

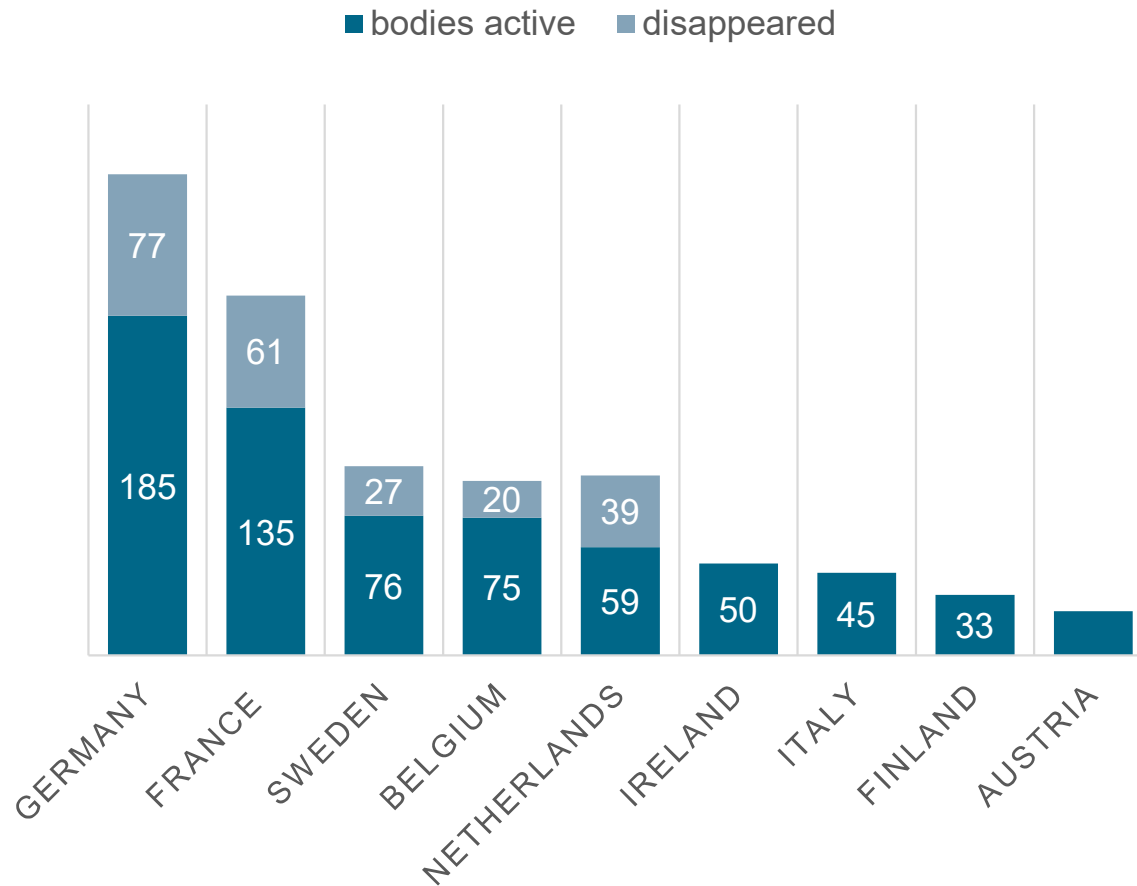


What's happening with EWCs

- **Statistics**
- **Analysis of typical EWC agreement clauses**

I. Stats and Graphs

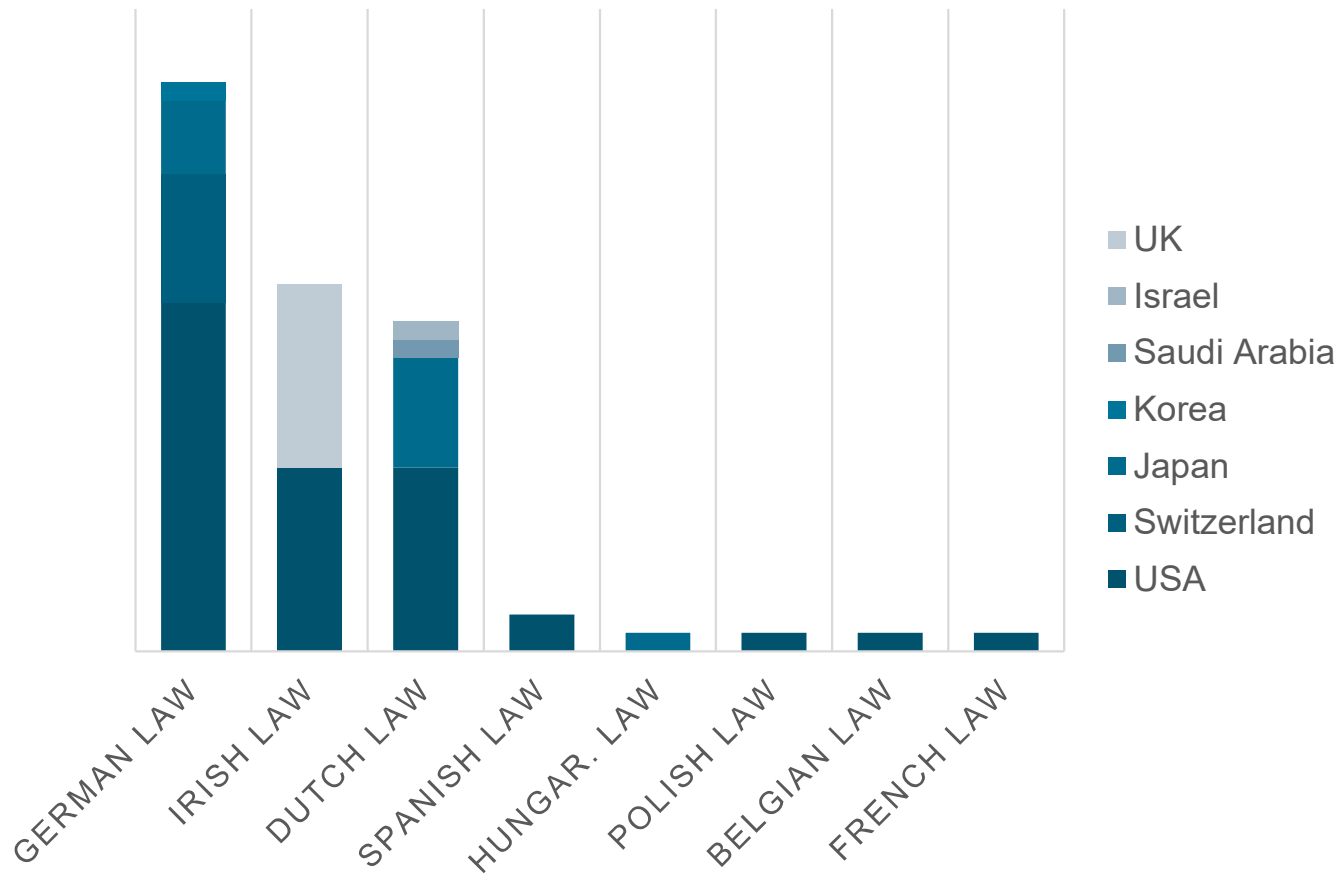
EWC bodies, by country of headquarters (HQ)



- Since Brexit, we have noticed a significant increase of EWCs in Ireland (approx. 50)

II. Stats and Graphs

Applicable law to EWC of companies headquartered in a third country (since 2011)



- Most companies from third countries choose to install the EWC in the country with biggest footprint.
- Significant increase of EWCs in Ireland

III. Arguments pro / con certain legislations

Germany	France	Sweden	Ireland	Netherlands	Hungary
Injunctions <ul style="list-style-type: none"> • Not possible 	Injunctions <ul style="list-style-type: none"> • Possible but and not so rare 	Injunctions <ul style="list-style-type: none"> • Possible but rarely used or awarded 	Injunctions <ul style="list-style-type: none"> • Possible, but not practiced as it requires funds which the EWC does not have 	Injunctions <ul style="list-style-type: none"> • Possible, but under strict conditions 	Injunctions <ul style="list-style-type: none"> • EWC can represent the interests of the employees in court
Case law <ul style="list-style-type: none"> • Much case law (38 cases listed) 	Case Law <ul style="list-style-type: none"> • Much case law (56 cases listed) 	Case Law <ul style="list-style-type: none"> • Little case law (2 cases listed) 	Case Law <ul style="list-style-type: none"> • Few cases but increasing 	Case Law <ul style="list-style-type: none"> • Little case law (2 cases listed) 	Case Law <ul style="list-style-type: none"> • No case law listed
Costs / Experts <ul style="list-style-type: none"> • One expert • Costs covered by employer 	Costs / Experts <ul style="list-style-type: none"> • Costs covered by employees 	Costs / Experts <ul style="list-style-type: none"> • Required costs covered by the management • Expert assists the negotiating delegation of the employees 	Costs / Experts <ul style="list-style-type: none"> • Cost covered by the management • Limited to one expert per meeting between the EWC and management 	Costs / Experts <ul style="list-style-type: none"> • One expert per item on the agenda, unless the EWC and the management agree otherwise 	Costs / Experts <ul style="list-style-type: none"> • One expert • Costs covered by management

III. Arguments pro / con certain legislations

Poland	Spain	Belgium	Luxembourg	Italy
Injunctions <ul style="list-style-type: none"> No information given 	Injunctions <ul style="list-style-type: none"> Comprehensive injunctions granted by Spanish courts 	Injunctions <ul style="list-style-type: none"> Possible but rarely used or awarded Costs must be borne by the parties 	Injunctions <ul style="list-style-type: none"> No information given 	Injunctions <ul style="list-style-type: none"> Possible for unions
Case Law <ul style="list-style-type: none"> No case law listed 	Case Law <ul style="list-style-type: none"> Little case law (1 case listed) 	Case Law <ul style="list-style-type: none"> Little case law (5 cases listed) 	Case Law <ul style="list-style-type: none"> Little case law (1 case listed) 	Case Law <ul style="list-style-type: none"> Little case law (3 cases listed)
Costs / Experts <ul style="list-style-type: none"> One expert unless EWC and the management agree otherwise 	Costs / Experts <ul style="list-style-type: none"> One expert Costs covered by management 	Costs / Experts <ul style="list-style-type: none"> One expert Costs covered by the management 	Costs / Experts <ul style="list-style-type: none"> One expert unless EWC and the management agree otherwise Costs covered by management 	Costs / Experts <ul style="list-style-type: none"> One expert Cost covered by the management

IV. EWC Agreement Clauses

We also have evaluated 115 publicly accessible EWC agreements and combined it with our own experience re: EWC agreements clauses:

- Composition of EWC
- Binding language
- Size of EWC
- Number and type of EWC meetings
- Definitions (e.g. transnational matters)
- Cost bearing
- Experts
- Virtual meetings
- Brexit



1. Composition and Size

Thresholds (min. employees / country)	Less than 50	51 to 100	> 100	No provision	Other
# of agreements	28	14	7	57	5

Distribution according to ..	number of employees / country	percentage of employees per country	Fixed number of EWC members	Other
# of agreements	61	29	15	10

Max. EWC members per country	1-2	3-4	5-6	7-8	> 8
# of agreements	15	30	14	9	2

Max. size of EWC	1-10	11-20	21-30	31-40	> 40 / no provision
# of agreements	3	3	11	10	88

2. Composition and Size

Note:

- A threshold of 50 employees per country is recommended
 - most of the new agreements have a threshold (9/15)
- Distribution according to percentage of employees per country (as statutory law 10% = 1 seat) recommended
 - most of the new agreements specify the distribution of EWC members according to % of employees (10/15)
- Maximum of 3-4 members per country and maximum of 16-25 EWC-members is recommended
 - limitation of costs, working capability, limitation of members/size result in lower fluctuation in EWC

2. Meetings - Number of EWC Meetings

EWC meetings p.a.	1	2	3	No provision
# of agreements	50	28	0	37
# of select committee meetings p.a.	1-2	3-4	If necessary	No provision
# of agreements	12	18	11	74

Note:

- One EWC plenary meeting per year is recommended
- 3-4 select committee meetings per year is recommended
- Most newer Agreements provide for one EWC meeting and two select committee meetings per year (8/15)

2. Meetings - Meeting Language

Language	German	English	Dutch	Spanish	Polish	Hungarian	No provision
# of agreements	36	47	4	9	0	1	18

Note:

- Most EWC representatives have a good command in English
 - Especially newer EWC determine English as binding language (11 out of the 15 newest Agreements)
- Language trainings to be offered to employee reps in order to facilitate work in general
- Most agreements stipulate that meetings will be held in English, but that simultaneous interpretation into required languages may be provided if needed
 - In our experience, this is a main cost factor of EWCs

2. Meetings – Virtual Meetings

- Regulations in newer agreements included
- Virtual meetings of EWC / select committee are possible, e.g. two of three meetings can be held online
- In our experience, more and more meetings with the select committee are being held virtually (especially in recent years).
- Since the EWC's mode of operation can be largely agreed, upon contractual regulation is permissible.

„The select committee shall have the right to meet face to-face or, if that is exceptionally not reasonably practicable, virtually with the Central Management”. – EWC Agreement Swissport.

3. Definitions - "transnational matters"

Definition	Directive as basis	"Stricter" definition	No clear definition	Threshold for affected employees
	79	18	18	2

Note:

- "Stricter" definitions often emphasize that measures additionally must have "significant" impact on employees
- Recommendable to use Directive as basis, but add a threshold (i.e. minimum number of affected employees by transnational measures)
- Clarification that UK is not considered in this regard (e.g. measure affecting Germany and UK is not a transnational matter)

"Matters shall be considered to be transnational where they concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States." (Art. 1 Nr. 4 EWC Directive 2009/38/EC).

3. Definitions - "Extraordinary circumstances"



Typical examples	Relocation	Closure	Collective redundancies	Additionally: Significant impact on interests of employee (to be defined)
# of agreements	25	25	25	59
Time window for information as of decision	Within # of days	"Immediately"	Within "Reasonable time"	No rule
# of agreements	7	3	13	92
Max. consultation period	Yes (between 2 – 6 weeks)		No explicit provision	
# of agreements	5		120	

Note:

- Define significant impact on employees particularly in the event of relocations, closure of establishments or undertakings or collective redundancies
- No deadline in days regarding information of EWC/select committee
- Clear consultation period, e.g. 4 weeks

4. Experts

Experts	Allowed w/o limitation	Specific agreement required	Limitation of cost bearing	Primary internal experts
# of agreements	113	14	24	13

Note:

- Directive does not impose any restrictions
- It is more common to not restrict external experts with a few exceptions:
- Newer Agreements often require approval of the central management (7/15)
- We recommend to not include restrictions

Électricité de France: Limitation to EUR 70.000,00 p.a

Asahi Breweries: Limitation to EUR 10.000,00 p.a.

Amadeus: Limitation to EUR 25.000,00 p.a.

Benteler: Limitation to EUR 10.000,00 p.a.

SAB Miller: Limitation to EUR 5.000,00 p.a.

5. Cost bearing

Budget	Annual budget agreed	No budget agreed
# of agreements	11	104

Extent	Everything that is "necessary" (however, see limits for experts)	Limited
# of agreements	111	4

Note:

- Annual budget very rare with a few exceptions (see examples)
- Only in 1 of the 15 newest Agreements
- In our experience, difficult to negotiate with SNB / EWC

Électricité de France: Limitation to EUR 185.000,00 p.a incl. costs for experts

Benteler: Limitation to EUR 10.000,00 p.a. for travel and meeting/expenses

APSA: Limitation to EUR 25.000,00 p.a.

(in our opinion, these numbers are not representative; comparability also questionable due to different size of group)

6. Treatment of non EU-Members/UK

- Non-EU states or non-EEA-members can be included in the scope of the agreement – however, very rare in practice! (only 7 agreements)
- Groups seated in Switzerland often extend the scope to Non-EU states (to include themselves)
- In newer EWC agreements, we note different provisions re future status of UK members
 - Few provision that UK members should retain their status
 - Majority provisions exclude UK members or only give them an associated status without voting rights

Thank you for your attention!



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