

Brussels, 24 September 2003

OPINION

of the European Economic and Social Committee

on the

Practical application of the European Works Council Directive (94/45/EC) and on any aspects of the directive that might need to be revised

(Exploratory opinion)

By letter dated 26 November 2002, **Mrs Loyola de Palacio**, vice-president of the European Commission, requested the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, to draw up an exploratory opinion on the

Practical application of the European Works Council directive (94/45/EC) and on any aspects of the directive that might need to be revised.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 September 2003. The rapporteur was **Mr Piette**.

At its 402nd plenary session of 24 and 25 September 2003 (meeting of 24 September), the European Economic and Social Committee adopted the following opinion by 122 votes to one with six abstentions.

Purpose of the opinion

In response to requests by the EESC for greater involvement in the EU's work in the area of social policy, and in the spirit of the framework agreement between the Commission and the EESC, the Commission has requested the Committee to draw up an exploratory opinion on the practical application of the directive on the establishment of a European Works Council or a procedure in Community-scale companies and Community-scale groups of companies for the purposes of informing and consulting employees and on any aspects of the directive that might be need to be revised. This opinion could be very useful for the Commission with a view to taking a well-founded decision in 2003 on the follow-up to be given to the request made by several players, and in particular the European Parliament, concerning the revision of Directive 94/45/EC. The social partners will be able to draw support from the evidence and commonly agreed facts presented in this opinion, without prejudice to their autonomy or their decision on this matter.

Thus the present document is primarily meant to be a corpus of information and its aim is to take stock of the experience acquired following the implementation of the directive.

1. Background to Directive 94/45/EC and its review

1.1 The adoption by the Council of Ministers, on 22 September 1994, of a directive on the establishment of a European Works Council or a procedure for the purposes of informing and consulting employees and its extension to the United Kingdom by Council Directive 97/74/EC of 17 December 1997 marked a crucial step forward in the development of a truly European social dialogue at company level in line with the transnational structure of companies and groups of companies.

This new instrument, which is genuinely transnational, has made a made a very important contribution to developing the European dimension of industrial relations.

1.2 Member States were supposed to have transposed the directive into national legislation by 22 September 1996 (15 December 1999 for Directive 97/74/EC).¹ The central management of companies and employees' representatives were set the same deadline for negotiating voluntary agreements under the provisions of Article 13. In view of the complexity and highly innovative character of the directive, in that it combines specifically European aspects and national aspects, coordination of its transposition into national legislation proved to be essential in establishing provisions with a high degree of convergence in terms of content.

1.3 Under the provisions of Article 15 of Directive 94/95/EC, the Commission was required to review the operation of the directive by 22 September 1999 at the latest, with a view to proposing any amendments that might be necessary to the Council.

1.4 By that date, the negotiations and work carried out within European works councils (EWCs) were supposed to have provided sufficient practical experience for the review to be carried out, whilst recognising that this was a ground-breaking process.

1.5 The Commission was to conduct the review "in consultation with the Member States and with management and labour at European level".

1.6 The review was to focus on the operation of the directive, i.e. on all aspects relating to the setting-up and functioning of EWCs and on the appropriateness of the workforce size thresholds.

1.7 Following the review and a conference with the social partners held in April 1999, the Commission submitted its report on the application of the directive to the European Parliament and the Council on 4 April 2000. Although the report was largely concerned with assessing the transposition measures taken by Member States, it also included an evaluation of the practical implementation of the directive. Regardless of the quality of the transposition measures, the Commission stressed that there was a need for further interpretation of some issues. The report went on to note that while some of these issues could be solved by the parties concerned, others would have to be resolved by the courts. Therefore the Commission did not conclude that there was a need to propose amending the directive at that stage.

1.8 The President of the European Parliament subsequently referred the report to the Committee on Employment and Social Affairs for its report and to the Committee on Legal Affairs and the Internal Market and the Committee on Industry, External Trade, Research and Energy for their opinions. The European Parliament resolution on the report was issued on 17 July 2001; in it the Parliament called on the Commission to submit, at an early date, a proposal for the revision of the directive containing a series of improvements.²

¹ The texts of the legal acts transposing Directive 94/45/EC into national legislation are available on the web site: http://europa.eu.int/comm/employment_social/soc-dial/labour/directive9445/index_en.htm.

² European Parliament report A5-0282/2001 of 17.7.2001 on the Commission report on the application of Council Directive 94/45/EC – Committee on Employment and Social Affairs.

1.9 Nearly three years after its report and a longer period of application, the Commission considers that it would now be appropriate to carry out a new review of the practical implementation of the directive, especially as this issue was mentioned in the Agenda for Social Policy adopted by the Nice European Council in December 2000.

1.10 Since the publication of the Commission report in April 2000, the European labour market has undergone considerable change. The quickening pace and changing nature of transnational restructuring, which has become a more permanent feature of business life, represent challenges for EWCs today.

1.11 Directive 94/45/EC will apply to the new members of the European Union, ten of which are scheduled to join on 1 May 2004. Enlargement will have an important impact on both some of the existing councils, which will have to include employees' representatives from these countries, and on new groups of companies that will come under the scope of the directive, which will certainly bring new challenges. Any assessment of EWCs and action related to them over the next few years will have to recognise the special features of the new companies that will be covered by the directive and the specific characteristics of industrial relations systems in the new Member States. As was stressed by the social partners at the conference *European works councils: practice and development* held in April 1999, a learning process will be necessary to enable the players to bring together facts and features that are the product of different cultures, practices and realities and overcome obstacles related to social, economic and cultural differences.

1.12 The legal context has also changed with the entry into force of new Community legislation on informing and consulting employees, namely Council Directive 2001/86/EC of 8 October 2001 on supplementing the Statute for a European Company with regard to the involvement of employees, and Council Directive 2002/14/EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.

2. The evidence to date

2.1 An already considerable body of experience

2.1.1 Out of a total of 1,865 companies or groups of companies employing 17 million people which come under the scope of the EWC directive, 639 of them, with 11 million employees, had an EWC at the end of 2002. 72% (400) of the agreements were concluded under Article 13 of the directive before the deadline for the entry into force of the directive ("agreements in force") and 28% under Article 6. Thus a very large majority of the EWCs in operation today are still based on agreements in force, renewed or amended where appropriate. The list of agreements also includes seven agreements which provide for the introduction of information and consultation procedures without the setting up of an EWC.³

³ ETUC Infopoint database.

2.1.2 More than half of the agreements were concluded in 1996 alone. Since then, about 40 agreements have been concluded annually. Of all the companies and groups currently covered by the directive, 1,200, employing 6 million people, have yet to establish an EWC or a procedure for informing and consulting employees. Many of the companies or groups concerned are smaller in size and less integrated in transnational terms but already engage in significant transnational operations.

2.1.3 A quarter of the agreements fall under German law, 12-13% fall under French, Belgian or UK law, 4 to 7% under Dutch, Swedish, Italian, Irish or Finnish law and less than 20 agreements fall within the scope of, respectively, Austrian, Norwegian, Danish, Luxembourg, Swiss, Spanish or Greek law.

2.1.4 Enlargement is already a reality for about 30% of existing EWCs⁴ which include members or observers from the countries set to join the European Union on 1 May 2004. The candidate countries, among them Poland, the Czech Republic, Slovakia, Slovenia and Hungary, have started to transpose Directive 94/45/EC into their national legislation.

2.1.5 More than 10,000 workers' representatives are now directly involved in the work of EWCs and in implementing intercultural exchanges and practices. This is one of the most striking and significant features of social Europe.

2.2 The negotiation of agreements

2.2.1 The merit of the principle of the directive, i.e. that it requires management and employees at company level to take the initiative with regard to negotiations, is confirmed by the number of agreements concluded under Articles 6 or 13. Admittedly, the role of the social partners has not always been easy, given the complex and inherently European nature of this new instrument, but the studies generally indicate that the social partners have taken full advantage of their shared experience of EWCs.

2.2.2 The agreements show great diversity both as regards agreements concluded before the entry into force of the directive, which make up the majority of the total, and those concluded after. In most cases the agreements include provisions on informing and consulting employees on a transnational basis, in accordance with the rights laid down by the directive. Only eight agreements are limited to the provision of information. Moreover, some agreements not only include central mechanisms for information and consultation but also make provision for decentralised procedures at national level for certain aspects of information and consultation.

2.2.3 The social dialogue and the role of management and employees in a company have been strengthened simply as a result of negotiations between central management and special negotiating bodies on establishing EWCs. The studies on the agreements reveal that European trade

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European Trade Union Institute, European Works Councils – facts and figures, Brussels, November 2002.

union federations have played an important coordinating role in more than three-quarters of the voluntary negotiations and have been co-signatories to agreements. In many cases, the members of the special negotiating body have requested experts of their choice, for example representatives of appropriate Community level trade union organisations, to assist them in their work.

2.2.4 The method of negotiating a new agreement is laid down by Directive 94/45/EC. However, the adjustment or renegotiation of existing agreements can raise the sensitive issue of negotiators and signatories where there are no provisions on this in the agreement.

2.2.5 The question of information on the structure of the company or group of companies in Europe, the workforce and the negotiating partners in different countries is usually the first to arise for employees in the 1,200 companies or groups of companies which may wish to initiate the process for negotiating a new EWC or establish a procedure for the purposes of informing and consulting employees. Three cases brought before the European Court of Justice for a preliminary ruling⁵ establish the principle that the managements of all the undertakings located within the European Economic Area must provide employee representatives with any information required to open negotiations on setting up a European works council, in particular information on the structure of the group and the workforce, irrespective of where the headquarters of the group is located or the central management's opinion as to the relevance of the directive.

2.2.6 Creating the conditions and means necessary for conducting negotiations is the responsibility of central management, which must handle various practical aspects of organising meetings (travel, accommodation, interpreting, allocation of time, etc.) as well as meet the costs. This is particularly crucial for medium-sized European groups, which make up the majority of companies that still have to commence negotiations. It could be useful to consider practical arrangements for supporting the establishment of transnational social dialogue within such companies, for example through the budget lines opened in this area.

2.2.7 The negotiations, which must be commenced within six months of the request or initiative, can take up to three years, but usually take less. The conditions under which they are conducted are often decisive when EWCs start operating.

2.2.8 Many companies adjust or renegotiate the agreements on their EWC(s) because of mergers, transfers of business or important changes in activity. The adequate adjustment of the composition of representative bodies in the event of changes in the company's or group's field of activity and their continued existence during transition periods are crucial for the ability of the council(s) to deal with restructuring. In half of the agreements restructuring issues are included in the remit of the EWC; 51% of the agreements mention mergers, 47% closures and 53% relocations.⁶ Changes in the field of activity have raised issues in most councils.

⁵ C-62/99 Bofrost, Ruling of 29.3.2001; C-440/00 Kühne & Nagel, Conclusions presented on 11.7.2002; C-349/01 ADS Anker GmbH, Conclusions presented on 27.2.2003.

⁶ Agreements database, ETUC Infopoint.

2.3 The operation of EWCs

2.3.1 The joint reports published by the European Commission (DG Employment and Social Affairs) and the European Foundation for the Improvement of Living and Working Conditions drew a distinction between agreements establishing EWCs whose potential seems to be confined to a largely formal or symbolic existence, based on annual meetings, and agreements establishing EWCs with the potential to develop a dynamic role. Under the latter agreements there is ongoing activity on the employee side between meetings and permanent liaison with management.⁷

2.3.2 However, existing EWCs are constantly evolving as part of a constructive internal process, so that to determine the extent to which the agreements offer EWCs real scope to play an active role, it is necessary to focus not only on the provisions of the agreement but also on the analysis of practical experience.

2.3.3 The results of various studies (e.g. Lecher⁸) clearly indicate that the conclusion of an agreement is more a point of departure than the end result in the evolution of an EWC as a body.

2.3.4 The studies analysing the operation of EWCs in the form of monographs, surveys or exchange of practices point to a dynamic process of development in successive stages. If, initially, there may have been some reservations regarding requests to establish EWCs, today there is wide recognition of the positive role played by EWCs in improving social dialogue and information/consultation in the company.

2.3.5 A study published by the Dutch employers' association sheds light on the tasks and role of EWCs in 17 companies headquartered in the Netherlands and shows that most employers feel that EWCs bring or can bring added value, particularly in the case of restructuring.⁹ Some employers nevertheless thought that EWCs had not helped to improve social dialogue in the company. Similarly, in a survey conducted among Japanese multinationals¹⁰ a large majority of the senior managers interviewed gave a positive assessment of EWCs. A recent survey by a US-based management consultancy firm of managers in 24 major, mainly American, multinationals also found that experience of EWCs was positive¹¹. A majority of companies indicated that the formal provisions of their EWC agreements had been exceeded in practice; management was now more willing to examine

⁷ Negotiating EWCs under the Directive: A comparative analysis of Article 6 and Article 13 agreements, European Foundation for the Improvement of Living and Working Conditions, Mark Carley & Paul Marginson, 2000.

⁸ Lecher W., Nagel B. & Platzer H.W. (1999), *The establishment of European Works Councils. From information committee to social actor*, Ashgate Publishing, Aldershot.

⁹ *The added value of European Works Councils*, J. Lamers, AWWN, Haarlem 1998.

¹⁰ S. Nakano, *European Journal of Industrial Relations*, vol. 5, No. 3, pp. 307-326.

¹¹ Organization Resources Counselors Inc., *ORC European Works Councils Survey 2002*, summarised in EIROnline 01/2003.

issues falling within their transnational dimension than in the early days of their EWC; confidentiality posed very few problems; the contribution of experts was judged useful; and consultation on restructuring was viewed as positive. Three-quarters of the managers interviewed felt that EWCs brought added value to the company, despite the heavy demands in terms of time and resources. Several respondents even reported that EWCs had brought unexpected benefits through improved management discipline and coordination in the decision-making process.

2.3.6 Reflecting the different stages in their development, EWCs are often classified according to the way they operate (Lecher): some are an extension of national representative structures in the country where the company is headquartered, and thus are a source of additional information for national use; others are led by representatives from the dominant country and thus possess a transnational quality, albeit embryonic; still others are characterised by a true "supranational collective identity", with equality between members, and the development of common positions.

2.3.7 The timing, content and frequency of transnational information and consultation are key factors in the operation of EWCs, in particular:

- the quality of regular and specific information (provided by management and by members to their colleagues) and all interested parties' actual accessibility to such information are considered vital to the quality of the dialogue which can take root within an EWC and to its capacity to play an active role. Some EWCs are therefore agreed on the need for access to and analysis of updates and other types of information;
- the confidentiality clause appears in 87% of the agreements and is often the subject of debate in practice, mainly in cases of restructuring. However, the establishment of an atmosphere of confidence seems to have made it possible to mitigate the problem with the help of the dialogue mechanisms in place.

2.3.8 Experience shows that early intervention by EMCs in all decision-making processes can help to promote a responsible and precautionary style of management, especially in the case of restructuring.

2.3.9 The transnational nature of issues addressed by EWCs is often the subject of practical debate, for example in cases where decisions which, although in principle concern only one country, actually have strategic implications that extend beyond national level. Despite the fact that it covers a different area, partly because of the purely optional nature of the European Company, the directive on the involvement of employees in a European Company stipulates that " ... the informing of the body representative of the employees and/or employees' representatives by the competent organ of the EC on questions which concern the EC itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State ...".

2.3.10 Research by the European Foundation for the Improvement of Living and Working Conditions on transnational joint texts negotiated by EWCs in 12 companies or groups of companies¹² and databases on EWC agreements¹³ show that some EWCs are starting to expand their information and consultation role by drawing up joint opinions, codes of conduct, charters, action programmes and agreements at European level covering areas such as health, safety, the environment, fundamental rights, mobility, training, supplementary pensions, and mergers, closures, relocations and restructuring.

2.3.11 Experience also shows that the establishment of real, fruitful dialogue within an EWC is linked to the council's mode of operation, as this determines how information is circulated and the capacity to coordinate and respond:

- The select committee, whether a bureau or secretariat (present in three-quarters of councils), its composition, the frequency of meetings, contacts with national representative bodies, the possibility of contacts with the company's various sites and translation facilities are considered key to the effective operation of EMCs.
- The skills and competence of EWC members and the resources at their disposal vary between EWCs: 42% of the agreements already make provision for training, and training is geared to the specific needs of performing representative functions at European level; most of the agreements provide for access to experts (57% of the agreements provide for the use of expertise at plenary and preparatory meetings) although expertise nevertheless remains a subject for debate in view of the specific characteristics and day-to-day practices of national bodies – in some countries trade union officials are council members; communication facilities, including links to the various sites represented, and customised translation and interpreting services, are essential; the frequency of ordinary council meetings is also important (83% of the agreements explicitly limit the number of meetings to one a year or to one ordinary meeting with the possibility of an extraordinary meeting; 14% of the agreements provide for two ordinary meetings).
- The information and consultation process largely covers the topics set out in the directive and is of particular importance in cases of restructuring. However, some councils have extended the scope of information and consultation to include measures planned by management in, inter alia, the following areas: continuing training, the environment, health and safety, equal opportunities, possible employee financial participation and, albeit still in a very small minority of cases, cultural and social activities.

EWCs are proving to be a forum for the practical implementation of objectives, such as those set in Lisbon, a key element of which deals with lifelong education and training.

¹² M. Carley, *Joint texts negotiated by European Works Councils*, EFILWC, Dublin, 2001.

¹³ ETUC Infopoint database.

2.3.12 The capacity of EWCs to adapt and evolve as a result of changes within the group or with the aim of improving the way they operate (dynamic process) is also very important in practice. The Belgian agreement on the transposition of the directive makes reference in its supplementary provisions to changes in the structure or size of the company or group and lays down rules applicable in such cases. These rules can be laid down in a cooperation protocol.

2.3.13 Some agreements provide for separate treatment of different activities or divisions within a group. While in some cases the EWC is a single body, despite a very wide range of activities, organisation along sectoral lines within one and the same EWC is already the case for more than one in ten EWCs (study by the European Foundation for the Improvement of Living and Working Conditions, Dublin, 2000). Most of the companies concerned have also established formal arrangements for the circulation of information and coordination between the different levels and bodies engaged in dialogue.

2.3.14 The serious imbalance in the representation of men and women is a persistent feature of special negotiating bodies and EWCs and most probably reflects the imbalance that also exists in representative bodies at national level. In view of the position of EWCs in the European social model, it seems appropriate to consider ways of voluntarily reducing this imbalance.

2.3.15 In addition, some agreements and some provisions of national transposing legislation provide for a balanced representation of different categories of employees on EWCs.

2.3.16 The approach to the question of the legal personality of EWCs and their right to take part in court proceedings, manage assets and conclude agreements, varies between Member States.

2.3.17 All countries prescribe penalties for the infringement of the requirements laid down in the directive, as regards the setting-up of a negotiating body and the operation of the EWC. However, problems may arise with regard to the accessibility of the law in certain cases, especially where a group headquartered outside Europe has its main European office in a country which has no trade union representatives on the EWC. The representatives may come up against practical and legal difficulties regarding recourse to the competent courts in the country concerned (in Belgium, for example, national law allows employees' representative organisations to seek legal remedy through the labour courts).

2.4 **Coordination of national and European social dialogue**

2.4.1 Directive 94/45/EC largely respects the subsidiarity principle by taking into account the different types of representation and ways of informing and consulting workers in a company. The arrangements for selecting or appointing workers' representatives are decided by the Member States.

2.4.2 In some cases the interaction between the local and the European level has helped to improve national practices.

2.4.3 Thus, following on the heels of an EWC, some companies have established a group works council (inter-establishment works council) at national level, in some cases through an agreement. According to a survey of Belgian representatives of the CSC-ACV (Confederation of Christian Trade Unions), EWCs have led to the creation of inter-establishment communication networks at national level in 35% of cases. According to the same survey, 67% of representatives feel that EWCs have been a factor behind the improved operation of local works councils.¹⁴

2.4.4 Thus, in some companies, EWCs have also helped to eliminate obstacles to staff information, consultation and communication, as a result of the requirement in point 5 of the annex to the directive for EWC members to provide information to the employees' representatives, or in the absence of representatives, to the workforce as a whole.

2.4.5 Thus, with a view to strengthening coherence between local managements, some groups also introduced transnational management meetings when EWCs were set up.

2.4.6 EWCs have fostered the emergence of a European awareness in social dialogue not only through information and consultation but also through the exceptional cultural opportunity provided to foster exchanges at transnational level. Seen against the background of building Europe and mindful of the diversity of arrangements for representation, exchanges of knowledge, reciprocal interaction and synergy between the interests of workers and employers within the same group represent a real cultural advance.

3. Conclusions

3.1 The various reports and studies on agreements and practices confirm that the experience gained to date is sufficient for conclusions to be drawn on how to organise a simple, democratic and effective negotiation process on the establishment of a European Works Council or a procedure for the purposes of informing and consulting employees. There is also a wealth of experience on the extent to which the basic aim of the directive, i.e. to improve the right of workers to information and consultation, has been achieved.

3.2 By virtue of its composition, the EESC has certainly been able to shed special light on the dynamic process of social dialogue under way in companies and groups of companies. The EWC is still a very new body but one which is constantly evolving. The proportion of agreements that are renegotiated each year bears witness to this.

3.3 Information and consultation through EWCs and the dynamic nature of their role and practices would certainly benefit all the parties concerned, including citizens. The responses made in the context of the globalisation of companies and restructuring affect not only living and working conditions but also the social climate beyond company gates.

¹⁴

Le CENE est-il sur la bonne voie? CSC and Hoger Instituut voor de arbeid, Veerle Cortebeek and Joris Van Ruyseveldt, Leuven, 2002.

3.4 Drawing on various findings – which it shares – on the practical application of the directive and the operation of the EWCs, the EESC has been able to identify the contribution of EWCs to European social dialogue and European development. However, a number of fundamental questions remain open. They mainly concern the following aspects:

- the concepts of "useful effect" and "timeliness" with regard to informing and consulting employees;
- the scope of Directive 94/45/EC with regard to, for example, joint ventures, the possible exclusion of merchant navy crews and the concept of "undertaking", owing to the many different forms of business organisation. This diversity will increase further at European level with the inclusion of community enterprises, cooperatives and mutual enterprises, whose economic activities are becoming increasingly important and increasingly transnational in scope. Public enterprises are nevertheless mentioned explicitly in the national transposing legislation of two states, Sweden and Spain;
- the question of representation and proportionality of representation on EWCs, which is not covered by transnational rules;
- the question of the impact of EWCs on social dialogue in the company at national level;
- the question of the possibility of EWC representatives visiting the establishments whose workers they represent and communicating with these workers;
- the question of the relation between EWCs and the regulatory authorities in the competition field. Council Regulation No. 4064/89 on Community control of concentrations stipulates that "recognised workers' representatives" may be heard as "natural or legal persons showing a legitimate interest" in connection with an examination of a concentration operation subjected to Community control. At present, however, workers' representatives have no guarantee of access to files, not even "non-confidential" versions. This is a matter first and foremost for the Community authorities in connection with the establishment of a more coherent link between Community social policy and competition policy.

3.5 EESC members are divided on the significance of the findings and views put forward on the application of the directive and the operation of EWCs. Some feel that the present exploratory opinion must simply provide a corpus of information, without any intention of influencing possible future discussion by the social partners on the revision of Directive 94/45/EC; the Commission has indicated in its work programme that it intends to consult the social partners starting in the autumn of

2003. Others consider that it should be possible to use the evidence presented by the Committee on the application of the directive and the operation of EWCs as a basis for assessing any aspects of Directive 94/45/EC which might need to be revised.

Brussels, 24 September 2003

The President
of the
European Economic and Social Committee

The Secretary-General
of the
European Economic and Social Committee

Roger Briesch

Patrick Venturini

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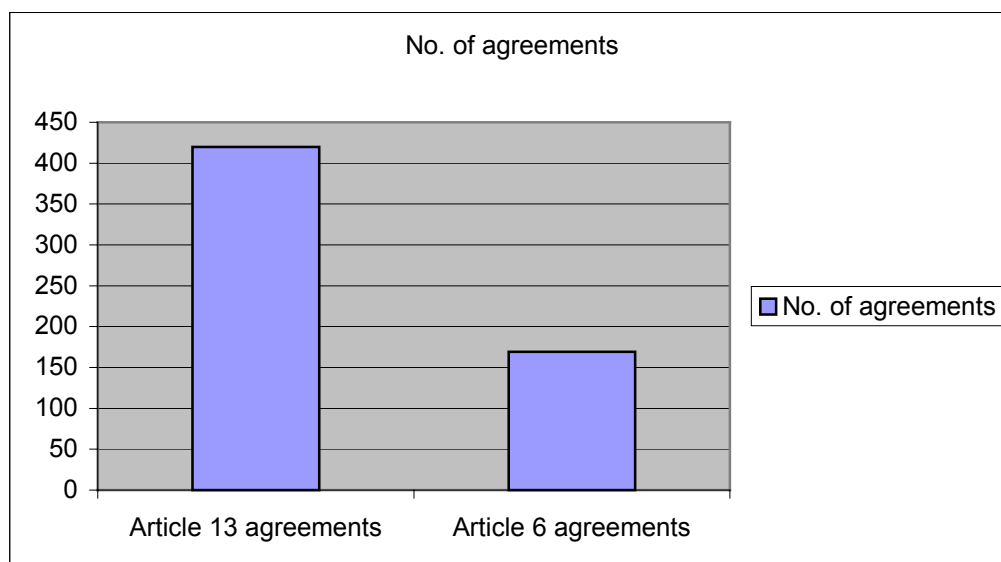
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N.B.: Appendices overleaf

- Appendix I – Key figures
- Appendix II – Court decisions
- Appendix III – References

APPENDIX I

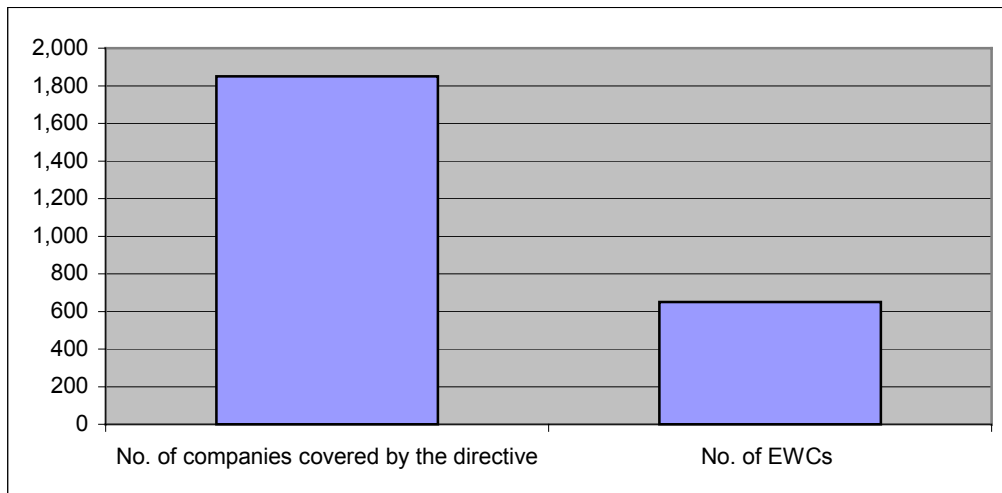
Out of a total of 589 agreements examined¹⁵ (March 2003):

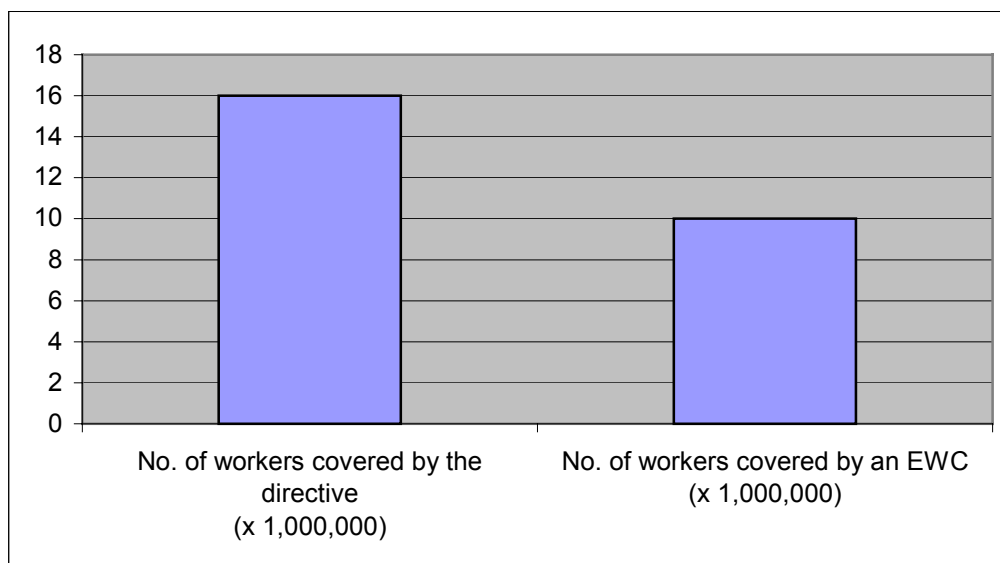


Year	No. of agreements
1989	1
1991	1
1992	1
1993	5
1994	15
1995	45
1996	327
1997	35
1998	49
1999	40
2000	45
2001	18
2002	7

¹⁵ Source: ETUC Infopoint database (Brussels).

Country	No. of agreements
Austria	12
Belgium	70
Switzerland	6
Germany	155
Denmark	10
Spain	5
Greece	1
France	78
Finland	22
Italy	31
Ireland	28
Luxembourg	9
Norway	11
Netherlands	46
Sweden	35
United Kingdom	70





No. of meetings per year	No. of agreements
1 ordinary meeting	78
1 ordinary meeting with possibility of an extraordinary meeting	414
2 ordinary meetings	8
2 ordinary meetings with possibility of an extraordinary meeting	65
No provision made in the agreement	14
More than 2 ordinary meetings	10

Powers of EWC	No. of agreements
Adoption of recommendations	2
Opinions	7
Information	8
Information and consultation	569
Information, consultation and opinions	2
No provision made in the agreement	1

Select committee	No. of agreements
Workers only	302
Workers and employers	79
No provision made in the agreement	208

Subjects falling within the remit of EWCs

Economic field

Subject	No. of agreements
Production	482
Markets	508
Field of activity	432
New technology	267
Environment	205
Mergers	300
Closures of establishments	278
Relocations	315
Research	24
Other	202
No provision made in the agreement	23

Financial field

Subject	No. of agreements
Balance sheet (analysis)	482
Investment	435
Joint ventures	9
Other	132
No provision made in the agreement	36

Social field

Subject	No. of agreements
Employment	530
Working conditions	142
Health and safety	227
Training	155
Gender equality	49
Union rights	10
Collective redundancies	235
Other	163
No provision made in the agreement	29

Assistance of experts

Assistance of experts	No. of agreements
No provision made in the agreement	119
Only at plenary meetings	67
Only at preparatory meetings	69
At plenary and preparatory meetings	334

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APPENDIX II

Court decisions relating to European Works Councils¹⁶

A number of different court cases have clarified important aspects of the application of Directive 94/45/EC:

- The "*Renault Vilvoorde*" case¹⁷ highlighted the **obligation to inform and consult employees** set out in the Directive, which also applies in the event of prior agreement. The ruling is based on the **principle of "useful effect"**: "Any decision-making procedures which manifestly do not enable information and consultation to be effectively implemented are clearly unlawful; useful effect shall be determined using reasonable criteria, which shall, at the very least, include the scope left for comments, challenges or criticisms, the scale and degree of irreversibility of the harm likely to be caused to employees, and compliance with a time-scale which permits effective measures or reactions, or revision of the initial decisions (...)." The principles set out in this ruling were also applied to the European Works Councils of *Otis*¹⁸ and *Panasonic*¹⁹.
- The "*Marks & Spencer*"²⁰ case clarified the fact that the existence of a European subsidiary to a national parent company does not exonerate the latter from **compliance with national law**: "the company *Marks and Spencer France* could not invoke its particular circumstances, to wit, that it was experiencing the effects of the restructuring project adopted by the *Marks and Spencer Group*, which had been imposed on it and over which it had no means of influence, as grounds for exoneration from its obligations; nor could it claim that the absence of an opinion from the European Works Council, which had not yet been informed or consulted, meant that it was too early to provide any information".
- According to a ruling by the Norwegian body responsible for procedures for the appointment of Norwegian representatives to Belgian European Works Councils established by prior agreement, employee representatives on European Works Councils must be **elected or appointed according to the national provisions** in force and not according to any procedures agreed or decided by the European Works Council itself²¹. However, an opposite decision asserting the primacy of the

16 Evelyne Pichot, L'actualité du Comité d'entreprise européen, Liaisons sociales, Paris, March 2003.

17 Appeals Court of Versailles, ruling #308 of 7.5.1997, Sté Renault c/ CGE Renault, Le Ministère Public, FEM.

18 TGI [*court of first instance*] Nanterre, Otis, 7.1.1998, no. B.O. 97/03732.

19 TGI [*court of first instance*] Bobigny, Panasonic, 4.5.1998, no. répertoire 4538/98.

20 TGI [*court of first instance*] Paris, Marks & Spencer, 9.4.2001, no. RG 01/54016.

21 Industrial Democracy Board, Fabricom (Tractebel), 12.6.1997, Case 3/97.

provisions of a prior agreement over national provisions was reached with regard to procedures for the appointment of French representatives to another Belgian European Works Council²².

- Three cases brought before the European Court of Justice for a preliminary ruling²³ establish the principle that the managements of all the undertakings located within the European Economic Area are required to supply any information required to open negotiations on setting up a European works council, in particular **information on the structure or organisation of the group**, to employee representatives, irrespective of where the headquarters of the group is located or of the central management's opinion as to the relevance of the directive.
- Several cases have dealt with the question of **which legislation should be invoked and which court should be competent to consider the validity of an agreement** and the French judges have followed various lines of reasoning:
 - When a group, whose headquarters was located outside the scope of the directive, appointed its Irish undertaking to represent it in negotiations, two rulings²⁴ held that only the Irish courts were competent to rule on the negotiations and on whether the agreement, or the conditions for implementing it, were valid under Irish law.
 - In the *Xerox*²⁵ case, the judgment states that, in so far as the rule of jurisdiction set out in Article L439-1 of the French Labour Code, which gave jurisdiction to the "Court of First Instance of the Headquarters of the controlling undertaking (...) applies to the European works council, it provides for only one option, namely the primacy of the general legal norm which stems from Article 42 of the new Code of Civil Procedure and which gives jurisdiction to the defendant's place of domicile". The judgment of the Court of First Instance also clarified that "given that the decision as to which legislation is applicable, particularly in view of the nationality of the controlling undertaking, is a substantive legal issue rather than a matter of competence, the French judge could, if necessary, apply foreign legislation".
- The **form requirements in respect of proceedings** instituted by a European works council are important. For example, in the *Panasonic* case²⁶, the European works council's appeal could not be considered because its appointed legal representative had not been able to present an authority to act.

22 TGI [*court of first instance*] Lille, 10.10. 2002, No. 02/2177.

23 C-62/99 Bofrost, Ruling of 29.3.2001; C-440/00 Kühne & Nagel, Conclusions presented on 11.7.2002; C-349/01 ADS Anker GmbH, Conclusions presented on 27.2.2003.

24 Appeals Court of Grenoble, Becton Dickinson, 26.10.1999 RG No. 99/01092 ; TGI [*court of first instance*] Paris, Marks & Spencer, 19.9.2001.

25 Appeals Court of Paris, Xerox, 15.11.2000, No.2000/10353; TGI [*court of first instance*] Bobigny, Xerox, 11.4.2000, Registry No. 1999/01870.

26 Appeal against the judgment of the Bobigny Court of First Instance, 4.5.1998, Registry No. 4538/98.

- The question of the **legal personality of European works councils** was raised by the British courts in the case of an appeal lodged by P&O's European works council in 2002: during a preliminary hearing on the issue of court costs, the judge expressed doubts about the arrangements in a joint body where, on the one hand, employee representatives were considered competent to bring an action independently of management and, on the other hand, management, which was held to be a part of the company, could be authorised to institute proceedings against itself.
- As is the case for national workers' representative bodies, the European Courts do recognise the competence of European works councils, which is not restricted to the internal matters of the group of undertakings. For example, the Court of First Instance of the European Communities accepted the **intervention of the *Legrand*²⁷ European Works Council in the dispute over competition law** connected with the merger with *Schneider*: "As representatives of the employees of the enterprise and group of undertakings, the Works Council of SA Legrand and the European Works Council of the Legrand group are granted leave to intervene in the proceedings".

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CFI, T-77/02, Schneider Electric, Judgment of 6.6.2002.

APPENDIX III

References

Many **studies** have analysed the operation of EWCs in the form of monographs, surveys or exchange of practices, of which the following may be consulted:

- studies by the European Foundation for the Improvement of Living and Working Conditions (Dublin) and the review of existing studies: online references and summaries www.eiro.eurofound.eu.int;
- studies by Jeremy Waddington on EWCs as seen by EWC representatives (presented at various European conferences, in publications of the European Trade Union Institute and in EWC Bulletin 33, May-June 2001);
- "The establishment of European Works Councils: from information committee to social actor", W. Lecher et al., Ashgate Publishing, 1999;
- the views of Dutch employers: "The added value of European Works Councils", J. Lamers, AWWN, Haarlem 1998;
- the views of Japanese employers: S. Nakato in European Journal of Industrial Relations, vol.5 No. 3 pp 307-326;
- the views of management in major, mainly American, multinationals: Organization Resources Counselors Inc., ORC European Works Councils Survey 2002, summarised in EIROonline 01/2003;
- "European Works Councils. Cases of good practice", results of a trade union seminar, CONC, Barcelona, 2001, available online in French, English and Spanish: http://www.conc.es/internacional/documents/cee_english.pdf;
- An evaluation of the functioning of European Works Councils, results of a survey of representatives of the CSC-ACV (Belgian Confederation of Christian Unions): Le CENE est-il sur la bonne voie? Hoger Instituut voor de arbeid, Veerle Cortebeeck and Joris Van Ruyseveldt, Leuven, 2002, available in French and Dutch.

Detailed data on EWC agreements are available:

- online from the European Foundation for the Improvement of Living and Working Conditions (Dublin): www.eurofound.eu.int/industrial/ewc.htm; texts of agreements, analysis of agreements, research and publications in different languages;

- from the ETUC Infopoint database;
 - in a study published by the European Trade Union Institute: "European Works Councils – facts and figures", Peter Kerckhofs, Brussels, November 2002.
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