from at least 100 employees, or their representatives to do so. The employees must come from at least two EU member states in which the company has operations.

The timing of the drive for change in 2008/2009 was a result of the Commission's desire for a major "social policy achievement" before its term of office expired in 2009 and this dovetailed neatly with the priorities of the French Presidency of the Council of Ministers, which ran from July to December 2008.

Revising the EWC Directive offered a (relatively) "easy, high-profile win" with virtually no cost implications for governments. Strengthening EWCs could be portrayed as helping workers and their representatives to deal with the "ravages" of globalization, especially the "near and far" eastern drift of production and service delivery from Western EU Member States such as France, Germany, and the UK.

Wish Lists

The EU Commission set out the somewhat modest changes it sought in the Directive in a consultation paper[1] of February 2008. The final text would not be that far away from the Commission's proposals, though suggestions that there should be at least two regular EWC meetings with management per year, and that there should be not one, but two meetings in exceptional circumstances "to seek an agreement" on proposed business changes did not make it through.

These two meetings in exceptional circumstances would have been in addition to the two regular meetings. If the unions' expansive definition of exceptional circumstances was to be adopted, this could see four full meetings between EWCs and management every year. Probably more, as the unions regarded every management decision as "exceptional".

The trade unions' "wish-list" detailed in their response to that consultation paper was very much more extensive and, if accepted, would have seen a significant expansion in the power and influence of EWCs, and of the role of trade unions within EWCs.

In the end, the revised Directive reflected a greater sense of realism and struck a more proportionate balance between the interests of management and workers.

Given the importance of the unions, both in the EU's "social partnership" model and in the labour relations arrangements in many multinational businesses in Europe, it needs to be remembered how extensive the trade union wish list[2] was at the time. To summarise:

1. Reduce threshold for determining if companies came within Directive's scope from 1,000 to 500
2. A "transnational issue" to be understood as follows

   > *It is not always easy to distinguish whether any one issue meets the 'transnational' criterion, thus making it a legitimate topic for information and consultation in the EWC. In order to prevent the misuse of this argument in order to frustrate and delay legitimate information and consultation procedures from taking place, the burden to prove that an issue that effects only one country should rest with the management of the undertaking.*
   >
   > (In other words, the unions wanted all issues to be considered transnational unless proved otherwise by management. A close to impossible task.)
3. Two full meetings between EWCs and management
4. All EWCs to have a select committee, formed from a handful of employee's representatives on the EWC, whether or not the full EWC wanted such a committee
5. Information on whether a company falls within the scope of the EWC Directive: European trade union federations to have the right to request information directly from management (and presumably be able to trigger the SNB process)
6. The trade unions should have at least one seat on all Special Negotiation Bodies (SNB) and on all EWCs (no reference to their membership in the companies concerned)
7. SNB negotiating timeline to be reduced from three years to one
8. At least 2 meetings in exceptional circumstances

   > *"Provision for a second exceptional meeting: It is important, if consultation is to be effective, that the parties to such meetings can reconsider their positions in the light of the discussions*

[1] http://ec.europa.eu/social/BlobServlet?docId=2159&langId=en
[2] https://www.worker-participation.eu/content/download/2049/15789/file/ETUC%20response%20-%20opinion%20on%20the%20content%20of%20revision.pdf

when they are unable to come to an agreement in the first instance. The Directive should therefore make provision for a second exceptional meeting in such circumstances."

9. Expand definitions of 'information' and 'consultation' to include reference to "agreement" (see Pt 6)
10. Penalties: Courts to have the power to set management decisions aside
11. Legal challenges: EWCs to have the legal right to go to court, funded by management
12. EWCs to have the right to 2 experts, one of whom would always be a trade union official. Who the second "expert" would be, would depend on circumstances.
13. Experts to SNBs to have the right to sit in on meetings with management
14. The procedure for renegotiating agreements, including when companies merge or are taken over, to be made more precise and existing EWCs not to be disbanded while such negotiations are in process
15. Better definition of "controlling undertaking" to include franchisees
16. EWC members to be able to visit all workplaces
17. Confidentiality to be extremely limited
18. Preparatory and follow-up meetings for all SNBs and EWCs without management being present
19. The EWC to have the right to decide on a European-level training programme for EWC members and the right to appropriate time off. All training costs to be paid by management
20. Interpretation at the meeting and translation of documents, into all relevant languages
21. Agenda items to include 'health and safety policy', 'training and education policy', 'environmental policy' and 'equal opportunity policy'
22. Ensure gender balance in EWCs
23. Registering agreements: All EWC agreements to be registered with a central authority.

The unions were to be disappointed. Yes, there were changes, but nowhere near as extensive as they had wanted. Much of their wish list was absent from the final text[3].

Key Changes

Compared to the 1994 Directive, the 2009 Directive:

1. Introduced a definition of "information", including a provision for an "in-depth assessment" of the information provided.
2. Expanded the definition of "consultation", though no reference to "agreement" being required;
3. Moves the definition of "transnational" from the Subsidiary Requirements into the main body of the Directive. The Subsidiary Requirements are the "fallback" arrangements that apply when the SNB cannot agree with management on how the EWC should operate.
4. Requires that all EWC agreements:
    - Define how European-level and national-level information and consultation processes are to be coordinated;

[3] BEERG member companies played an important role during the recasting process in providing information to BusinessEurope on the practicalities of managing EWCs and in outlining why many of the changes been proposed by the unions would prove damaging in practice.

- State how such agreements are to be revised in the event of organizational changes (e.g. when one undertaking with an EWC acquires another undertaking which also has an EWC);

5. Gives EWC members an entitlement to training;
6. Recognizes EWCs as the European-level legal representatives of all European employees and gives them a right to the "means required" to apply the rights arising from the Directive;
7. Sets out new requirements for the SNB process by:
   - Establishing a new formula for the composition of an SNB;
   - Making it obligatory to inform appropriate European-level employer and worker organizations of the establishment of an SNB;
   - Identifying officials of European trade union federations as potential "experts" to advise SNBs. However, it is for the members of the SNB to select and appoint experts. It is not for external bodies to do so[4];
   - Giving SNB expert advisers, and European-level trade union officials, the right to attend negotiating meetings between the SNB and management;
8. Provides new and enhanced protection for Article 13 agreements and creates a new category of exempted Article 6 agreements.

The full text of the 2009 Directive, in multiple languages, can be found online at Eur-Lex[5]

What Impact?

Ten years on, in 2021, how important[6] have these changes turned out to be?

Without doubt, EWC processes have become somewhat more formal, and they can take more time. Management may be required to provide more information than previously and EWCs can offer an "opinion" on proposed management decisions or actions to which management must respond.

EWCs, especially in the UK when it was still an EU member, have become more willing to go to court. Or, to be more exact, EWC "experts", now mostly paid consultants rather than trade unions officials, are quick to advise EWCs to go to law as this prolongs the process, resulting in more fee-earning days.

Generally, union officials have "skin in the game" as they, or their colleagues in other European trade unions, will have members in the company and need to keep the totality of the relationship in mind. What goes around comes around. Union experts need to pay attention to the long-term consequences of their actions. The vast majority of them do.

But paid consultants have no such "skin in the game". For them, advising an EWC is just another fee-generating assignment. Long-term consequences to the businesses and for jobs are of less immediate concern. Indeed, if a problem is prolonged, rather than fixed, that can work to their advantage in narrow, fee-earning terms. A regrettable development.

[4] An SNB can appoint as many experts as it wants. However, management if only obliged to cover the costs of one such expert.
[5] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0038
[6] For an understanding of how the unions saw the Directive see: Severine Picard: *European Works Councils: a trade union guide to Directive 2009/38/EC,* ETUI Report 114.

As a result, EWC agreements have become longer and more prescriptive. Best for management to nail everything down, leave as little to chance as possible. Close off all possible legal loopholes less they be exploited by fee-driven experts.

But, if processes have become more formal and extra information must be provided, in reality the 2009 Directive has not really changed corporate decision-making to a marked extent. EWCs cannot delay the implementation of management decisions, still less have they any sort of veto on such decisions.

At best, they can offer an opinion on what is under consideration, but as the UK's Central Arbitration Committee (CAC) made clear in the *Oracle* case, management does not have to wait for the EWC's opinion before proceeding. If management did have to wait for the EWC's opinion it would effectively give the EWC a blocking mechanism by withholding its opinion. Withholding an opinion would give the EWC negotiating leverage. *Oracle* made it clear that the EWC has no such leverage.

Information and Experts

Back before the French changed their laws a favourite tactic of French works councils was to say that they were unable to render an opinion because management had not provided them with sufficient information.

We have seen some attempts to "export" this tactic from France to EWCs, especially by French consultants who may be trying to compensate for market shrinkage at home by expanding EWC opportunities. Where such consultants are used as "experts" by EWCs we have seen them submitting pages of requests for additional information and for the right to "interview" members of central management. All the requested additional information would then be analysed by the "experts", possibly involving 10 or so consultancy days, and resulting in a counter-report to that presented by management.

As the Subsidiary Requirements make clear, meetings are held on the basis of a report drawn up by management[7]. There is nothing in the Subsidiary Requirements to suggest that the EWC has the right to commission a counter-report. Certainly, the EWC can be assisted by an expert in examining the management report and, of course, the expert should have some time to study the report before meeting with the EWC.

Nor is there anything in the Subsidiary Requirements to suggest that the expert has the right to generate their own information, with their time in doing so being paid for by management. Of course, the expert can do their own research. But management does not have to pay for that research. If Pascal wants to be a car mechanic Pascal needs to go and train to be a mechanic.

I do not expect to turn up at the garage only to have the Pascal say to me that I will have to pay for ten days' training as he familiarises himself with my make of car. If that is what the Subsidiary Requirements say, why would you want to go beyond that in negotiating or renegotiating an EWC agreement?

Let me go further. In the few instances I am aware of where "Anglo-Saxon" companies did agree to the production of such an expert report, it was incomprehensible to most EWC members. No one paid attention to it. It had no impact on the proposed management decision - but the expert felt important and earned a nice fee[8].

[7] The Subsidiary Requirements, the fallback that comes into force in the absence of an agreement, is the foundation on which agreements are built. Most managements have always been reluctant to go beyond the key provisions of the SRs in agreements, while being willing to set out in agreements how those provisions would work in practice.

[8] I do not understand what makes an EWC "expert" an "expert". I regard myself (modestly) as an expert in negotiating the establishment of EWCs. I know what is involved, but EWC information and consultation is about the workings of companies, their current operations and their future strategies. What does a French accountant, for example, know about such matters when it comes to US companies? Sure, they can make a comment on the annual results, compared to market trends. But what insight do they have into strategy, forward planning, market risk, competitive challenges? The question answers itself.

EWCs work best when the agreement clearly defines the information that is to be provided, both annually, and in exceptional circumstances, which should also be defined precisely. There is no universal definition of exceptional circumstances. They are company specific. What may be exceptional in a company of 5,000 employees may be unexceptional in a company of 50,000 plus. There is no "one-size-exceptional-circumstances" fits all template.

If the EWC is to be assisted by an expert then the agreement should specify that the expert assists it at its pre-meeting only and has no automatic right of attendance or participation in the meeting of the EWC, or its Select Committee, with management.

The expert's role is helping the EWC to understand the information that has been provided by management. The agreement should be clear that the expert has no mandate beyond assisting at the pre-meeting and that management will not pay for the expert to do any own-initiative research.

The expert is there to advise the EWC. They are not independent actors in the EWC process. The expert is an advisor to the EWC. They are not there to engage directly with management. Any access for an expert to confidential information must be supported by suitable obligations (e.g. NDAs) to protect confidentiality.

Keep it Simple and Straightforward

The heart of any EWC agreement is the procedures it puts in place for information and consultation. All the rest is simply the scaffolding that supports these procedures. Experience suggests that it is best not to overcomplicate matters.

If you are starting with a blank sheet and are drafting an initial agreement for negotiation with a SNB, the following guidelines may help.

- *Give the EWC all relevant information about proposed decisions*
- *The EWC does an "in-depth assessment" of that information with the assistance of an expert*
- *The "in-depth" assessment takes place at the employee pre-meeting*
- *You make it clear that while the EWC can ask questions and ask for additional information after they have undertaken their "in-depth assessment" there can be no question of an expert be paid to do any independent research*
- *You meet with the EWC and discuss the matter with them. They can ask further questions and ask for more information. Provide what information you can. The agreement should clearly state that you will answer questions raised at the meeting within the time limit allowed for the offering of an opinion by the EWC but that you will not engage in a never-ending back-and-forth.*
- *Thereafter, they can offer you an opinion, if they so wish, either at the end of the meeting or within a reasonable time thereafter.*
- *Management responds to the opinion in writing, and that brings the matter to an end.*
- *But the agreement also needs to make it clear that if EWC does not offer an opinion within a reasonable period of time, which should be defined, management will proceed anyway and that, in the meantime, will be opening national-level information and consultation.*

Human nature being what it is, in the hot-house atmosphere of an EWC meeting, especially when confronted by aggressive and confrontational members of the EWC – and many EWCs have such members –

it is all too easy to become over defensive and, sometimes, bloody-minded. I have been there myself. Never a good place to be. Best, as Fisher and Ury put it in *Getting to Yes,* "separate the people from the problem".

Role of the EWC

When it comes to EWCs, we can distinguish between two sorts of power: hard power and soft.

Hard power is the legal power to stop management implementing a decision. EWCs have little hard power, as *Oracle* made clear. The courts have no power to impose injunctions on management. At best, they can impose fines. But they cannot block or reverse decisions.

It is unlikely that European legislation will ever offer EWCs the hard power they seek. Europeans live in a social market economy. But a social market economy is still a capitalist economy and in a capitalist economy the holders of capital are the dominant actors. Unions, and EWCs, may not like that and want to the power to be able to block and veto management decisions with which they disagree.

The legislators are not likely to give the unions and EWCs veto powers on managerial decisions because they have no European-wide electoral or constitutional mandates to do so, whatever individual political parties in individual countries may advocate.

Of course, even if EWCs cannot go to court to ask for injunctions they can go to court and ask the court to order management to hand over more information. Yet, even if the court does so, how far do they benefit? What is the EWC going to do with the extra information[9]? Come back and say that they think you have miscalculated your discounted cash-flow over the next three years or that you are underestimating the price that the market will bear for a particular product range and that, therefore, you need to rethink your proposed decision to shutter the plant in Milan?

Does anyone really think that EWC members stay up at night studying EBIDA trends? Or are concerned that in Q3 there was a 4.7% undershoot on a particular product range in the Swedish market because of unseasonably warm weather? Not in my experience.

Any court win for the EWC comes at a price. It imposes costs on the business. Lawyers are not inexpensive. You very rarely meet a poor lawyer, poor in the dollar sense that is. And it eats up management time which could more productively be spent on other matters. Some of the representatives and their experts may see management's discomfiture as a victory.

But such discomfiture lasts but for a few seconds and is of little consequence. But the biggest loss for the employee representatives will be the loss of goodwill and the corresponding formality and caution that management will be likely to adopt in future discussions. Once bitten and all that.

Soft power, on the other hand, is the ability to influence management through freer and more open discussion and dialogue in a forum where mutual trust has developed.

EWC members, potentially, have plenty of soft power in such forums, but the ability to build that soft power depends on them accepting the EWC process for what it is, having realistic expectations about what can be achieved. Not easy when there are so many trainers and consultants out there trying to persuade EWC

[9] One EWC went to the CAC in the UK to ask the CAC to order the company to hand over more information. The court sided with the EWC. The company gave the EWC some extra information. But refused to hand over all the information requested as it had moved its "representative agent" to Ireland and, in the best Irish republican tradition, refused to recognise the authority of an "English" court. Six months after the holding of the annual meeting the EWC has not issued an opinion. It would appear that the EWC was simply asking for information for the sake of asking, advised to do so by its expert.

members that they have "hard power". And if they haven't got hard power then the law is deficient, and they should be pressing for change.

My own view is that EWCs work best when management pays proper attention to them. Which means that EWCs require careful, and continuous, "expectation management". Which is easier said than done. It starts with management being clear with EWCs and their select committees about how management perceives them.

For a start, management should be made clear that they do not see EWCs as a "shadow management", there to second-guess corporate decisions. They have neither the resources nor the capacity to do that. Their role is to offer an opinion on the "possible impact[10]" on employees of decisions under consideration on the basis of the information provided by management.

> *At the end of an SNB negotiation, just after the agreement had been signed, one SNB member remarked: "Wait until central management in the US realise that they now cannot take any decisions unless we agree." He clearly misunderstood the agreement he had just signed but too many of his colleagues in that company, and in others, thought the same way. Of course, they were to be bitterly disappointed when US management did not come calling before they took strategic decisions.*

Nor are EWCs there to commission "consultants", in the form of "experts", to develop counterstrategies for the business in opposition to the strategy been followed by management. The logic of the Directive and its *raison d'etre* is that EWC members should be able to comment on proposed management plans based on their own "lived experiences" as employees and employees' representatives in the company over many years. They should not need third-party consultants to tell them what to think about their own company and its plans for the future.

If EWC members cannot enter discussions and dialogue with their own management based on their lived experience then what is the point of EWCs in the first place? EWCs should not become a "game of experts".

Businesses operating in Europe, and particularly those in long established production and service sectors, need to be conscious of the status accorded to the trade union movement in some countries – for example in sectoral pay bargaining and within national and domestic works councils. However, EWCs do not exist to promote a trade union agenda.

The majority of employees in companies within the scope of the EWC Directive are not union members. Based on OECD figures[11] only about 15% of EU workers in the private sector are union members. Remember, in most EU Member States, around two-thirds of all union members work in the public services.

Sure, there are some companies where unions do dominate, but that is more and more not the case. Which is one reason why European trade union federations have not secured an automatic seat on EWCs, something they asked for in 2008 (*see earlier).*

For most companies, the stress has to be on accessing the "lived experience" of EWC members.

> *"This is your company, the company you have all worked for over many years. This is how we plan to go forward. This is the difficult decision we are proposing to make. What do you think? Not what some trade union official thinks, or some consultant thinks. What do you think? What do your colleagues back in your workplaces think?"*

[10] Taken from the definition of "information" in the Directive

[11] https://stats.oecd.org/Index.aspx?DataSetCode=TUD

Of course, there will be disagreement. There always are. But the EWC is not the place to resolve such disagreements. Which is why references to "agreement" were dropped when the original 1994 EWC Directive was being revised in 2008.

Disagreements are best resolved at local-level, in accordance with national laws and or practices when it comes to employee information and consultation and, yes, negotiations. It is locally where things really count, locally where people live and work. Where employees know their representatives and can engage with them.

Final Thoughts

One thing is certain. The 2009 Directive has not dramatically increased the number of EWCs. If it is accepted that there are around 2,200 companies within the scope of the Directive then the number of EWCs in existence continues to hover around the 50% mark. Why this continues to be the case some 25 years after the original Directive was adopted is not a question this paper tries to answer. I suspect that there are no simple answers.

What then of the changes in the 2009 Directive compared to the 1996 Directive? The best way to put it is this: The hopes of the unions, and fears of the employers, were much exaggerated, as time was to show.

Yes, the Directive introduced changes, but they turned out to be measured and proportionate changes that management soon learned to work with in a pragmatic way, even if the cost was more formalised procedures and more detailed agreements.

Attempts by EWCs, advised by union officials and union-side experts, especially in the UK, to go to court to seek expansive interpretations of provisions of the Directive have generally come up short.

The courts have not read the law as giving unions blocking powers over proposed management decisions. At best, the courts can impose fines on employers who disregard information and consultation obligations. The number of employers who blatantly ignore EWC information and consultation obligations is insignificant to non-existent. So, fines have been rare.

Where unions have had some success before the courts have been on the margins.

A meeting should have been held earlier; more information should have been given; information should not have been marked confidential; an expert should have been allowed to attend a meeting; a particular issue should have triggered an EWC information and consultation process. All matters of interpretation either of the Subsidiary Requirements or of agreements. But nothing which changed business decisions to any great extent.

Does the EWC Directive need further change? We don't think so. The 2009 Directive provides an adequate framework to facilitate dialogue between management and employees' representatives.

Proposals for extending the role of EWCs will surface from time to time in EU Parliament reports and in academic research papers but there would appear to be no immediate prospect of change.

EWCs are what they are.

They are unlikely to be anything different anytime soon.

Tom Hayes
August 30, 2021

Part Two:

1990 – the start

In 1990, Ernst Breit, who at the time was president of the European Trade Union Confederation, and president of the German DGB, delivered the Countess Markievicz[12] lecture[13] to the Irish Association for Industrial Relations.

The year 1990is significant: the year of German reunification. The Berlin Wall had fallen just 12 months before. Countries in Central and Eastern Europe were escaping from decades of Soviet domination. Europe was being reborn.

1992 would see the coming into full force of the Single European Act, the legislation that provided for the creation of the European Single Market. Legislation that had been forcibly pushed for by Margaret Thatcher and delivered by Arthur Cockfield, the UK EU Commissioner. The same Single Market that the UK now longer wants to have anything to do with because it allegedly diminishes its sovereignty. The remaining 27 Member States do not find that to be the case with their sovereignty.

For the first time since the EU was established in 1958, the Single Market Act provided for the adoption by the Council of Ministers, by qualified majority voting, of legislative proposals to do with health and safety and the "working environment". The veto was beginning to crumble[14].

1990. We were two years away from the Maastricht Treaty. The heart of that treaty was a deal between France's Mitterrand and Germany's Kohl that in return for French support for German reunification, which Thatcher tried desperately to block, Germany would give up the deutschmark and agree to the creation of the Euro.

The Maastricht Treaty, negotiated in 1992, has a social chapter which provided for a wide range of employment and labour laws to be adopted through qualified majority vote. The veto was effectively dead. The then UK Conservative government could not stomach the social chapter and famously opted out of it.

A New Dawn?

When Ernst Breit delivered the Markievicz lecture the unions were full of hope that the power and influence they then exercised at national level could be replicated at European level.

Breit spoke from a position of some strength. Trade union density in the old West Germany stood at 40% in 1990[15]. Union membership was concentrated in manufacturing industry. It was the same elsewhere in Europe. Union strength lay in male, mass manufacturing plants.

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[12] See bio here: https://en.wikipedia.org/wiki/Constance_Markievicz
[13] https://www.ul.ie/iair/sites/default/files/1990 Lecture by Ernst Breit.pdf
[14] Up to that point, all EU social legislation had to be adopted by the Council of Ministers, unanimously. This gave each Member State a veto, which the UK was not shy in exercising.
[15] https://www.oecd.org/els/emp/4358365.pdf

However, even as he spoke, Breit could not know that the digital services industry was about to be born. And the world was about to go global.

According to Breit the European Single Market

> *…will encourage cross frontier mergers and the establishment of new groups of firms. This will shift decision making centres in enterprises. The representation of employees' interests at the workplace, one of the cornerstones of effective social relations and to be found in different but comparable forms in all the Member States of the European Community, will still be subject to the frontiers of national legislation. The Europeanization of the structures of enterprises will thus change the situation on the employers' side without providing for anything equivalent on the employees' side. This will bring the social dialogue within enterprises to a standstill.*

The Europeanisation of business would have to be met with a Europeanisation of industrial relations.

> *The result may and will be social conflicts, some of which will not stop at frontiers. What we are proposing and this above all with an eye to the Statute of a European Company is the establishment of a European body representing employees' interests in enterprises. For this the necessary legal foundations must be laid. Until this is done, the trade unions will try to reach agreement with the employers on such bodies. If this is not possible in a socially peaceful way, the trade unions must try to achieve their objective with the means at their disposal.*

Breit was calling for legislation to provide for the establishment of European Works Councils and if legislation did not deliver European Works Councils, the unions would use their economic leverage to force employers to create them. As he noted:

> *A number of important enterprises are well aware of this and are taking appropriate action; others will have to be helped to choose the right course, or it may even be necessary to force legislation through.*

Breit, and his unions colleagues, quite naturally assumed that European Works Councils would be dominated by unions members and would work to a union agenda, in much the same way as German works councils at the time worked hand-in-glove with the unions.

European Works Councils would give the unions a seat at the top European corporate table. And it was just within reach.

But it slipped away. He got his European Works Council law. But it was more form than substance, a very pale shadow of what the unions wanted. It would take them some time to realise it.

Change

As the same time as Breit was speaking three major developments were beginning to take shape that would dash his hopes.

First, of course, and following the fall of the Berlin Wall, the major countries of Central and Eastern Europe were about to re-join the Western market economy, opening the door to European Union membership. They would join the EU in 2004. But even before then, they were open for business.

Labour costs were considerably lower in these countries than in Western Europe and, in many cases, their workforces were highly skilled. Factories that once made Soviet tanks could easily be turned to making cars. Western trade unions, long used to operating behind national protective walls, were about to be hit by the

chill, competitive winds of a Single European Market now opening to the low-cost economies of Poland, Hungary, and the rest.

It is worth keeping in mind that in these newly freed countries, trade union membership was compulsory under the Soviet regime. The unions were seen as a "transmission belt" by the Communist Parties, telling the workers what the Party wanted them to hear. Unions were part of the Communist apparatus. As soon as the Communists were gone, union membership began to fall like a stone from a great height. Today, in Central and Eastern Europe it is on the floor.

From that point on, European employers had new leverage in negotiations with their unions. Alternative locations were available for new investments. Strike, and the factory may not be there when the strike was over. If it was still there it might not be there for much longer as new investment would be frozen and instead directed elsewhere.

Second, both China and India, in their separate ways, concluded that the "socialist" economic paths they had been following were leading nowhere and both decided to re-join the global, market economy. Chinese manufacturing boomed and India became home to a vibrant information technology business. More locational choices for employers.

Third, and critically important, the modern ICT industry was being born. Mobile phones and laptops became available, at ever falling prices, and soon everything was connected by the internet. It is easy to forget that the internet is just 30 years old, so all pervasive is it today. Could we have survived through Covid had we not all been online?

It was on August 6, 1991, that Tim Berners-Lee posted the first ever internet page, and changed the world. How many of you reading this paper work for companies that would not exist except for the internet?

If Central and Eastern Europe, China and India, offered new, low-cost locational choices to employers, developments in ICT made moving facilities, and jobs, to these locations manageable from a distance. The "always-on" global economy was being born.

1990 may have been close to the peak year for trade union power and influence in Western Europe and the European Union. Thereafter, began a long period of declining fortunes. To borrow some words from the show, *Les Misérables,* the unions

> *…dreamed a dream in times gone by / When hope was high and life worth living*

The EWC Story

The EWC story begins in 1972 when the European Commission published the draft 5th Directive on Company Structure and Administration. Unsurprisingly, it was modelled on the German system of co-determination and proposed a supervisory board and a management board. It would apply to all companies with more than 500 employees. The debate on employee information and consultation was opened.

Between 1972 and 1983 the proposed Directive went through various revisions and moved away from an exclusively German model and incorporated aspects of Dutch, Italian and British practices. The threshold was raised from 500 to 1,000 employees and the "social partners" at company level were given a menu of options to choose from. The choice was now between:

- *A third and a half of non-executive board members to be employee directors on either a supervisory or a unitary board.*

- *Employee representatives to be co-opted on to a supervisory board, with the power of veto on nominees made by the other side.*
- *A special body of employee representatives with right to information and consultation to be set up as a company council, but with no direct veto on managerial decisions.*
- *Employee representation at the company level to be agreed through negotiations in line with the basic principles of the other three systems.*

At the same time as the 5th Directive was under consideration another Directive was put forward by DGV, the employment directorate. This was a draft Directive on procedures for informing and consulting employees, generally known as the Vredeling Directive, after Hank Vredeling, the then Dutch EU Employment Commissioner. The focus of Vredeling was employee information and consultation in large, multi-plant but especially multinational businesses. Vredeling is the real source of the current EWC Directive.

Vredeling provided for:

- *The requirement of headquarters of companies with over 1,000 workers to inform and consult employees regarding their operation*
- *The provision of information on an annual basis relating to the structure, financial situation, employment, investment prospects and future development of the enterprise*
- *The provision of information to employee representatives within 30 days of lodging a request*
- *Information to be given prior to major decisions, that is, information on decisions deemed to have serious consequences for employees was to be subject to early disclosure, such information to be given in "good time", which was left undefined, and had to give workers the grounds for the decision, its legal and economic basis and the likely impact on employees*
- *The provision of a third party to monitor and receive information from the social partners*
- *Employees to be given a right to "by-pass" local management and gain access to management in other countries that constituted the ultimate decision makers.*[16]

According to Cressey, " … the debate on Vredeling and the draft 5th Directive came together in 1983, the year in which the latter was amended, producing a torrent of criticism from both European and non-European multinational employers".

The Japanese Business Federation, Keidanren, commented:

> *Keidanren opposes the adoption of the Vredeling proposal on the grounds that it will not only have a negative impact on business activities but will also discourage direct investment from outside the European Community. Also, in regulating labour-management relations it will undermine the amicable relationships that Japanese enterprises operating in Europe have worked so hard to build with their employees over the years.*

The UK's Institute of Directors branded the 5th Directive as a "Trojan Bullock"[17], totally alien to the needs of British companies. The Confederation of British Industry said it could not accept any Directive that included references to the statutory enforcement of worker directors on company boards. It argued:

> *The Fifth …threatens confusion to a company's strategic decision-making because it would admit for the first time in Britain the representation of sectoral interests on board structures.*

[16] Peter Cressey *Employee Participation* in Michael Gold (ed) *The Social Dimension: Employment Policy in the European Community* MacMillan, 1993

[17] "Bullock" was a 1970s UK Labour Government proposal to legislate for worker directors on company boards, named after the academic who chaired the working group

The Engineering Employers Federation saw Vredeling as "doctrinaire and irrelevant to the real problems of European industry whose competitiveness it would damage:

> *What we do not like about Vredeling – even in its revised form – is that it still represents a creeping and insidious form of paralysis leading to expropriation*

UNICE, the forerunner of BusinessEurope, also had objections. It saw the 5th as unjustified if the aim was the harmonisation of company law, since these were not the only way forward. It also saw worker directors as disruptive of industrial relations practices in certain member states and criticised the measures on the grounds of requiring a great deal of legislative enactment.

With the UK's Thatcher government indicating that it would veto both measures they were dropped from the agenda, referred for "further consideration". Vredeling would return in 1991 in the form of a draft European Works Council Directive. Writing in 1984, Herman Rebhan of the International Metalworkers Federation (IMF) said:

> *We have to be honest and say that multinational companies beat us to the mark in the battle of the Vredeling Directive … US multinationals poured men and money into Brussels … unions will have to become much more skilled manipulators of the European bureaucracy, while at the same time building up trans-frontier union strength within the same company.*

Vredeling becomes the EWC Directive

When Vredeling did return in 1991, in the form of a draft Directive "*on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees*" it was still hostage to the UK veto.

But the President of the EU Commission, Jacques Delors, was already working on the provisions of the social chapter of what would become the Maastricht Treaty, which would remove the veto on issues of employee information and consultation and instead make them subject to qualified majority voting[18].

The European Commission gave the European social partners, UNICE and ETUC, the opportunity to negotiate an agreement between themselves on the issue in place of a Directive. The Maastricht Treaty was to allow for such negotiations, and if an agreement was reached the EU Council of Ministers could make it legally binding.

While negotiations did take place between UNICE and the ETUC they failed to come to an agreement. Not surprising, as the establishment of EWCs touched on the controversial issue of the balance of power within enterprises and rational economic actors rarely say to a counterparty: "Here is a big stick with which to beat me. Use it often." It just does not happen.

While, subsequently, the social partner negotiating procedure of the Maastricht Treaty did produce some agreements, on the right of fixed-term workers, part-time workers, and parental leave, all matters of individual rights, it has never led to an agreement on collective, industrial balance-of-power issues. These have always been settled by political decisions.

[18] Charles Grant: *Delors*: *Inside the House That Jacques Built* Nicholas Brealey Publishing, 1994

The 1994 EWC Directive

The EWC Directive (94/45/EC) was adopted by the Council of Ministers on September 22, 1994, immediately after the German Constitutional Court had given the green light to the Maastricht Treaty. The Commission reintroduced the draft Directive on the new legal basis provided for by the Treaty, which meant that the UK was "out of the game" as it had opted out of the Maastricht social chapter, which allowed for measures involving the "information and consultation of workers" to be adopted by qualified majority vote. By a strange twist of fate, the EWC Directive was the very first measure to be adopted by the EU under the Maastricht Treaty.

Adoption by the Council of Ministers on September 22, 1994, meant that it would become national law on September 22, 1996, two years later. Those two years were to become extremely important, as we shall see later.

For the first time in Europe, the Directive provided a legal framework for the creation of European-level employee information and consultation bodies, European Works Councils. Workers from across Europe would have the chance to come together to meet with "central management" to discuss the progress of the business.

The unions hoped EWCs would be the mechanism through which they could decisively influence European-level, strategic, corporate decisions. The employers greatly feared as much. It didn't work out that way.

The 1994 Directive applied to any "undertaking" that has 1,000 employees in the European Economic Area (The European Union, along with Norway, Iceland and Lichtenstein), and also had at least 150 employees in at least two EEA Member States. Employees in the UK were excluded from these calculations because of the UK Maastricht social policy "opt-out".

However, UK-based companies that had 1,000 employees in the EU, excluding the UK, and 150 in two EEA Member States, again excluding the UK, still had to set up EWCs as the EU took the view that employees in other EU Member States could not be deprived of their rights because of the UK opt-out. The opt-out stopped at the UK border.

The "opt-out" only ended when Labour came to power in 1997 and the UK subsequently came within the scope of the Directive in 1999. In practice nearly all companies that set up EWCs included their UK employees. The rationale was that, despite the opt-out, the UK was still a member of the EU, and everyone was aware that Labour planned to reverse the opt-out. By the time the Directive became national law in 1996 it was becoming increasingly clear that Labour was going to win the next general election in the UK, which it did in the Blair 1997 landslide.

With Brexit, we are now back to the Directive no longer applying to the UK because the UK is now completely outside the scope of all EU law. Brexit is not comparable to the days of the "opt-out" when the UK, despite the opt-out, was still an EU member. As the EU Commission has made clear[19]: *EWCs can no longer be legally based in the UK, nor do UK employees have a legal right to be represented on EWCs.*

Whether management wishes to allow for continued UK representation on a voluntary basis is something management needs to discuss with the EWC.

Central management would be responsible for the establishment of the EWC, through arranging for the creation of an SNB, when requested to do so. Where central management is not located in an EU member state, as is the case with US companies, then central management is to nominate a "representative agent" in an EU member state who will act of their behalf, becoming the "de facto" European central management.

[19] https://ec.europa.eu/info/sites/default/files/brexit_files/info_site/transnational_workers_council_en_0.pdf

Back in 1996 this did not seem such an important issue and US companies ended up in France, Germany, Belgium and the Netherlands. The wise ones, even then, went to Ireland.

The issue of the location of the representative agent became important in the years after 2000 when French courts started ruling that managements that had breached information and consultation could be ordered to freeze decisions, or even reverse them.

Suddenly, EWC location became an issue. The UK was the destination of choice because UK legislation made it clear that the courts could not rescind management decisions. Post-Brexit, Ireland became the obvious choice. There may now be well over 100 EWCs using Ireland for EWC purposes.

100 employees, or their representatives, could submit a written request to "central management", via local management if the identity of "central management" was unknown, calling for the establishment of a Special Negotiating Body (SNB) to agree the terms of an EWC with management. The parties were free to come to any agreement they wanted, subjected to some minimal conditions around the composition of the EWC, the meeting schedule, and agenda items. The EWC members were entitled to meet on their own before the meeting with management.

The SNB was to be composed of at least 1 representative from each country in which the company had an operation, no matter how small. Countries with larger numbers of employees got some extra seats. The SNB had three years in which to negotiate an agreement. If no agreement could be reached within the three years the "backstop" Subsidiary Requirements came into force.

While the purpose of the Directive was the transnational information and consultation of employees, the Directive had nothing to say about what "information" had to be provided and consultation was defined as the "establishment of dialogue and the exchange of views". There was no suggestion in the Directive that EWCs would have any sort of delaying powers on the implementation of management decisions, still less a veto on such decisions.

Penalties for failing to inform and consult the EWC were fines, amounting to at most €10,000 in today's terms. The Spanish fine at €150,000 was an outlier, until the UK came along with a fine of up to £100,000. Nothing as compared to the 4% of global turnover, or €20m, whichever is the greater, provided for in the General Data Protection Regulation.

Very few companies needed to resort to the Subsidiary Requirements. Agreements were generally reached, often after just one meeting with the SNB[20]. They nearly all followed a similar pattern. A two-day meeting consisting of an employee pre-meeting on Day 1, followed by a meeting between the EWC and management the following day. Meetings were to be held in various European cities and the evening of Day 1 would see the EWC and management dine together[21]. Information consisted of a series of PowerPoint presentations. Consultation was generally little more than a question-and-answer session.

The biggest arguments during the SNB process tended to be over seat allocation on the EWC, with management trying to keep the numbers down to contain costs, and the SNB looking to maximise the number, especially from the larger countries.

[20] Not all meetings were easy. I especially recall one when the German delegate wheeled in a large trunk, opening it to reveal a mini law library. On another occasion the Greek delegate wanted the meeting to adopt a resolution denouncing US imperialism. The first meeting of one SNB was taken up with the French and Italian delegates demanding that we discuss the timetable for future meetings. Another SNB in a US company appointed an Austrian union official as its expert. Only problem was that he had no English and had never negotiated an EWC agreement before. Then there is the legendary story of the SNB delegate whose attendance at the meeting was the first time he had travelled outside his country and the first time he had stayed in a hotel. He emptied the minibar of all the mini liqueur bottles, three time, to bring them home as presents to his work colleagues.

[21] I have fond memories of dinners in: Brussels, London, Paris, Rome, Madrid, Lisbon, Dublin, Cannes, Frankfurt, and the rest. In those days, EWC work was tough work. Sadly, we are now reduced to Zoom aperitifs.

There were even bigger arguments around the role of "experts", which was generally understood as code for trade union officials.

The 1994 Directive provided for SNBs to be assisted by "experts" of its choice, though the company only had to pay the costs associated with one such expert. However, the Directive was silent on whether these experts could actually attend negotiating meetings between the SNB and management. There never was a settled view on the matter. It was to be resolved in the 2009 Directive.

While the Directive also provided that an EWC working under the Subsidiary Requirements could be assisted by experts of its choice, again it was silent on whether they could attend the meeting with management. The minimum requirements for an EWC agreement set out in Article 6 of the Directive did not mention "experts" as one of those requirements.

However, the need for an EWC to be assisted by an "expert" (union official) was of such importance to the unions that they advised SNBs that it would be better to default to the Subsidiary Requirements rather than sign an agreement that did not provide for experts. As, in general, management preferred the certainly of an agreement than the "black box" of the Subsidiary Requirements, they agreed to the involvement of experts, though often on condition that the expert could only attend meetings between the EWC and management by mutual agreement, with management consent not being "unreasonably withheld".

For the most part, agreements also provided for training for EWCs members, with such training being bolted on to the annual meeting, adding an extra day to the two-day meeting.

We now know that the 1994 Directive was "light touch" legislation, that simply provided for European Works Councils (or whatever else they were called) that would "exchange views" and engage in "dialogue" with management without slowing down management decision making, much less have a veto on such decision making.

Nearly 30 years on from 1994, it is difficult to find any example of a major corporate decision anywhere across Europe that has been fundamentally changed, or blocked, because the company had an EWC. Once you met with the EWC, told them what you planned to do, listened to their views, gave them a response, you had met your obligations[22].

Very few companies went beyond the basics in their agreements.

Some might point to the Suez/Gaz de France saga which saw an €80b merger blocked for several years because of a management failure to properly engage in consultations with the French and European Works Councils in both companies. But the court decisions had more to do with French domestic law than with EWC law and, besides, the Suez/Gaz de France merger was a highly charged political issue in France in the run-in to a presidential election which saw Nicolas Sarkozy elected to succeed Jacques Chirac. Suez/Gas de France turned out to be very much *sui generis*.

Yes, there were other judgements from French courts around the time of Suez/Gaz de France which saw companies ordered to unwind decisions already made, even to reopen shuttered plants as in the case of Total and a refinery in Dunkerque, but these decisions were rooted in French domestic law, rather than EWC law. The practice of courts ordering management to reverse decisions never really did spread beyond France, though Spanish courts also tend to do the same. Successive changes to French law have seen the powers of the courts to block management decisions progressively curtailed.

[22] The Renault Vilvoorde case, the proposed closure of a plant in Belgium and the transfer of production to Spain, turned out to be very much a "one-off".

When the US company Visteon, which had an EWC based on Germany law, closed a plant in Spain an attempt was made to have a German labour court injunct the company and order it to halt the process. While the court found that Visteon may indeed have breached its EWC information and consultation obligations, it also made it clear that the most it could do was to impose a fine on the company as that was all German law provided for.

A subsequent attempt in another case, *Amcor*, on the part of the EWC to suggest that the German law was defective and should provide the court with injunctive powers instead of with just the ability to impose fines was rebuffed by the court with said the law transposed the Directive correctly and refused to refer the issue to the European Court.

That the 1994 Directive would turn out to be "light-touch" was not to be known back then. The unions saw the Directive as a breakthrough achievement. Special Negotiating Bodies (SNBs) which were to be the process through which EWCs were to be negotiated after September 1996, could be assisted by an "expert of its choice", as could EWCs which might be set up under the "backstop" arrangements of the Subsidiary Requirements. "Expert" was widely understood to mean "trade union official" nominated by one of the European-level trade union federations to coordinate the work of the SNB or the EWC to ensure that they worked the way the unions wanted them to work.

Article 13 Agreements

As already noted, the Directive was adopted by the Council of Ministers on September 22, 1994, which meant is would become nation law on September 22, 1996, two years later.

Article 13 of the Directive read:

> Agreements in force
>
> *…the obligations arising from this Directive shall not apply to Community-scale undertakings or Community-scale groups of undertakings in which, on the date laid down in Article 14 (1) for the implementation of this Directive or the date of its transposition in the Member State in question, where this is earlier than the abovementioned date, there is already an agreement, covering the entire workforce, providing for the transnational information and consultation of employees.*

This meant that any transnational company that had arrangements in place before September 22, 1996, providing for the "transnational information and consultation of employees" was exempt from the terms of the Directive. Businesses across Europe, and in the US and Japan, saw "Article 13 Agreements" as a way of avoiding what they saw as the rigours of the law.

There was a rush to sign such agreement. As a recent ETUI report notes

> *Many thought it was reasonable to negotiate the agreements without having to worry about rigid regulations and procedures (such as appointing a special negotiating body). As a result, nearly 400 EWCs were established using the path offered by Article 13 of the Directive.*

To borrow a phrase from elsewhere, Article 13 agreements were negotiated in the "shadow of the law". If voluntary agreements could not be reached, the law would impose more draconian requirements. Or so it was thought at the time.

The European trade union federations actively pushed this understanding as they saw the voluntary route to negotiating EWC agreements as a way to maximise their involvement and leverage in the process. Their offer

to companies was simply: Negotiate an Article 13 agreement with us or face the "unknown" of the Special Negotiating Body" process.

Personally, I have never been convinced that Article 13 agreements were worth all that much. In most EU countries disputes between management and an Article 13 EWC would be dealt with in accordance with normal, industrial relations disputes procedures, involving reference to a Labour court. The one exception was the UK which provided no such option. An Article 13 agreement in the UK was simply "free floating", living in its own little bubble.

Not the Way it Was Planned

It soon became clear that the unions were not going to control EWCs, even if they invested a great deal of time and resources into organising conferences, workshops and seminars to plan strategy and tactics and produced "guidelines" to be followed by EWCs. There were a number of reasons for this.

First, the legislation was simply too "light" to support the unions' ambitions. They wanted a skyscraper reaching into the corporate clouds. They got a caravan.

Second, as time went by, it became clearer and clearer that the majority of EWC members were not union members, a simple reflection of declining union density across Europe. This became even more pronounced with the accession, in 2004, of Cypris, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

As already noted, after the liberation of the countries of Central and eastern Europe from the grip of the Soviets, trade union membership began a rapid nosedive, a nosedive that continues to today. Trade unions were actively distrusted in these countries, been seen as agents of the former Communist regimes.

Third, managements, especially the managements of American companies, were simply not going to negotiate agreements which gave EWCs powers beyond what the Directive gave them. The "terrors" that European-level information and consultation would give rise to, and that drove the opposition to the 5th Directive and Vredeling in the 1980s, turned out to be nothing more than shadows in the night. When the dawn broke, the shadows were gone.

The greatest beneficiaries from the 1994 EWC Directive would turn out to be the writers of academic papers on the topic, with a new research stream being born on the "Europeanisation of industrial relations", and the European tourism industry as around a 1,000 EWCs held up to 1,500 meetings a year in cities across the continent. Oh, translators and interpreters didn't do badly either. Not to mention a few management-side consultants. The lawyer's turn was to come with the 2009 Directive.

At present (2020), there are around 1,180 active EWCs. No one knows for sure as companies split, merge, re-split and/or are taken over. Nothing stands still.

The first recognisable EWC was created in 1985 when the forerunner of Danone cut a deal with the International Union of Foodworkers (IUF).

Today, the sectoral distribution of EWCs is as follows:

- 430 – metal industry
- 261 – services
- 205 – chemical industry
- 108 – food industry, hospitality industry, catering services
- 81 – construction and wood industry
- 39 – transport

- 30 – textile industry
- 15 – public services
- 38 – other/unspecified industries

In terms of company size:

- 40% (481 in total) of EWCs can be found in companies with less than 5,000 employees;
- one third (378 in total) of EWCs operate in companies with more than 10,000 employees
- 16% (186 in total) exist in companies with 5,000–10,000 employees.

As regards internationalisation (number of EEA countries in which companies run their operations), about half of EWCs operate in companies active in more than 10 countries, and the share of EWCs in companies active in more than 5 (but less than 10) and below 5 countries are nearly equal.

As for the country where the head office is located, the largest number of EWCs are distributed as follows:

- Germany (271 active)
- USA (188)
- France (132), and
- UK (102 pre-Brexit, most of whom have now moved to Ireland).

It did not take the unions long to figure out that the 1994 Directive had delivered an awful lot less than they had wanted.

Almost immediately, they began to agitate for changes and a rewrite. But it was to take them over ten years, until 2009, to get a reworked Directive, the 2009 Directive, which we examined in Part 1 of this paper.

August 2021