

Whittall, Michael; Lücking, Stefan; Trinczek, Rainer; Gunkel, Jennifer

**Book**

## Closed frontiers: Why German multinationals don't utilise the European works council directive

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Globalisation and Europeanisation

Michael Whittall | Stefan Lücking  
Rainer Trinczek | Jennifer Gunkel

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Why German multinationals don't utilise  
the European Works Council Directive

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**Whittall, Michael**, Prof. Dr., Lehrstuhl European Industrial Relations, Nottingham Trent University, Zahlreiche Publikationen zu den Themen Europäische Betriebsräte, Betriebsräte, Gewerkschaften, Prekäre Arbeit, Europäische Industrielle Beziehung, Solidarität und Identität.

**Lücking, Stefan**, Dr., Leiter des Referats „Mitbestimmung im Wandel“ bei der Hans-Böckler-Stiftung. Zahlreiche Publikationen zu Europäischen Arbeitsbeziehungen, Mitbestimmung, Wissensarbeit und prekären Formen der Interessenvertretung.

**Trinczek, Rainer**, Prof. Dr., Dekan der Philosophischen Fakultät der Friedrich-Alexander-Universität Erlangen-Nürnberg (FAU). Zahlreiche Veröffentlichungen zu den Themen Arbeits- und Organisationssoziologie, Industriellen Beziehungen, Managementsoziologie, Arbeitszeitforschung, Arbeit und Leben.

**Gunkel, Jennifer**, Dr., Consultant bei Aecom Deutschland GmbH in München. Lehrbeauftragte an der SRH FernHochschule Riedlingen. Publikationen zu den Themen Arbeit und Gesundheit, Kreativitäts- und Innovationsmanagement.

**Whittall, Michael**, Professor, chair for European Industrial Relations, Nottingham Trent University, numerous publications on European Works Councils, trade unions, precarious work, European industrial relations, solidarity and identity.

**Stefan Lücking**, Dr., head of the research funding area “Changes in Co-determination” at the Hans Böckler Foundation. Numerous publications on European industrial relations, co-determination, knowledge work and precarious forms of interest representation.

**Trinczek, Rainer**, Prof. Dr., dean of the Faculty of Humanities, Social Sciences and Theology at the Friedrich-Alexander-Universität Erlangen-Nürnberg (FAU). Numerous publications on sociology of work and organisation, industrial relations, sociology of management, working time and work-life-balance.

**Gunkel, Jennifer**, Dr., Consultant at AECOM Deutschland GmbH in Munich, Germany. Lecturer at SRH FernHochschule Riedlingen. Publications on work and health, creativity and innovation management.

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## **Zusammenfassung**

Als im Jahr 1994 die Richtlinie zum Europäischen Betriebsrat verabschiedet wurde, stellte dies einen Durchbruch für die Interessenvertretung der Arbeitnehmer auf europäischer Ebene dar. Zwanzig Jahre bleiben die Auswirkungen dieser Richtlinie jedoch ambivalent. Während inzwischen in annähernd 1 000 Unternehmen Europäische Betriebsräte eingerichtet wurden, verzichtet eine beträchtliche Anzahl nach wie vor auf diese Möglichkeit internationaler Interessenvertretung. Diese Umsetzungslücke ist unter deutschen Unternehmen, die auf nationaler Ebene in der Regel eine gut ausgebaute betriebliche Interessenvertretung haben, besonders ausgeprägt. Von daher stellt sich die Frage, welche Faktoren deutsche Betriebsräte davon abhalten, in ihren Unternehmen Europäische Betriebsräte einzurichten.

Auf der Basis eines Forschungsprojekts, das durch die Hans-Böckler-Stiftung gefördert wurde, erörtert dieses Buch mögliche Antworten auf diese Frage. Diese lassen sich vier Gruppen von Motiven zuordnen: (1) Unkenntnis über die genauen rechtlichen Vorgaben und intransparente Unternehmensstrukturen; (2) begrenzte Ressourcen und Zweifel am Mehrwert eines Europäischen Betriebsrats; (3) die Beziehung deutscher Betriebsräte zu den europäischen Niederlassungen; und (4) die verschiedenen Arten der Internationalisierung.

## **Summary**

In 1994 the European Works Councils Directive was adopted. It marked a major breakthrough for workers' representation at the European level. Twenty years later, however, the outcome of this legal provision remains ambivalent. While around 1,000 multinationals have set up a European Works Council, a considerable number has failed to take advantage of this legal option. The lack of implementation is particularly pronounced in Germany, a country with well-organized works councils. Hence, the question arises: What factors prevail that wittingly or unwittingly hinder German employee representatives from setting up a European Works Council?

Based on a research project funded by the Hans Böckler Foundation this book provides possible answers to this question. As will be demonstrated, four reasons appear to explain the dearth of EWCs in German firms. These include, (1) a knowledge deficit about the legal provisions and a lack of transparency regarding company structure; (2) limited resources and the uncertain added value of a European Works Council; (3) attitudes of German employee representatives regarding foreign subsidiaries; and (4) different types of internationalisation.

## Abbreviations

### Case Study Companies

AP	= Automotive Plc
BL	= Building Ltd
HL	= Household Ltd
IP	= Insurance Plc
ITP	= IT Plc
PL	= Packaging Ltd

### European Industrial Relations

EWC	= European Works Council
EWCD	= European Works Council Directive
IR	= Industrial Relations
SNB	= Special negotiating body (according to EWCD Art. 5)

### Employee Representation Germany

BR	= “Betriebsrat” (Works Council)
GBR	= “Gesamtbetriebsrat” (Joint Works Council)
KBR	= “Konzernbetriebsrat” (Group Works Council)

### Employee Representation France

CE	= “Comité d’entreprise” (Works Council)
DP	= “Délégué du personnel” (Employee Representative)
DS	= “Délégué syndical” (Shop Steward)

### Trade Unions Germany

IG BCE	= Industriegewerkschaft Bergbau, Chemie, Energie (“Mining, Chemical and Energy Industrial Union”)
IG Metall	= Industriegewerkschaft Metall (“Industrial Union of Metalworkers”)
ver.di	= Vereinte Dienstleistungsgewerkschaft (“United Services Union”)

### Trade Unions France

CFDT	= Confédération française démocratique du travail (“French Democratic Confederation of Labour”, originating in the catholic union movement, it was linked to the Socialist party in the 1970s/1980s, currently it pursues a moderate and reformist policy)
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- CFE-CGC = Confédération française de l'encadrement – Confédération générale des cadres (“French Confederation of Management – General Confederation of Executives”, organises unions for professional employees, with higher education and/or in management positions)
- CGT = Confédération générale du travail (“General Confederation of Labour”, traditionally linked to the Communist Party)
- FO = CGT Force ouvrière (“General Confederation of Labour – Workers’ Force”, founded in 1948 by former members of the CGT who opposed against the influence of the Communist Party)



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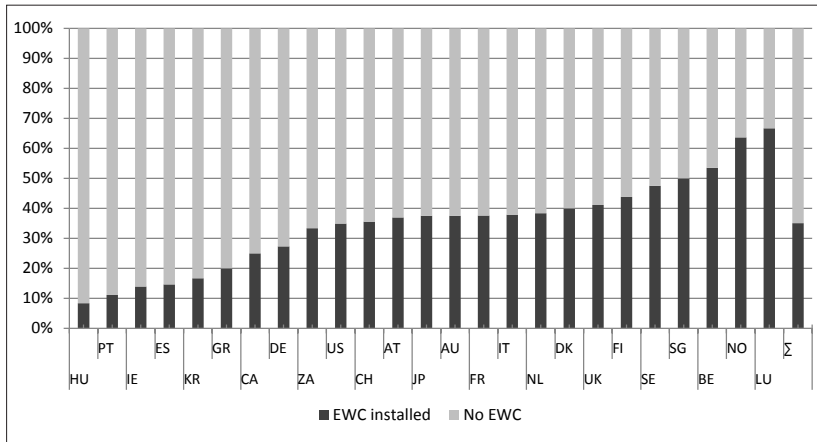
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# **1 Introduction – Don't German Employees value European Works Councils?**

In August 2008, European social partners agreed in principle to the European Commission's proposal to recast the European Works Council Directive (EWCD). For a very brief moment this European institution was placed under the spotlight, catching the imagination of some of Europe's more serious press who helped to elevate the profile of European Works Council (EWC) to such a level that one might have been forgiven in thinking the EWC was no longer an abbreviation known only to a few interested and like-minded academics and industrial relations practitioners alike. In some respects 2008, like 1994 the year the EWCD was passed, represented a false dawn. Strangely the financial crisis that has engulfed the European Union, in some Member States comparable to the Great Depression of the 1930s, has not resulted in a tidal wave of press releases by affected EWCs in response to the crisis. A new round of redundancies and site closures will result in trade unions, national and transnational, works councils and politicians of hit areas airing their concerns about such developments. However, EWCs often remain conspicuous by their absence in such periods of uncertainty. Of course, it does not help that many of the affected employees are very unlikely to have access never mind have heard of this European institution, especially if they work in a German undertaking. Nearly, two decades after its passing the EWC, the jewel in the crown of the EU employee representation legislation remains for many employees an obscure institution.

Interestingly, the recast process recognised the need to address the problem of setting up EWCs, the actual compliance rate a mere 39.1% (Waddington, 2010: 57). For this reason the Recast of the Directive has attempted to encourage actors to found new EWCs. To this end it sorts out an old tried and tested strategy, the "voluntary approach" as applied by Article 13 in the original 1994 Directive. Now known as Article 14 actors were offered a time frame, 2009–2011, in which they were exempt from the Directive as long they put in place some form of European employee consultation and information structure. It was hoped that such a customised approach would have a similar effect to that of its 1994 predecessor, the number of EWCs rising from 49 prior to the Directive being passed to around 400 in 1996 the year the legal applicability of Article 13 ceased. However, as Jagodziński and Pas (2011: 11) note, Article 14 has not had the desired effect: 'the annual rate of establishment of new EWCs has been gradually decreasing, reaching a new low in 2010'.

**Figure 1: EWC coverage ratio per country**



Source: Kerckhofs (2006)

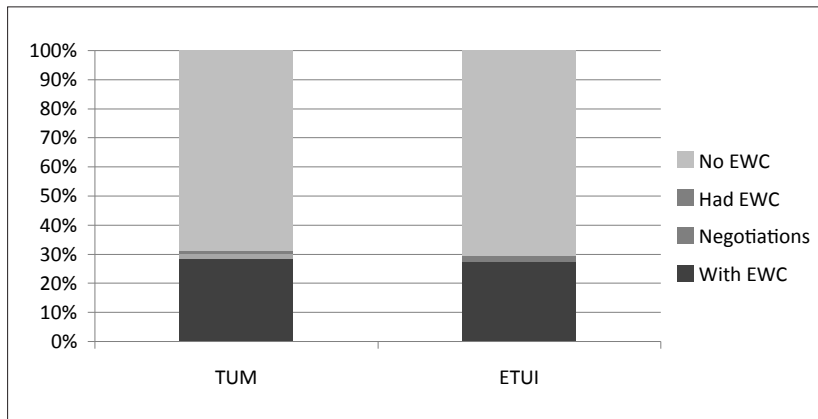
Although it is now widely recognized that the “non-implementation” of the EWCD represents a problem that needs to be addressed (Jagodziński and Pas, 2011), it remains to all intents and purposes un-navigated territory, very little is known about the reasons why around two thirds of companies covered by the Directive continue to constitute what can be best described as a large non-EWC zone. Or what we ironically refer to as the “Closed Frontiers” of European employee representation, the i.e. inability on the part of employee representatives to break out of the national industrial relations context. Designed to provide employees with a representative sphere at a European level, a clear acknowledgement that industrial relations practices embedded within national environments threaten to be surpassed by the rootless and increasingly virtual character of multinationals, a large percentage of employee representatives have failed to take advantage of this legal option. Here, the emphasis is on “option” because after all the establishment of EWCs on the whole requires employees to take the initiative.

Even though no country appears immune to the Closed Frontiers virus, certain States appear to fare less well than others. The obvious surprise here being Germany. It is indisputable that German actors led the way in setting up EWCs between 1994 and 1996 (Marginson et al. 1997). However, a quite different picture emerges post 1996. While current ‘compliance rates per country... fall mostly between 34 and 40 per cent’ for all countries today (Kerckhofs 2006: 32), the German rate remains at a steady 28 per cent according to our own databank (see

Figure 2: EWC Coverage of German Multinationals)<sup>1</sup> (TUM database developed as part of this project, see Lücking et al. 2008).

Rightly viewed as the home of works councils, early forms of company level co-determination stretching back to the mid-19th century with the arrival of the Fabrik-Ausschüsse (factory committees), of the old EU 15 Member States Germany's low implementation is only bettered by the likes of Greece, Ireland, Portugal and Spain. Even more ironic is the fact the UK and the USA, two countries which were fervently opposed to the Directive (Streeck 1997), the former even opting out of the EWCD until 1997, continue to have higher EWC rates, 42 and 38 per cent respectively (Kerckhofs 2006: 32), than Germany. If one considers the total number of German multinationals covered by the Directive, approximately 460, this represents by far the highest number of companies covered by any one country. Hence there is even a strong argument to suggest that Europe's low implementation rate is proportionally a German problem. If German companies complied with the EU average, let us say a modest 40 per cent, the total number of EWCs would increase by 145 according to calculations based on the TUM database.

**Figure 2: EWC Coverage of German Multinationals**



Of course, there is a need to put into perspective the German situation. Considered merely in the cold light of day these figures provide a slightly slanted and even unfair picture of the situation in Germany. They fail to reveal the progress

<sup>1</sup> It needs to be noted, however, that there are huge problems in calculating "implementation rates". As outlined in our previous work this involves the problem of not possessing a basic population (Lücking et al. 2008).

made in relation to existing German EWCs and the resources that trade unions have and continue to invest in this European institution. Concerning the first point, for example, Kotthoff and Whittall (2014) indicate that of those institutions considered to be successfully representing employee interests they either belong to German companies or have a strong German presence (Kotthoff and Whittall, 2014). Hence, there is an interesting quality vs. quantity debate that should not be ignored. Also let us not forget that the current 131 German EWCs represent in real terms the highest overall total number of any Member State. Without a doubt this is a major achievement. Furthermore, to compare Germany with other EU Member States could be viewed as a futile and unjust exercise. A population of 82 million and home to the highest number of multinationals of any European country makes for an unfair comparison with Scandinavian countries where the EWC density rates are much higher. For example, a mere 100 multinationals are covered by the EWC Directive in Sweden. In fact, there is a strong argument to suggest that German trade unions and works councils have not played an insignificant role in promoting this key European institution. On the contrary, with resources already overstretched German trade unions should be congratulated for setting up so many EWCs. Moreover, maybe here lies the reason, or one potential reason, for the relatively low number of German EWCs in total terms; i.e. that with so many German companies covered by the Directive Germany is simply playing the game of “catch-up” and it is merely a matter of time before it begins to penetrate the 40 per cent barrier.

However, as this book will suggest a number of indicators show the “catch-up” hypothesis only partly explains the relatively low number of EWCs in German multinationals. Clearly, a word of caution is required here. As in most countries Germany experienced an intense period of setting up EWCs prior to September 1996, this due in the main to Article 13 of the EWC Directive that exempted EWC agreements concluded prior to September 1996 from the minimum rights set by the Directive. In short, so-called Article 13 Agreements presented actors with a certain degree of leverage, a freehand in determining factors such as seat allocation, the frequency of meetings and agenda issues to be addressed at EWC meetings. This “customisation” option, one preferred by management according to EWC literature, is used to explain the stampede to set up EWCs in the mid-1990s (Whittall 2003, Kerckhofs 2002). Certainly, since September 1996 there occurred a notable stagnation in the number of new EWC agreements. Between 1999 and 2008 the number of new agreements signed was as low as 3 (2003) and as high as 6 (2007) in Germany (reference). As a consequence both the European Trade



Union Institute (ETUI) and TUM EWC database suggest that the German EWC density rate has remained constant at around 28 per cent.

In addition, the decline in activity can be further explained by the fact that the initial wave of EWCs involved predominantly large enterprises with strong trade union connections and a high degree of internationalisation (calculated by the number of foreign subsidiaries a company possesses) (Kerckhofs 2002). These represent the so-called “easy options”. However, the TUM databank suggests that the close correlation between size/internationalisation and the existence of an EWC does not always hold to be true. According to the TUM databank a considerable number of firms without an EWC are large in size (even among German multinationals with at least 10,000 employees 58 out of 129 haven’t set up a EWC in 2007), covered by sector collective bargaining and host to many foreign subsidiaries, in short so-called “easy options”. Furthermore, of the six case studies contributing to this book, three employed over 5,000 employees in Europe, and all six breached the figure, i.e. minimum of 9 subsidiaries, used to classify whether a company can be classified as international. Hence, the optimal preconditions necessary to set up EWCs would not appear to be any different than those which prevailed at the height of the stamped period to found EWCs in the first half of the 1990s. Other factors therefore would seem to be at play in influencing the setting up or non-setting up of EWCs.

At one level we would argue recent trends are the result of trade unions setting priorities. Limited resources, the result of declining membership, require trade unions to take hard decisions. Consequently, the relatively low numbers of German EWCs could be perceived as partly the result of German trade unions having to set priorities. A general agreement appears to prevail that they should invest time and resources into existing EWC bodies. However, to lay the blame for the low number of German EWCs at the door of German, trade unions, as some European Commission officers have done, would be short-sighted. As noted above, German trade unions continue to lead the way in developing EWC work. Furthermore, such a position has to recognise that the Directive stipulates the initiative to set up an EWC lies with company level actors. Trade unions can offer advice and support, which they readily do, but first and foremost they are dependent on employees within German multinationals taking the initiative. Could it be that the relatively low number of EWCs within in German enterprises lies not with German trade unions but with company actors themselves?

Undoubtedly, this book is not in the business of “naming and shaming”, but rather it represents an attempt to comprehend factors which might encourage or

perturb actors, in particular employee representatives from taking advantage of the EWCD. In the first part of the book we consider the painful and in some respects drawn-out birth of the EWCD. This is followed by a review of existing EWC research which in the last few decades has taken-up centre stage in discussions on European industrial relations. Knudsen et al. even go as far as suggesting (2006) that there could be strong arguments that between 1992–2006 a form of EWC overkill occurred, industrial relations conferences and publications inundated with EWC research. Although the book addresses the issue of “non-implementation” we contend that chapters two and three can offer important insights into why actors have been reluctant to set up EWCs. We would even hazard a guess that both these levels of investigation, research into existing and non-existent EWCs are ultimately complimentary. That whatever the pro and contra choices of having or rejecting an EWC, employee representatives of multinationals are faced by identical issues, managerial decisions surrounding restructuring, investment and inter-plant competition. For example, the inability of EWCs to influence trans-national managerial decisions would appear an apparent deterrent to setting-up a EWC. ‘Why go to all the trouble and stress of not only founding but servicing such a structure when management does its own thing any way?’ Clearly, a powerful argument! Alternatively, EWC delegates might question the necessity of such a body if evidence prevails that local representative structures are equally adept at gaining the ear of management. Of course, an alternative scenario should not be ignored, one in which European rather than local employee representatives are best placed to influence managerial decisions, the latter a collective force which is best placed to influence company policy.

In chapter 4 we address the question of methods. Here, we not only offer an insight into our research design, we discuss hypothesis instrumental in informing our empirical approach and offer important information about the 6 case studies that participated in the project. We then turn to chapter 5, the heart of the book, in which we review the empirical findings. Here, we ask the questions whether the lack of an EWC is the result of knowledge and transparency deficits, respectively an unawareness that the EWCD exists on the part of employee representatives as well as a belief by these same actors that the EWC is not applicable to their particular case. We also consider the factors relating to limited resources and the problem of added value, the fact that employee representatives lack resources to set up an EWC, which anyway still has to prove that it is of any value in improving workers’ interests. Next, we turn to consider the question of parochialism widely discussed in EWC research, particular a tendency amongst employee delegates

to have too narrow horizons. Further chapter we discuss the notion of a Diaspora raised in the work of Hermann Kotthoff (2006), the notion that countries with a strong representative tradition and access to top management, as in the case of Germany, can take on the representative function at a European level without having to formally set up an EWC. This is followed by a look at the international structure and size of the case studies in question, addressing as we discussed above whether these two factors, the degree of internationalism and the size of a concern impede or support the setting of an EWC.

In chapters 6 and 7, we turn and consider two industrial relations actors respectively, management and trade unions, who we suggest are important gatekeepers to setting-up EWCs. As we will show, for example, management is an important source of information pertaining to the applicability of the EWCD, specifically whether the number of employees employed within the European Economic Area crosses the threshold set by the directive. Furthermore, current EWC research demonstrates the pivotal role trade unions have played in founding EWCs, using their vast network to bring workers from different countries together and offering invaluable advice during the Special Negotiating Period. Hence, in both cases it is important to discern the stance of both these actors towards the EWC as this might be a pivotal aspect in the low number of EWCs within German multinationals. Finally, in chapter 10 we offer a detailed review of the main findings, findings we perceive which can either hinder or support the foundation of EWCs.



## **2 Thirty years of pain – the long road to European cross-border employee representation**

Undoubtedly September 22nd 1994 marked a historical watershed in European industrial relations, after years of debate and many false dawns under the leadership of the then President Jacques Delors, the European Commission was able to enact the EWCD. Nearly, twenty years later and some 1000 EWCs it would seem inadmissible that employers should not have the right to be represented at a European level today. However, underlying the evolution of European employment policy generally and the EWCD more specifically exists a story, either untold, ignored or even just forgotten, which we contend has a bearing on this publication and sheds light on the question why the number of EWCs is not much higher. In particular, this brief historical transgression focusses on how trade unions have struggled, and in some respects still struggle, to respond to European integration.

The history of supranational employee representation has been marked by a critical and highly political debate that has influenced the course of legislative progress in this area. From the early 1970s the European Commission unsuccessfully attempted to enact various laws to improve workers' participation rights within European undertakings. According to Streeck and Vitols (1994), Brussels' often lone concern with improving the rights of workers was motivated by the following three considerations:

1. Harmonization of national systems of company law;
2. Development of supranational European Company law;
3. Creation of workers' legal rights vis-à-vis management to information and consultation. (Streeck and Vitols, 1994:7)

Between 1972 and 1980 the Commission drew up three significant proposals on worker participation rights in European firms. These included the 1972 Fifth Directive, the 1975 European Company Statute and the 1980 Vredeling Directive. In the case of the Fifth Directive (1972) the Commission, under pressure from the German government (Streeck and Vitols, 1994), attempted to install a quasi German co-determination system at the European level. The proposed draft Directive stipulated that public limited companies employing more than 500 employees would not only have to set up a WC, but would also be required to give workers supervisory board rights. The attempt to transfer the German system of industrial relations to other Member States continued in 1975 when the Commission propo-

sed the European Company Statute Act, an act which was eventually passed twenty six years later in 2001. Again, the main concern was to make companies agree to a supervisory board structure that would provide workers with information and co-decision powers. Moreover, this new proposal spoke about founding an EWC for the first time. Finally, the Vredeling Directive (1980), a weaker version of the two previous attempts to promote workers' rights, simply emphasised information and consultation rights and dropped any reference to co-determination prominent in the 1972 and 1975 recommendations.

The failure of Fifth Directive (1972), the European Company Statute (1975) and the Vredeling Directive (1980) to win the necessary government backing has been well documented (Klak, 1998; Rhodes, 1995). At each juncture the Commission failed to win the relevant unanimous support of the Council of Ministers for the laws to be enacted (Rhodes, 1995). As we know, this widely documented at the time, business lobbied their respective national leaders to intervene and limit attempts to unveil a European legal framework for industrial relations. Its more recent stalling tactics concerning the reform of the EWCD suggests its position towards European industrial relations remains if nothing else consistent. What is not widely acknowledged, though, is that European unions demonstrated a degree of scepticism towards European social policy, too. At a time when the European Trade Union Confederation (ETUC) and European Industrial Federations such as the European Metal Workers Federation play a leading role in promoting and developing a European industrial relations system, this marked by the plethora of framework agreements they have negotiated, could be taken as evidence of trade unions unmitigated support of a European, it would be short sighted of us to believe that 1) this enthusiasm always existed and 2) that European and national European structures are as integrated as would appear on first sight. The second point we will consider in greater detail later on in the book.

Concerning the first point, it is often forgotten, even swept under the carpet, that employers were not alone in their reservations about an emerging European industrial relations system. Although much has been made about the blocking tactics of business, especially opposition on the part of American multinational companies (MNCs) (Rhodes, 1995; Lühker, 1995), championed by non-other than Margaret Thatcher and her successor John Major in the 1980s and 1990s, it would be a grave historical mistake not to recognise that for all their support for Europe in the last two decades European trade unions' have demonstrated at different times a certain unease towards industrial relations policy emanating from Brussels (Lecher, 1998a; Streeck and Schmitter, 1991). Certainly, the so-called

Germanisation of industrial relations proposed by the Commission is something that unions from countries unfamiliar with co-determination practices were historically wary of (Lecher, 1998a, 1998b; Streeck and Vitols, 1994). Hyman (1996) and Bacon and Storey (1996) note, that British trade unions have traditionally expressed a widespread suspicion of measures and structures designed to encourage employee participation outside of trade union structures. For example, whilst the Commission was trying to place the issue of worker directors on the European agenda in the 1970s, British trade unions were divided over the Labour government's attempt at the time to follow a similar path with the production of the Bullock Report (Kessler and Bayliss, 1995). Also let us not forget British trade unions were generally divided over whether the UK should join the European Common Market in the 1970s.

Irrespective of British trade unions suspicion of anything continental, generally the potential of a European system of employee representation has created a degree of unease on the part of most trade unions irrespective of nationality. Not least because they are advocates and disciples of particular national industrial relations practices (Whittall, 2010) and belief systems (Keller, 1997). What is often discussed in terms of "institutional diversity and path dependency" (Gajewska, 2009). As Hyman (2001) avidly points out this has the consequence that particular national traditions are ingrained in the psyche of its actors. Certainly, if nothing the official arrival of the EWC in 1994 helped to amplify the diversity of perspectives. In fact, EWC research suggests the success of this European institution depends on accommodating diverse industrial relations backgrounds (Whittall, 2010; Lecher, 1998b, Schulten, 1996a). In the same way that German trade unions have been eager for the rest of Europe to adopt their industrial relations practices, labour organisations from other Member States have shown an equally strong commitment to their own traditions (Schulten, 1996b).

Armington's (1998) work on trade unions and European industrial relations convergence is quite revealing, suggesting as he does that a major problem concerns the question of trade union "institutional inertia", the inherent reluctance to consider and implement change. Although according to Hege (1997) national industrial relations systems experienced "cracks" in the 1980s and 1990s, subsequently reducing the cohesive influence of organised labour (Waddington et al, 1997; Leisink et al, 1996; Visser 1995), trade unions have found it difficult to adjust and address problems brought about by these new circumstances. In the main these include the widespread existence of unemployment (Visser, 1997), the decline in trade union membership (Cressey et al, 1997; Waddington et al, 1997),

deregulation of labour markets (Thelen and Turner, 1999; Koch, 1996; Lecher and Nauman, 1994) and the flexibilisation of work (Ferner and Hyman, 1992). Armingeon (1998) offers various reasons for the existence of such inertia. These range from an in-built resistance to change as a means of reducing instability, through to bureaucratic power structures which have interests in retaining the status quo. This suggests that nationally bound trade unions experience difficulties in attempting to “supranationalize” their organisational structures. Hence, as Hege (1997: 500) has noted ‘the contrasts between the national trade union systems are proving resilient and showing little eagerness to merge into a harmonious flow that would facilitate the coordination of representation and bargaining strategies’. Moreover, we would argue that the pull of the national setting (something we will consider in more detail below) remains as strong as ever.

Undoubtedly, these tensions had a direct effect of the eventual character of the EWCD. Again much has been made about employers’ strategy to water-down the EWCD, Buschak and Kallenbach (1998: 172) argue, once UNICE, the employers association (now BusinessEurope) realised the Commission was serious about the EWCD it decided to ‘take the bull by the horns’ and mount what they refer to as a “retreat forwards”. This amounted to an acknowledgement that it would be more preferable to try and achieve acceptable agreements through negotiation as against imposed statutory legislation (Gold and Hall, 1994). Furthermore, such a strategy benefitted from a negotiating partner in the form of the Commission committed to any eventual agreement being highly flexible (Lecher et al, 1998). Whilst the Directive should aim ‘to improve the right to information and consultation of employees in Community Scale undertakings and Community Scale groups of undertakings (EWC Directive, Article 1: 1)<sup>2</sup>, i.e. create a level of security against possible social dumping, the Commission’s main concern was to give actors a high degree of room to manoeuvre (Lecher 1998a). Hermanus van Zonnefeld, then head of labour law at Directorate-General for Employment, Social affairs and Education (DG-5) was quite clear about this point. He argued that although Brussels wished to make the supranational exchange of information and consultation a legal requirement, the structure and content of how this should be achieved had to remain the domain of the social partners (Hornung-Draus, 1995). This led a number of writers, Lecher et al (1998), Oechlser (1996), Gold and Hall (1994) and

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2 At least 1,000 employers in Member States, at least two group undertakings in different Member States, and at least one group of undertaking with at least 150 employers in one Member State and at least one other group undertaking with at least 150 employers in another Member State. (Article 2: 1 (a), EWC Directive).



Hall (1992), to conclude that, in contrast to previous proposals, the Commission followed a strategy designed to avoid specifics, concentrating instead on achieving “negotiating solution procedures”. Subsequently, the only thing that had to be fixed was that agreements needed to be written.<sup>3</sup> However, trade unions indicated they could live with such an approach, too. The ETUC (Streeck and Vitols, 1994) and the European Metal Workers Federation (EMF) expressed a similar level of satisfaction with this aspect of the agreement. A EMF officer noted:

When you enter the area of social affairs, you really enter a very sensitive area. It is one thing to harmonise the composition of chocolate, in is another thing to harmonise social issues. In terms of social legislation it is a reflection of historical choices in each country, and you have to take into consideration the distinction between the countries. (Quote taken from Whittall, 2003)

In sum, we contend that trade unions’ stance towards Europe is extremely complicated. Whilst acknowledging the threat posed to nationally based industrial relations by the internationalisation of competition it continues to struggle to breach national borders, a dilemma which is best observed in unions’ relations to EWCs. Of course, it would be wrong to deny unions’ involvement in setting-up EWCs and offering training and advice when called-up, but the question remains whether such involvement has ever represented a priority area or more a “shotgun marriage”, the passing of the EWCD nothing less than a *fait accompli* which unions have had no alternative but to support when called upon by company representatives wishing to flank national with European a dimension. However, we suggest that such an approach entails a responsive as against a promoting strategy on the part of trade unions, a strategy which has clear limitations. As respondents in chapter 8 reveal, such a responsive strategy relieves unions of the responsibility of taking the initiative to set-up EWCs, namely to inform potential EWC delegates who are both unaware of their rights as well as knowledge of procedures to be followed in accessing such rights.

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3 This point will be considered in greater detail in the proceeding section where the pessimist school critique is presented.



### **3 EWCs: much to do about nothing?**

The 1994 EWC Directive, designed to provide workers with cross border consultation and information rights, has received and continues to receive considerable, some would say unprecedented, attention amongst industrial relations practitioners and researchers in recent years. It has even been hailed in some quarters as the most advanced piece of European social legislation to date (Jensen et al. 1999, Rigby 1999, Lecher 1997, Bobke and Müller 1995). The arrival of the Directive has signalled the beginning of an extremely interesting and lively debate about the value of such an institution, a debate as we will demonstrate which can inform the current piece of research.

#### **3.1 EWC balance: neither European nor works council?**

A general consensus prevails that the EWC has not lived up to expectations. With few exceptions, the major one being General Motors (Whittall et al. 2009, Haipeter 2007, Kotthoff 2006), this employee representative structure has failed to fully replicate national practices at a European level. Two European-wide studies, one conducted by Waddington (2006) the other by Carley and Hall (2006), respectively concluded that the EWC neither influences delegates' day-day work nor plays a significant role in cross-border restructuring processes. This would appear to confirm Wolfgang Streeck's (1997) hotly debated stance that this European body appears to be "neither European nor works council".

##### **3.1.1 Pessimist position**

Although in recent years Wolfgang Streeck's research interests have not directly dealt with the issue of EWCs (he continues to write widely on Europe), his work on EWCs, developed in the 1990s, remains undoubtedly influential. In particular his 1997 article, "Neither European nor Works Council", not only received much acclaim in some quarters, writers such as Oechsler (1996), Keller (1998), Wills (2000), Streeck and Vitols (1994) and Schmidt et al. (2008) taking up Streeck's pessimistic position, but this work continues to set the tone either wittingly or unwittingly for EWC research.

In short, Streeck and his followers question whether there is any value in the EWC Directive for employees. At the heart of their argument they contend that 1) the Directive failed to empower employees, rights of information and consultation taking precedence over co-determination rights and 2) a failure to harmonise

industrial relations practices, continued national representative practices preferred to a European approach. Streeck argues that the inability to empower employees plus the lack of a common song sheet will ultimately undermine employees with the help of a EWC to develop a EU wide collective approach necessary to address aggressive managerial policies. As a consequence of the Directive the EWC becomes a mere extension of national industrial relations practices, a lobbying instrument for promoting national interests, what Wills (2000) ironically refers to as “international nationalism”. Rather than helping promote greater social cohesion the EWC ironically becomes an instrument of what is commonly referred to as social dumping, employees involved in a game of competition which undermines employment conditions and pushes wages down.

In this sense it is viewed as futile to refer to this institution as European. If anything its identity remains principally national in character. Moreover, it represents an interface of competing industrial relations systems (Whittall, 2010; Knudsen et al. 2007), what Miller (1999) refers to as “cultural competition” and Levinson (1972) as “polycentrism”. Both terms depict how institutions like the EWC promote individual national interest. This can take the form of either hijacking (hegemony), employee representatives from the country in which the company in question is based using their access to central management to control the EWC (Whittall, 2003) or alternatively refusing to co-operate within the EWC structures, this leading to low trust relations and potential conflict between EWC delegates. Far from being a forum in which cooperative transnational employee relations are “formed”, the EWC becomes a structure in which national interests are perpetuated, with national representatives forced to participate in management’s “bidding” war to ensure their own survival. Discussing the findings of a three year EWC case study conducted between 1996 and 1999 Wills (2000) notes for example, that British respondents felt:

...rather exposed, it is understandable that they retreat into the parochialism of local concerns and try to make sure that their plant survives. (Wills 2000: 99)

This amounts to the predominance of regime competition (Hoffmann and Hoffmann 1997). Here, EWCs are depicted as part of a much wider labour market deregulation process, the conveyor of concession bargaining. Not only do EWCs undermine existing collective bargaining structures, but they also fail to replace these by evolving a centralised organisation at a supranational level. Discussing the situation of the car industry in relation to EWCs Hancké (2000) notes:

... the relative incapacity of EWCs in the European car industry to address these problems [cultural hindrances] follows directly from the way they are embedded in a wider competitive regime, which emphasises short-term local activities. Put differently, because of the way unions are engaged with them, EWCs are not the harbingers of a European industrial relations system, but a defensive instrument for local labour relations. (Hancké 2000: 38–9)

The misgivings of this body of work concerning the EWC are supported by numerous very high profile cases of public EWC fallouts over restructuring and plant closures, Vilvoorde, AEG, and Volkswagen (Artus 2008). In short, the EWC is at best a toothless tiger, a body which management is obliged to consult once year. At worst it represents a pack of hyenas threatening to tear each other to part in the fight for a long term lifeline, investment. Seen from this perspective, potential EWC delegates, employee representatives contemplating founding such a body, especially those which already have the ear of central management (home country representatives) or access to co-determination legislation as in the case of the German Works Constitution Act could be forgiven for believing that the EWC is of no added-value, but rather that it represents a potential threat. Of course, representatives deprived of direct access to central management, in the main foreign subsidiaries, might welcome the possibility to meet management even if this entails competing over jobs.

The pessimist position also raises another interesting point in relation to the added-value of EWCs, in particular the role of organised labour in setting-up EWCs. Certainly, trade union and European Industrial Federations organisations are perceived as playing a pivotal role in promoting and setting-up EWCs after 1995 (Waddington, 2010; Knudsen, 2003 ; Platzer et al, 2001), providing invaluable advice and training on procedures to be followed in establishing EWCs, knowledge of the Directives existence as well as a key interface through which employee representatives separated by national borders could learn of each other's existence (Waddington, 2010). Platzer et al (2002: 151) note; that trade union involvement in the negotiation of EWCs has a 50% success rate as against 30% in instances where there was no trade union presence. However, as acknowledged earlier the number of new EWCs has slowed down dramatically, of the total EWCs in existence by 2005, 72% were founded between 1996 and 2000, whilst in the five years that followed a mere 18% new agreements were signed (Kerckhofs, 2006: 26). More recently around 15 new agreements are signed on average per year according to ETUI (Jagodziński and Pas, 2011: 8). Is this decline a direct consequence of trade unions declining activity and interest in EWCs? And if so, is this

the consequence of limited resources or moreover trade unions' disillusionment with the value of this European institution? The fact remains that irrespective of trade unions' current stance towards the EWC there has been a close correlation between the establishment of EWCs and trade unions involvement in this process.

### **3.1.2 Optimist position**

Another strand of research prevails, however, which is less critical of the EWC's ability to coordinate employee interests at a supranational level. Although acknowledging the pitfalls of the legislation and the difficulties faced by EWC delegates in working together, a body of EWC research suggests that EWCs have to be viewed as a cognitive experience (Whittall 2007, 2000, Whittall et al. 2009, Knudsen et al. 2007, Huijgen et al. 2007, Kotthoff 2006, Marginson 2000, Miller 1999, Lecher and Platzer 1998, Lecher et al. 1998, Hoffmann and Hoffmann 1997, Waddington et al. 1997, Ramsay 1997). Undoubtedly, the early years are often marked by mistrust and regime competition (Lecher et al 2001; Whittall, 2000), but evidence suggests that employee representatives eventually acknowledge that the race to the bottom only helps serve management interests'. Waddington et al. (1997) sum up the position of this research strand when they note that the EWC needs to be viewed as a contested institution:

The argument advanced here... is that a broad range of institutions are in place through which labour may develop policy objectives and has secured policy gains. We do not argue that labour is europeanised, nor do we argue that institutional development is complete. We argue that the rudiments of structures which might form the basis from which more wide-ranging policy objectives will be sought are emerging. The outcome of this on-going development is intertwined in the tension and pressures towards deregulated competition and pressures towards regulation or re-regulation. As there is no pre-determined outcome of this tension, the issue for trade unionists is to struggle to resolve it in their favour. (1997: 483)

For this reason the likes of Knudsen et al. (2007), Kotthoff (2006), Marginson (2000), Platzer (1998), Lecher et al. (1998), Weston and Martinez Lucio (1998) and Ramsay (1997) part company with the over-pessimistic position that EWCs are neither representative of a European institution nor a works council body. In contrast, they believe that the EWC structure can form the basis of a

... distinctively European dimension to industrial relations. (Marginson 2000: 21)

In contrast to the pessimists this group of writers consider the EWC to be a possible, with the emphasis very much on possible, European springboard able to achieve the following:

- Promote the supranational exchange of information between workers
- Build up supranational trust relations between workers
- Oppose management whip-sawing tactics
- Creation of joint positions. (Lecher et al. 1998)

At the centre of the optimistic position is a belief that the “national extension” notion of EWCs so central to the Directive’s critics, i.e. the view that the “European” in EWCs is culturally meaningless, is only one but not the only option. Miller (1999) argues, for example, that the basis for what he calls “transnationality”, in this case a pseudonym for “Europeanisation”, already exists at one level in the form of trade union values that can transcend national settings. Hence, the “international nationalism” key to the pessimists’ line of thought fails to acknowledge that EWC delegates often read from the same song sheet within their national settings. Taking up this point (Miller 1999: 3) notes:

Historically, trade unionism, although never explicitly articulated as a transferable set of core values, has been a movement and an ideology which has transcended national boundaries and trade union organisation has provided the means by which workers could collaborate at an international level.

In a study consisting of 100 EWC delegates from Germany, Italy, the Netherlands and the UK, Miller (1999) discovered a set of core values that respondents could agree on as being central to EWCs. These included:

- Independence
- Organisational Security
- Transparency/accountability
- Right to representation
- Solidarity
- Equity<sup>4</sup>

Implicitly Miller’s position would suggest that the notion of solidarity, something employee representatives are committed to irrespective of national setting, should represent a catalyst which encourages them to set up an EWC.

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4 For an in-depth discussion of these variables see Miller (1999: 3–5).

Marginson (2000) has also challenged the “national extension” position, doing this at two levels. The first relates to his observation that the “Eurocompany” is emerging, out of which national considerations have begun to decline in significance. In this sense, there is every reason to believe, in contrast to Wills (2000) and Streeck (1997), that the notion of “European” has a very real meaning, namely that there are real material circumstances which are furthering the cause of Miller’s (1999) concept of a transnational identity. Returning to what he calls the “Porterian taxonomy”, a conceptualisation of companies in terms of multi-domestic (competition is nationally bound) or global industries (competition is globally bound), Marginson (2000) believes that following the completion of the single European market there is a need to add a further variable, that of “multi-regional”. Due to such economic integration industrial sectors are seeing production and marketing structured more and more along European and not country lines. Hence, Marginson (2000) proposes an argument that de-emphasises the importance of national product markets and national industrial relations systems. Neither is viewed as homogeneous as was once assumed. For this reason Marginson (2000: 15) argues it is no longer feasible to presume that:

...the organization of production of work within the enterprise is shaped by the interlocking influences of the institutional forms, specific to each society, governing education and training, the conduct, control and coordination of work and the regulation of conflict.

Such a development has been no more salient than in the automobile industry where there has been a general move towards flexible-working-time (FWT) practices and the development of platform production (Köhler 2000, Hancké 2000). With firms utilising a centralised computer supportive planning system (Schulten 1992), this external flexibility (Hoffmann and Hoffmann 1997) allows for tighter central management, greater control and emphasis on dispersing best practices (Köhler 2000, Marginson et al. 1996). In a recent study of five EWCs Kotthoff and Whittall (2014) came across Eurocompany structures, too. They note that EWC delegates begin to see the value of working together when a ‘decisive change within the company, namely the centralisation of strategic decision making processes’ occurs (Kotthoff and Whittall, 2014: 260).

The second aspect of Marginson’s (2000) work relates to the negotiation process and structure of EWCs. For example, drawing on a study of 386 voluntary agreements, he addresses the signatory issue. The “national extension” position adheres to the view that there is often a predominant trend whereby agreements



are signed and negotiated by a single employee signatory, usually representatives stemming from the mother country. According to Marginson's (2000) study there is no conclusive evidence to support such an assumption. Of the two thirds of his focus group a mere 17 per cent exhibited such a hegemonic character, in contrast 49 per cent of EWC agreements concluded were signed by worker representatives from two or more countries. Rivest's (1996) study of the negotiation procedure and the content of 59 early agreements confirms these findings. She reaches the conclusion that there was more cross-country, sector specific similarity than country variable influences. Like Marginson (2000), Rivest (1996) contends that one important reason for this relates to the involvement of European-wide trade union federations in the negotiations. Thus, there is more than a tangible reason to believe that EWCs are less internally diverse than the pessimists suggest.

Finally, evidence to support the pessimist argument that there is no added value to be gained from the EWC is also far from conclusive. In recent years a number of case studies have come to light (Kotthoff and Whittall, 2014; Knudsen 2008, Whittall 2007, Whittall et al. 2009, Haipeter 2006, Kotthoff 2006) to support the notion that EWCs, usually after many years of developing internal relations, can bridge initial national differences between employee representatives in an attempt to ensure that this European structure develops common positions. In practitioner circles such a process is increasingly referred to as the act of "sharing the pain".

The eventual emergence of a well-functioning EWC appears to depend on a number of factors. Firstly, actors need to comprehend the need for such a body. This usually involves the collective experience of a catastrophic event (Whittall et al 2009a, 2007), usually involving heavy job losses and plant closures. It represents an acknowledgement that no country is immune to the harsh realities of global capitalism. Kotthoff (2006: 180) notes that this entails a developmental stage in EWC relations in which delegates realise:

What the Other does, and how he or she is doing, concerns me, for it has noticeable effects on me and vice versa.

Comprehending the importance of the Other is a key step to challenging the traditional abstract nature of international solidarity according to Knudsen et al. (2007). Furthermore, EWCs which have proven capable of challenging managerial decisions invest not only a considerable amount of time and resources in training but more importantly put in place structures which help to intensify relations between EWC delegates. As Whittall et al. (2009a) note, integral to such a process is the utilisation of Information Communication Technology (ICT). ICT in the

form of e-mail, cell phones and blogs, in addition to ensuring the EWC network remains transparent, a key pre-requisite of any representative body (Fung 2008), produces a quick response mechanism.

Seen from this more optimistic perspective there would appear some value in setting up an EWC. Certainly, when management is committed to a strategy of regime, competition structures such as the EWC could be useful in neutralising or at least socially managing such aggressive practices. The optimist train of thought throws up a number of interesting questions relevant to the issue why not more EWCs councils exist.

### **3.2 Objectives and hypotheses: lessons out of the literature**

To date research on EWCs can be divided into three periods. The first involved studying the legislation itself (1994), the second analysing the content of the agreements (1994–1996) and the third how EWCs function (1996 – to date). However, the question of why so few EWCs have been founded, an issue increasingly raised at conferences on EWCs, in the main has been neglected by researchers. Very few works prevail which deal with this issue, these include Blokland (2002), Lecher et al. (2001) Costa and Araújo (2008), Stoop (2008) and Waddington (2010). Of these, two are quite dated (Blokland 2002, Lecher et al. 2001) and in the case of Lecher et al. (2001) and Waddington (2010) the non-implementation of the EWC plays peripheral role – the latter two offer a telling insight into how EWCs function. For this reason the following two year study was designed to address this research void. The project consisted of three phases:

1. the production of databank for German companies covered by the EWC Directive,
2. six case studies of German multinationals covered by the Directive but which have failed to set up a EWC, and
3. a survey of all German multinationals covered by the Directive.

In trying to discern reasons why actors fail to take advantage of the EWC Directive the project drew on a number of hypotheses developed to suggest what either undermines or contributes the founding of EWCs. Of course, we are grateful in this respect to works preceding our study, the hypotheses applied here owing much to the research findings of Blokland (2002) and Lecher et al. (2001) but also the two publications produced by Kerckhofs whilst working at ETUI(2002; 2006). Although we acknowledge that an array of factors can explain the low number of

EWCs in German multinationals, for example, the degree of internationalisation (Kerckhofs, 2002; Blokland 2002, Lecher et al. 2001) and management opposition (Blokland 2002, Lecher et al. 2001). Concerning the degree of internationalisation, Kerckhof notes (2002: 40), ‘the more internationalised a company is, the more often it has set up an EWC.’ Internationalisation is measured on the number of subsidiaries a company has within the EEA, 10 and more representing a high degree. Although we do not totally ignore these variables we focus specifically on two other factors, the EWC Directive “knowledge deficit” and the perceived “added-value” of such a supranational body discussed in some detail above. We do not deny that either the size of an enterprise, the fact that the larger the company the more likely an EWC structure will be in place, or for that matter that a lack of management cooperation can make it difficult to found an EWC. However, we contend that neither factor has any relevance if 1) employee representatives are unaware of their rights and 2) that potential EWC delegates do not see any value in challenging managements’ opposition.

The hypotheses and methods developed by the authors have been strongly guided by the recognition that the EWC Directive, as with German legislation relating to the works council, offers employees the “option” of founding such an institution. Legal regulation has never been a guarantee. Therefore, a key aspect of our research concerns studying interest definition, specifically why employee representatives fail to take advantage of this legal option.

### **3.2.1 The EWC Directive “knowledge deficit”**

Concerning the “knowledge deficit” hypotheses we contend that this has to be considered at two levels. On the one hand it involves a simple assumption that potential EWC delegates, strange as it might sound nearly 20 years after the Directive was passed, remain unaware of its existence. For example, the Directive makes no provision for informing employees of their rights. The question that needs to be asked, therefore, is whether the EWC Directive is a so-called “oblivious” law. Implicit here is an assumption that employee representatives, works councils in the case of Germany, are dependent on certain information channels, usually trade union services. Hence, we contend that factors might exist which hinder the flow of such information so as to ensure that employees remain unaware of their rights.

As regards the second assumption, this involves we believe an equally plausible explanation, one which focuses on what we term the problem of transparency. Here, we contend that employee representatives though aware of the Directive’s existence believe, often because of managements’ assertions, that their enterpri-

se is not covered by the legislation. In particular, this involves the problem of managerial structures, the fact that management has put in place a managerial structure which portrays, at least on the surface, the company as an amalgamation of independent companies. Often designed for tax reasons such a structure has the added benefit that it makes a strong argument for the non-applicability of the EWC Directive. Such an assumption is based on the premise that the company does not breach the threshold criteria set by the Directive, namely that the law only applies when a company employs a minimum of 1000 employees in the European Economic Area of which 150 are employed in two different countries. Hence, we argue that not only is knowledge (that it exists) of the Directive a pre-requisite of setting up an EWC, but that a better understanding of the Directive and the managerial structure of a company is a necessity, too.

### **3.2.2 Added value of the EWC**

Apart from the “knowledge deficit” there exists a need to recognize that actors, and here we refer to central management, German employee representatives (works councils) and employee representatives of foreign subsidiaries, may have taken a conscious decision not to support the foundation of such a structure, i.e. the question of “added value”. We offer various hypotheses to explain each of the actors’ reluctance to found an EWC. These include:

- **Management:** In the case of management three main variables we would argue are influential. These include, firstly the cost of such a body - the employer responsible for covering all EWC expenses related to travel, subsistence, administration, translation and training. Secondly, potentially the EWC encourages employees geographically dispersed to co-ordinate their activities in the promotion of cross border solidarity. And finally, such legislation runs counter to employers’ increasing support for less rather than more regulation. This very evident in employers’ general opposition to the proposed EWC Directive prior to 1994 (Hepple, 1990).
- **German employees:** Concerning German employees’ interests we contend that a major obstacle relates to the already adequate representative structures provided for by the German system of co-determination – the Directive is therefore superfluous (Lecher 1998). Moreover, that EWC delegates lack any such co-determination rights, what Blokland (2002) and Lecher et al. (2001) refer to as the perceived limited added value of an EWC. In this sense not only might the legislation be perceived as an irrelevance, but equally a threat

to the more substantial rights enjoyed in Germany. This last point needs to be considered in the light of the fact that German employer associations have been actively campaigning to weaken employee rights in recent years (Abel and Ittermann 2001).

- Other factors deemed to be important include the problem of resources and relations to central management. In terms of resources, we acknowledge that the process of decentralization within German industrial relations is already putting great strains on German employee representatives (Koch 1996). Seen from this perspective the EWC only threatens to add to an already impossible work load (Whittall 2003). Finally, German employees' traditional close relationship with central management we consider to be another important factor that can lead to a rejection of the Directive. The foundation of an EWC might be perceived as potentially endangering this "special status", the EWC offering the potential development of alliances between management and non-German employee-representatives.
- Foreign employees: With regards the interests of employees from foreign subsidiaries, i.e. employees outside of Germany, there currently exists no information to consult. Their support, however, is critical if we consider that the application required to set up an EWC has to come from a minimum of two countries. At one level one would assume that it is very much in the interests of such protagonists so as to gain access to central management through the EWC. The lack of access to central management might prove a disadvantage when decisions are taken over investment and production location, i.e. the predominance of national Microcorporatism in the home country. But what factors prevail that might lead to a rejection of the EWC on the part of non-German based employees?
- One issue might concern foreign direct investment (FDI). It might be in the interests of actors in some Member States, i.e. an alliance between government, employers and employees, to promote favourable labour market conditions, i.e. to reject regulation in favour low labour costs and superior working time regimes as a means of encouraging FDI. After all Greece, Spain and Portugal, all countries with a low EWC density rates, were concerned that the Social Protocol should not undermine their competitive position as a source of cheap labour. Certainly, this was the position promoted by the British conservative government in their refusal to sign the Social Protocol in Maastricht as well as the eventual EWCD. John Major, then Prime Minister, argued that whilst

the rest of Europe was welcome to its social legislation, the UK would prefer to remain a paradise for foreign investors (Leibried/Pierson 1995). With the EU now incorporating most of Eastern Europe one might expect that such a line of argument is more than ever prominent in some quarters, specifically those Member States supportive of low cost and deregulated labour markets.

- We also argue that some foreign employee representatives, like their German counterparts might be critical of the weak nature of EWC rights, especially in those parts of the EU such as the Benelux countries with a similar co-determination history to that of Germany. Of course, such a position contrasts strongly with a critical view of any form of works council representation, where social partnership is a by-word for class compromise traditionally in the UK and many Mediterranean countries (Hyman, 2001).

In summary, our first hypothesis asserts that the failure to take advantage of the EWCD is the result of employee representatives' poor knowledge of this piece of European legislation. That an improvement in the promotion of the EWC Directive, either on the part of legislators or national and European employer and employee representatives, might lead to an increase in the number of EWCs. Our second hypothesis suggests that employee representatives view the EWC as a "white elephant", a structure though adding to their work load does not markedly improve their ability to represent their constituents. On the contrary, it might even represent a structure which undermines their existing position of influence.

## 4 Research design and methodology

### 4.1 Research criteria

Prior to undertaking research on the low number of EWCs within German multinationals we consulted the already referred to works dealing with this issue, Blokland (2002) and Lecher et al. (2001). Accounting at that time for the only known works on this issue both studies had an integral influence on our eventual research design, specifically their acknowledged shortcomings.

In the case of Blokland (2002), for example, Kerckhofs points out that while the study raises interesting questions it is weakened by the fact that the empirical findings are drawn solely from interviews conducted with Dutch representatives. The views of non-Dutch actors are missing from the story. If we consider that the process of founding an EWC as perceived by the Directive is intended as a cross-border act such an oversight is no small matter. The voice of actors, in our case individuals belonging to foreign German subsidiaries cannot be ignored, especially if one assumes, as we actually do, that a factor hindering the foundation of EWCs might very well involve opposition on the part of management and employee representatives within the home country. Of course, it would be somewhat naïve to expect that German respondents to be candid about their opposition, an opposition which in some cases can involve German employee representatives actively involved in blocking foreign subsidiaries attempt to set up an EWC. And according to the IG BCE this is not an uncommon experience. In an attempt to attain an accurate and balanced account of factors which can account for the low number of EWCs our research design is structured in such a way so as to include the views of foreign subsidiaries belonging to German multinationals.

As for Lecher et al. (2001) the authors actually acknowledge factors that raise methodological questions about their research design. The main issue concerns the applicability of quantitative research. Lecher et al., for example, used a survey questionnaire of companies failing to set up an EWC. But as they are forced to admit the return rate, 20 per cent, was not only modest but threw up interesting questions about the normative reasons behind individuals' decision not to complete the questionnaire, Lecher et al. (2001: 178) argue that non-compliance is not informed by chance, but rather by peoples' opinion of the EWCD:

The return rate is not only a consequence of not possessing the right addresses, but rather it has something to with the attitude of those employee representa-

tives, which for whatever reason (lack of interest in the EWC, ignorance about scientific research and a conscious decision to refuse to be involved in such a study) do not see the need to be involved in such a study.

Implicit to Lecher et al.'s work is an assumption that a quantitative approach might not be best suited to studying potentially controversial issues. Certainly, opposition to setting up an EWC might be perceived as controversial. As Fielding (1993) suggests, a qualitative approach, namely interviewing the respondent, has the benefit that it can be sensitive to people's concerns and suspicions. In short, the interview procedure overcomes the abstractness of a survey and is in a better position to waylay respondents' fears.

Finally, another factor which had a bearing on our research design involved the issue of sector differences. The TUM database demonstrates significant sector differences in the number of EWCs in place. As an example the three sectors we focus on, metal, chemical and services, respectively have implementation rates of 29% (metal), 36% (chemical), and 27% (services). This raises the question whether different coverage rates are the result of the varying roles played by the respective trade unions. Certainly, it would represent a major oversight to forget that trade unions play an integral role in the foundation of EWCs, helping to clarify whether a company is covered by the Directive, informing employee delegates on the procedures to be followed in setting up such a body as well as facilitating contacts between the different European sites.

## **4.2 Case studies**

The qualitative part of the project is based on 6 case studies of German multinationals covered but still to set up an EWC. In accordance with the points referred to above the eventual choice of case studies required us to adhere to certain guidelines. Firstly, there was a need to accommodate sectoral differences. Three sectors, metal chemical and services were chosen because they account for different coverage rates and because their historical experience of the Directive has been quite different. In the EEA, for example, the metal sector was very active in the early years, leading the way in setting up the so-called pioneer EWCs between 1992 and 1993, while the chemical sector played a very prominent role in the year the Directive was passed (Kerckhofs, 2002). Furthermore, in the case of Germany an important sector difference which needs to be taken into account involves trade union strategies towards the Directive. In contrast to the IG Metall the IG BCE does not have a department solely responsible for EWC related issues. On the



contrary the IG BCE has outsourced this responsibility to its European industrial federation, EMCEF. This naturally raises the question whether the difference in coverage is the result of the varying EWC strategies chosen by the respective trade unions.

Required also to take into account the views of actors employed in foreign subsidiaries of German multinationals our eventual choice of countries was strongly influenced by practical decisions. The inclusion of France and the UK not only had the benefit that they represented two countries home to quite contrasting industrial relations systems (see Table 1: Case studies – Industrial relations, p. 32), but also two Member States where the researchers already had a history of undertaking research (Voswinkel et al. 1996, Whittall 2007, 2000).

**Table 1: Case studies – Industrial relations**

	PL	BL	AP	HL	ITP	IP
<i>Employee Representation</i>						
<b>Germany</b>	BR, GBR	BR, GBR	BR, GBR	BR, GBR	BR, GBR	BR, KBR
<b>France</b>	CE, DS	CE	CE, DS	CE, DS	CE, DS	DP, DS
<b>UK</b>	Employee Forum	Employee Forum	Employee Forum	Employee Forum	Employee Forum	Employee Forum
<i>Unionisation</i>						
<b>Germany</b>	ver.di, AUB	IG BCE	IG Metall	IG Metall	Non-union, IG Metall, ver.di	Non-union, DHV
<b>France</b>	CGT, CFDT	Non-union	FO, CFE-CGC	CFDT, CGT, "autonomous union"	Non-union, CFE-CGC	CGT
<b>UK</b>	n/a	n/a	n/a	n/a	n/a	n/a

Another influential factor which influenced our choice of case studies also involved a commitment to include German firms with a tradition of works councils and trade union representation, in short firms that incorporated key elements of the German industrial relations system widely referred to as Modell Deutschland. Our choice here was influenced by a number of considerations. Firstly, one of our hypotheses implies that German employee representatives deem the information and consultation rights offered by the directive as superfluous. Armed with institutions such as works councils and supervisory board employee representatives not only sit on the source of company information but equally have the right to theoretically veto management decisions. Hence, this raises questions about what we refer to as the issue of "added value". Furthermore, our preference for German companies adhering to the German model was also influenced by a practical con-

sideration – that of access. Previous research had demonstrated that the existence of a works council greatly alleviates the problem of finding interview partners.

Finally, company size had a bearing on our choice of companies. Research clearly indicates a strong correlation between the number of people employed within a company and the existence of an EWC (Lecher et al. 2001; Blokland 2002; Kerckhofs 2002, 2006). In the EEA, for example, the average workforce of companies in the metal and service sectors with an EWC is around 18,000 (Kerckhofs 2006: 73). For this reason we divided our choice between companies employing either higher or considerably lower than 10,000 employees within the EEA.

In choosing six case studies we were greatly helped by the ETUI databank. After locating potential case studies the research team set about discovering which of these both had subsidiaries in the UK and France as well as possessed key elements of the German industrial relations system. Once again the ETUI databank proved invaluable, this source complimented by scouring the internet for information as well as utilising trade union contacts. As Table 2: Case studies – Economic data indicates, our eventual choice involved two companies from each of the following sectors, metal, chemical and service, with a workforce higher and lower than 10,000 employees and subsidiaries in France and the UK.

Due to the obvious sensitive nature of the research participants were assured that we would do everything in power to ensure total anonymity concerning their personal identity and that of their company. For this reason we have chosen names for the six companies based on the branch in which they are active.

**Table 2: Case studies – Economic data**

	<b>Packaging Ltd</b>	<b>Building Ltd</b>	<b>Automotive Plc</b>	<b>Household Ltd</b>	<b>IT Plc</b>	<b>Insurance Plc</b>
<b>Sector</b>	Chemical	Chemical	Metal	Metal	Services	Services
<b>Activity</b>	Paper and Plastic Packaging	Building material	Production equipment	Household appliances	Enterprise software	Insurances
<i>Employees</i>						
<b>World</b>	2500	22000	6100	16000	3500	6900
<b>Europe</b>	2400	9000	4200	14500	2000	4200
<b>Germany</b>	1750	3000	3000	10000	780	3450
<b>France</b>	200	2500	180	300	130	46
<b>UK</b>	125	n.s.	78	360	n.s.	550
<i>Sites</i>						
<b>Germany</b>	3	22	10	8	7	1
<b>France</b>	1	6	8	3	1	1
<b>UK</b>	1	10	1	1	2	2

#### 4.2.1 In the Field

In total 48 interviews were completed, 38 in the case study companies and 10 with so-called experts, trade union officers from the IG Metall, IG BCE and Verdi responsible for EWCs, a union officer from the British union Unite the Union, someone who has worked closely with his German counterparts, as well as EWC experts at the ETUC, EMF, SDA and UNI Europa. Although we were committed to interviewing employee and employer representatives within the relevant companies, access, in particular to UK subsidiaries, proved problematic (see Table 3: Completed interviews). In the case of IT Plc (UK) we were refused all forms of co-operation, while at Automotive and Packaging Ltd (UK) only interviews with management were agreed to.

**Table 3: Completed interviews**

Company/country	Interviews	Management	Employee representative
Packaging Ltd (DE)	1	0	1
Packaging Ltd (FR)	1	0	1
Packaging Ltd (UK)	1	1	0
Building Ltd (DE)	2	1	1
Building Ltd (FR)	1	0	1
Building Ltd (UK)	5	3	2
Automotive Plc (DE)	1	0	1
Automotive Plc (FR)	1	0	1
Automotive Plc (UK)	1	1	0
Household Ltd (DE)	3	1	2
Household Ltd (FR)	1	0	1
Household Ltd (UK)	2	1	1
IT Plc (DE)	3	1	2
IT Plc (FR)	2	0	2
IT Plc (UK)	0	0	0
Insurance Plc (DE)	2	1	1
Insurance Plc (FR)	2	1	1
Insurance Plc (UK)	9	3	6

A main problem involving UK subsidiaries involved gaining access per se, the one exception being Automotive Plc (the contact facilitated by the German joint works council). After much deliberation the only way of gaining access to UK subsidiaries involved contacting the personnel department. This was due to the fact that none of the subsidiaries were union organised, a fact we were able to determine after consulting the relevant UK trade unions. In addition, we were unable to discern whether any of the UK subsidiaries in question had any form of

employee representation. On the one occasion in which we asked the switchboard to place a call to the employees' forum our call was suspiciously redirected to the personnel department. This resulted in the researcher tactically explaining that TUM was undertaking a piece of research on the employment practices of German companies abroad. As a consequence no reference was really made to the EWC Directive. In three case studies, Household Ltd, Building Ltd and Insurance Plc, such an approach proved positive. Interviews with the relevant personnel managers not only helped to clarify the existence of employee representative structures within the subsidiaries but a willingness to set up meetings with employee delegates of these bodies.

As for Germany the reverse proved to be the case. While gaining access did not prove problematical, our groundwork in choosing the companies indicating that each company had at least a works council, management was reluctant to agree to an interview at times, the issue of time constraints often used as an excuse. This meant that interviews with German management, usually personnel managers or directors, were only conducted at Building Ltd, Household Ltd, IT Plc and Insurance Plc.

In the case of France access to employee representatives was easier. Due to the strict obligations of French Labour Law every enterprise with at least 50 employees has to set up a works council. Hence, in all cases where French subsidiaries had more than 50 employees, a contact was established to the secretary of the works council at the French headquarters. The only exception was Insurance Plc employing less than 50 employees in France. Here we spoke with two employee representatives ("délégués du personnel") as well as with the local human resource manager. In addition, as according to French law unions play an important role not only at local level (e.g. for the obligatory annual negotiations) but also with regard to setting up an EWC, we spoke with the shop steward of the main union. The only exception in this respect was Building Ltd where no union was present.

### **4.3 Questionnaire**

The article also draws on the data of a postal questionnaire of works councils of German companies covered by the EWCD. Here, we consulted an earlier piece of research conducted in 2007; this involved the creation of a EWC databank for German firms (Lücking et al. 2008). Of the 463 cases of German firms covered by the Directive according to the TUM databank, in total 424 were surveyed, namely companies where we knew a works council existed. Of the 424 questionnaires surveyed 110 replied, of which 70 were accounted for by companies without and 40 with an EWC. This represents a return rate of 23.7 and 32.2 respectively.

# 5 Factors impeding installation of a European Works Council

## 5.1 Knowledge deficit and lack of transparency

### 5.1.1 Awareness of EWC Directive

With regard to employee representatives’ awareness of the EWC Directive a disparate picture emerges between actors in France, Germany and the UK. In the case of Germany, both the case studies and survey evidence demonstrate that in the main works council members are aware of the Directive’s existence. A mere 20 percent of survey respondents without an EWC had no knowledge of the EWC Directive (see Table 4: EWC knowledge of non-EWC respondents). In France employee representatives at most of the sites visited “had heard” of the EWC, while the EWC was a new term for employee representatives interviewed in the UK.

**Table 4: EWC knowledge of non-EWC respondents**

Value	Number	%
Very good	3	4
Good	21	27
Poor	31	40
Very Poor	7	9
Non-existent	15	20
Total	77	100

How to explain this disparity? Clearly, there exists a close correlation between employee representatives’ knowledge of the Directive and respective industrial relations systems, in particular a strong trade union presence. In Germany, for example, around 80 percent of survey non-EWC respondents who possess either a good or very good understanding of the Directive referred to trade unions as the main source of their knowledge (see Table 5: Sources of EWC knowledge). This confirms the result of the survey conducted by Lecher et al. (2001: 181). Such a position was also reflected in the case study research. Although not all German works council respondents went as far as the chair of the joint works council at Household Ltd in inviting the IG Metall regional trade union officer to the interview, close relations between works councils and trade unions could be observed. Works council chairs at five of the six case study companies were long term serving trade union members, involved in collective bargaining commissions and trade union educational seminars. In short, five of our German case studies could

be classified as home to the tight connection between works councils and trade unions that is widely seen as typical for the German “dual system” (Thelen 1991).

**Table 5: Sources of EWC knowledge**

<b>Information source of respondents with very good or good knowledge of the Directive.</b>	
<b>Information source</b>	<b>%</b>
Trade union	78,4
Other works councils	13,5
Media	24,3
Other	24,3

In France employee representatives at three subsidiaries, PL, ITP and IP, were aware of the EWC Directive, while at two other sites, AP and BL, respondents had not heard of the Directive. At the remaining subsidiary, Household Ltd, the interviewees had heard something about this European institution but had rather confused ideas about the function of such body. Again a close correlation between respondents’ awareness of the Directive and the embeddedness of trade unions at plant level is to be observed. At Insurance Plc, Packaging Ltd and Household Ltd the secretaries of the comité d’entreprise were active trade union members. The following response summed up the situation at these three sites:

I took part in a trade union training course on EWCs... That was during my holiday... (Shop steward at IT Plc, France)

Contact to the union not only raised some respondents aware of the Directive’s existence but invariably provided them with an understanding of such an institution’s potential. In contrast the opposite scenario prevailed at the other three subsidiaries. At the three sites in which the Directive was in the main an unknown entity the interviewer was required to share their knowledge of EWCs, a kind of EWC schooling exercise.

The situation in the UK represented the extreme scenario. This due to the fact that of the three countries under study the UK posses the least developed system of employee representation. None of the UK subsidiaries, for instance, recognised trade unions. The sites were home to what Brian Towers (1997) refers to as the “representative gap”, which according to the most recent Workplace Employment Relations Survey (2004: 13) shows no sign of disappearing even given a commitment to raise the profile of trade unions since 1997:

Among the 36 per cent of workplaces with union members, three-quarters (76 per cent) recognised one or more unions for negotiating the pay and conditions

of at least some of their employees. These workplaces accounted for 27 per cent of all workplaces, and employed 48 per cent of all employees. In 1998, the equivalent figures were 33 per cent and 53 per cent respectively.

Undoubtedly the implementation of the European information and consultation Directive (2004) has gone some way to rectify this problem (Whittall and Tuckman 2008), but the emergence of what are widely referred to as employee forums are currently no substitute for the collective power of trade unions. Often inspired and controlled by management (certainly this was our experience at Insurance Plc, Packaging Ltd, Household Ltd and Building Plc) such employee forums are struggling to understand their remit. The desperate situation in the UK even made access to subsidiaries highly problematical. With none of the sites recognising unions, some even going to great lengths to keep unions out (Packaging Ltd and Building Plc) – the usual path to making contact with employee representatives was not made available to us. Attempts via the switchboard to discern whether any of the subsidiaries possessed other forms of employee representation, such as an employee forum, resulted in calls being diverted to the HRM department. As a consequence initial interviews were only conducted with HR managers and it was through such early contacts that we not only discovered the existence of an employee representative body but a willingness to allow us to eventually interview employee representatives at some of the sites.

Interestingly, managers at the UK sites were aware of the EWC Directive. The HR manager at Household Ltd HL had even been involved in setting up an EWC at Northern Foods. HR managers generally noted:

I have seen it (legislation). It is not something that we participate in. I did wonder when it was first introduced [whether we should set one up]... but I think at that time you had to have a lot more employees before [you could set one up]. (Manager Packaging Ltd, UK)

It was something in fact that prior to me joining [BL] [my former employer] was doing... (Manager Building Ltd, UK)

UK managers' awareness of the Directive did not stretch to them sharing such information with their employee representatives. Partly, this failure to inform employees of their rights was nothing more cynical than a view that this "is not part of our job". Such a stance, though, is not a problem of British management alone. An employee representative at IT Plc in France noted:

When I raised (EWC) the issue in a meeting the managing director said “That is not our problem. You as the employee representatives have to address this question.” (Shop steward IT Plc, France)

Some respondents, though, pointed out that central management made it quite clear that they were opposed to the Directive and that the local management should not undertake any activities that could encourage the local workforce to contact employers at other European sites:

The only discussion that we have had... I think in [Germany] there is a [commitment] that we don't create a European type forum, European works council... I think because of the fear of German works' council veto, and that it could become even bigger, European wide... So, for instance in terms of the staff forum (UK works council) I have, Munich said “set it up... as long as that does not fall into any EWC regulations”...

It [EWC] is not something that they feel we should do. And I certainly feel that it is not felt that we should do something from this end either. (Manager Packaging Ltd, UK)

Strangely, when asked to indicate where they could seek information about the EWC Directive some UK employee respondents pointed to the HRM department as a reliable source:

I don't know if HR should becoming to us and telling us... the head HR is also on our staff forum group and he should be, not be impartial, but I would assume... We are helping the company out by being the voice of staff and I think, I don't want to say withhold information from us, but I think they (HR department) should be obliged to provide us with information... (Manager 1 Insurance Plc, UK)

Now I know something about it I would probably look on the internet. If failing that I would possibly speak to Barbara (personnel manager). I would e-mail Barbara, she would be my next port of all. (Employee representative 1 Building Ltd, UK)

This actually raises interesting questions about the role of local management, especially in companies where central management is involved in what Kratzer (2006) calls “indirekte Steuerung” (indirect control) in relation to personnel policy. Although relations between central management and the subsidiary can be cha-



racterised as hegemonic, plant and country managers required to attend company meetings in Germany on a regular basis, personnel managers are excluded from this inner circle. As a consequence they are often left to feel like “second class” citizens, having neither access nor influence over the company’s business strategy. For this reason some UK personnel managers could be observed as not being opposed to the foundation of an EWC. On the contrary, they expressed views not too far removed from those promoted by employee representatives, that an EWC would be a platform through which they could have access to central management:

I suppose for me there are subtle benefits to be had and for me it (EWC) is about transparency and giving people the opportunity to recognise that they are part of a much larger global player and that gives us an enormous amount of strength and credibility... It could be used as a platform for about how we are going to go about having a HR framework or whatever throughout Europe and other parts of the globe. (Manager2 Building Ltd, UK)

I would view this (EWC) as a very positive thing. I think this would be very positive for the employees as well. It would be interesting for the employees to know what happens out in Germany and for some of that to be brought back and to be fed back to them. I mean even if it was... I mean we do have a company magazine which is sent over but it is in German (laughs). I think if that would be translated into English... We did our own magazine at one time and that was produced by the people who worked here and it was very good, it was very funny, it was very enlightening. So if you could not have this general meeting (EWC), if you could have another form of communication I think that would be positive and good for moral. (Manager Packaging Ltd, UK)

Although in contrast to Germany and some French sites the lack of a trade union presence ensured that UK employee representatives remained unaware of their rights, respondents were eager to learn more about the Directive and demonstrated a certain ability to collate the necessary information which suggested that their inferior rights would not hamper them should they support the setting up of an EWC. Marooned in a trade union free-zone, UK employee representatives have become used to not only taking the initiative but applying their cognitive skills to locate and understand information relevant to improve working conditions. For example, respondents outlined how they had drawn up and presented proposals on new working time practices, maternity leave and redundancy payments. This

involved respondents using their own free time to visit libraries as well as surfing the internet to draw up such proposals:

We have already put a couple of proposals together to go in (to put to the employee forum). I have got one to go into the next meeting on redundancy because we are on a statutory minimum package at the moment. I have done a bit of research to see what the local companies pay and we have based it on that. I worked it out on a guy who has been here for 18 years. On the government minimum he would get about 5000 pounds, on the scheme I am proposing it would be around 25000 pounds. It is a big difference. (Employee representative 1 Building Ltd, UK)

In summary, the knowledge that German and quite a few of the French respondents had of the Directive would suggest that the non-existence of an EWC is not the result of a “knowledge deficit”. Therefore, other factors need to be considered which might offer a better understanding of why a not inconsiderable number of German companies have failed to set up an EWC. The first of these involves the applicability of the Directive, what we refer to as the problem of transparency. In numerous interviews with ETUI officers responsible for EWCs, in particular the ETUI’s EWC databank, the issue of transparency was raised on numerous occasions many. As one ETUI officer noted, the main issue concerns the question of employee figures:

The biggest weakness or problem we are facing relates to the employees figures, employee figures being the point of departure for identifying companies which fall within the scope of the directive... We do not have the personnel resources to update the information every month – you would need a team of 10 to 15 people who devote their time specifically to this issue.

Hence, the ETUI officer in question has sympathy for national employee representatives struggling to address the problem of transparency, noting that many works councils are not aware that they have colleagues in other European countries who should either be a member of an existing EWC or a potential co-applicant demanding the setting up of a EWC.

### **5.1.2 Applicability of the Directive and the problem of transparency**

In this section we consider the applicability of the Directive from the perspective of German employee respondents, namely “is my company covered by the legislation?” Although we surveyed and undertook case studies in companies covered

by the Directive according to both the TUM and ETUC databases, a considerable number of respondents suggested that their company did not fall under the remit of the EWC Directive. In fact, around 20 percent of non-EWC respondents were convinced that the EWC Directive was not applicable to their particular situation (see Table 6: Applicability of EWC Directive).

**Table 6: Applicability of EWC Directive**

Is your company is covered by the EWC Directive?	
<b>Yes</b>	26 (34%)
<b>No</b>	15 (19.5%)
<b>Don't know</b>	35 (45.5%)
<b>No answer</b>	1 (1%)

n = 77 Companies without an EWC

This tendency, a belief that “we are not covered by the EWC”, was also to be observed amongst some of our case studies. At two companies, for instance, Building Ltd and Household Ltd, the works councils questioned our assumption that they had the option of setting up an EWC when we contacted them to arrange an interview. Although they indicated a general commitment to all HBS activities it was suggested that we had been mistaken in our assumptions about the applicability of the Directive in the case of their company. The general basis for such a position is summed up excellently by the following respondent:

Before I became chair of the joint works council we legally checked whether we were covered by the EWCD after 1996, around the year 2000. The then chair of the joint works council played an important role: together with the IG Metall he checked the legal situation. The answer we got was that there was no chance of setting up a EWC, this was because foreign sales and distribution companies, in particular the Austrian company, at that time we did not have a factory in the Czech Republic, belonged to a Swiss holding. This was the main problem; the Swiss holding was the problem. From what I know this Swiss holding is absolutely independent of [HL]. I don't have any idea though how the parts are distributed, whether [HL] Germany has a part of this holding or whether it runs via individuals. Or whether other companies exist? (Works council member Household Ltd, Germany)

The above respondent sums up the main problem employee representatives face, in particularly as we shall see in privately owned companies, in conjunction with

the EWC Directive. The HL works council assumes that a company structure is in place which does not require it to comply with the EWC Directive. As a French respondent noted, this involves the following:

In my opinion it depends on the how the company is legally structured. How should I say this? How it is legally constructed. This determines whether we can have an EWC or not. (Works council secretary Building Ltd, France)

In the case of HL a company structure was in place, at least on paper, whereby the foreign subsidiaries belonged to a Swiss holding and not the main concern based in Germany. As a consequence of this constellation the works council is convinced, a conviction based on their knowledge of “Konzern” as defined under German law, that HL does not fulfil the criteria set by the Directive. According to the works council at HL the all important employee threshold laid down by the Directive, which stipulates that a company has to employ at least 1000 employees in Europe and has 150 employees in at least two Member States, is not breached. Hence, although the company employs around 10,000 workers in Germany, and 400 employees at each of its Austrian and Czech plants not to forget the various distribution sites it has scattered throughout Europe, various constellations were in place which allowed management to claim they were not required to set up an EWC. As the IG Metall officer responsible for Housing Ltd noted:

The argument we have always heard [from management] was that having an EWC was not possible, having contacts would be good, but there is no need to dig deeper into the advantages of EWC because the legal parameters do not apply.

In the case of Building Ltd, another family owned company, the works council again firmly believed that a company structure was in place which made it impossible to found an EWC. Here, a different strategy prevailed, one involving the division of the company between individual family members. As a result Building Ltd represents nothing less than an amalgamation of individual business units according to management. Interestingly, the company’s website is less guarded about its structure, after having consulted this source we could have been forgiven for believing that Building Ltd is in fact a single company. The website, for example, talks of Building Ltd employing so many thousand people across Europe at numerous European sites.

As we have suggested in previous works, German works councils are faced with the problem of transparency or a lack of it. This is especially a problem

when it involves privately owned enterprises (Whittall et al. 2008, 2009, Lücking et al. 2008). With the number of privately owned German companies covered but not possessing an EWC standing at around 80 percent, one explanation we have chosen concerns the fact that non-shareholder companies are not required to make information on management structures and revenue flows public. We should also not be surprised to discover that European Court of Justice cases involving employers' failure to provide information necessary to set up an EWC involved German firms in private hands, i.e. Bofrost, Kühne und Nagel and ADS Anker (Altmeyer 2004).<sup>5</sup>

Although these constellations very often exist for tax reasons or as means of circumventing the German Co-determination act ("Mitbestimmungsgesetz", applying only to companies employing at least 2000), such structures can serve to question the applicability of the Directive. This lack of transparency allows management, often falsely, to claim that they are not required if called upon to comply with the EWC Directive. For instance, in the case of Building Ltd an interview with the company's head of the legal department and someone responsible for labour related matters was very enlightening indeed. Not only did they refuse us permission to tape the meeting, the only time this happened in the two years of research, but they spent nearly two hours rebuking the claim that our research quite clearly demonstrated that Building Ltd was covered by the Directive. However, the respondent was forced to concede that Building Ltd was covered by the Directive. In fact, the interview was concluded with the respondent stating that one of their first tasks as a new employee in the 1990s was to check the Directive's applicability – the implication being that Building Ltd had long been aware of its legal responsibilities.

Such a managerial position, though, gains credibility when made if we consider that the definition of a 'group' normally applied in German law (e.g. for the application of the Co-determination act) is rather narrow. According to German law (§ 18 AktG) a 'group' is defined on the basis of a 'unitary management' ('einheitliche Leitung') structure, i.e. the direct influence of central management on the subsidiaries. However, management's strategy to deny the applicability of the EWC Directive is not fool-proof, as the Directive's definition of 'controlling undertaking' covers a larger set of cases according to Blanke (2006: 258). Article 3(2) of the Directive states, irrespective of the company structure in place the law

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5 Although Kühne and Nagel's headquarters is based Switzerland, the fact remains that it belongs to a German family. The decision to move the headquarters to Switzerland was in response to Germany's co-determination law.

is applicable where an undertaking holds a majority share (by capital or votes) of another undertaking or can appoint more than half of the members of that undertaking's administration, management or supervisory board. Hence many groups that don't fulfil the narrow criterion of the 'unitary direction' in German law are covered by the definition of 'controlling undertaking' under the EWC Directive.

Unfortunately, the stricter definition of managerial control applied by the EWC Directive has not helped undermine management's opposition to the Directive. To understand why this is the case we need to consider the question of actors' awareness of the directive discussed in the previous section. The fact remains that even though most German employee representatives are aware of the EWC's existence, such a statement says very little about actors' understanding of the Directive. Knowledge of the Directive and a practical understanding of the legislation are two quite different variables. Works councils at German companies currently without an EWC are generally unaware of their rights – in particular the "controlling principle".

Another very important point also needs to be recognised here – German works councils willingness to rely on managements' word. Does this represent naivety or something else? Our experience of works councils over many years would suggest that they are far from naïve. We suggest that the transparency problem is more complicated. That its sole purpose is to hide German works councils' lack of interest in EWCs. For instance, our survey results indicate (see Table 6: Applicability of EWC Directive, p. 41) that 45 percent of non-EWC respondents simply do not know whether they have the right to establish an EWC – we can interpret this as meaning "we have not taken time to clarify this point".

Certainly, German works council members interviewed did not appear inclined to exert themselves in clarifying this point. Undoubtedly, there exist real obstacles to discerning whether 1) "we are covered by the EWC Directive" and 2) "whether the relevant foreign employee representatives are at hand". These should not be underestimated. Although a simple phone call might help to address these two key issues the problems of language skills and time resources can hinder such contacts. Unlike the researchers responsible for this project works councils' might neither possess the necessary French and English skills nor for that matter the time resources required. Then there is question of who to contact, in the case of the UK it took 6 months in some cases to discover that a UK subsidiary actually had a works council and nearly as long to set up a meeting.

The fact remains, though, that the effort required to address a company's lack of transparency might be an excuse to hide German works councils' lack of interest in setting up an EWC. This brings us to another factor which needs to be considered in explaining the relatively low number of German EWCs, the EWC's lack of "added value" or what Costa and Araújo (2008) refer to as employee representatives' "sceptical view" of the EWC institution.

## **5.2 Limited resources and uncertain added value**

Common to all respondents on the employee side is the argument of limited resources. Even our German respondents with access to a well established employee representative infrastructure consisting of several full time officers referred to the lack of resources as a key reason why no European Works Council had been founded. The argument of "limited resources", however, has to be seen in light of the fact that actors are required to take decisions about what issues take priority. Obviously, our respondents have come to the conclusion that the benefits associated with an EWC do not outweigh the resources they would have to invest in order to set one up.

The underlying problem is best expressed by a respondent from IT Plc's German works council. At IT Plc there occurred a very interesting and intense debate both within the headquarters' WC and the German joint works councils about the advantages of having an EWC:

Those were our considerations, though not really extensive ideas, in the sense that you could say: this point must be addressed in order to achieve it [i.e. an EWC]. Finally, we shelved the idea. [...] Because other issues became more important and because setting up a European Works Council is simply a long-winded process that doesn't have immediate outcomes. (Works council member IT Plc, Germany)

The decision whether the setting up a European Works Council is worth the effort is based on a calculation that involves the following factors:

- Available resources. In the case of German works councils, there seem to be vast resources, though even these are not unlimited.
- The amount of resources necessary to set up an EWC ("setting up a European Works Council is simply a long-winded process").
- The added value of an EWC ("doesn't have immediate outcomes").

■ Priority of other issues (“other issues became more important”).

We will now take a closer look at factors one and three: available resources and added value as these form the basis of the calculation. For example, the shop steward of IT Plc France noted:

What can we contribute [to setting up an EWC]? What do we have to invest even though we will get nothing back in the end? (Shop steward IT Plc, France)

Normally, a lack of resources and a lack of conviction in the added-value of a EWC are the reasons explicitly given to explain the non-existence of a EWC. Hence it makes sense to take a closer look on the variations of these arguments. However, they implicitly depend on the two other factors. A lack of resources would not be important if setting up an EWC was an easy task that doesn't presuppose the allocation of a lot of resources. Yet those respondents who are well informed about EWC know that negotiating an EWC agreement can take years. Those who are informed already eschew the amount of time it costs to get this information. In most cases the first step, i.e. to find a partner to demand the setting up of a Special Negotiating Body, was deemed a very time-consuming task.

In Austria, there are only a dozen people, in Switzerland too, in France it's similar. It's between 10 and 40 people in all [European] countries – with the exception of Spain, there are several hundred. They have a works council, too. With regard to England we know nothing. It should be less than hundred. And this is a problem of structures, there is no critical mass [...]; and with regard to the service oriented subsidiaries, there is also a different mindset. In sales they are seldom in favour of a works council, I'd say. (Works council IT Plc, Germany)

In the end, however, the decision to set up an EWC depends on the priorities where to invest available resources. In all three countries we observe that most respondents feel overwhelmed by pressing local issues, an issue we will consider more closely the next section dealing with parochialism and the Diaspora.

### **5.2.1 Limited resources**

At first sight the argument of limited resources seems to be more convincing for the or British and French (most) case study sites, employee representatives at these sites having access to only a small amount of resources with regard to time, money



and expertise. In the case of German works councils such an argument appears less convincing as they have available a large amount of time (with several full time employee representatives) as well as expertise and other resources. Interestingly, German respondents didn't actually refer immediately to a lack of resources as an obstacle but to the amount of work the installation of an EWC involves. Setting up an EWC means more work for the chairs of the German works councils – additional time that they currently do not have at their disposal as e.g. the chairs of the German works councils at Packaging Ltd, Automotive Plc, Household Ltd, and IT Plc explained.

We as full time employee representatives do what we have to do for our German colleagues. Only when there is time left over can we take consider other issues. (Chair of joint works council IT Plc, Germany)

In the German cases the argument of limited resources depends on two factors: the estimation that negotiating an EWC agreement is a laborious and long-winded process and the priority of other issues that are deemed more urgent and more important.

These are our struggles at the moment. Thus this story about a European Works Council is only on second or third place. (Works council IT Plc, Germany)

Nevertheless, as we shall see below most German respondents emphasise that they were eager to support the request for an EWC if it comes from a foreign subsidiary.

OK, if someone else took responsibility for this and said "We'll do it!" and we at [headquarters] had only to contribute a small part, it would certainly be something else – better than if we had to organise everything ourselves. (Chair of works council Packaging Ltd, Germany)

Laying the emphasis on setting up an EWC at the door of foreign subsidiaries, however, fails to consider that foreign sites, especially in the case of the UK, are often ill-equipped to take the lead in setting up an EWC. First and foremost there ensues a general unawareness of the EWC's existence. Second, the sites we visited were all non-union. As a consequence employee representatives lacked access to an infrastructure which not only provided them with information on the procedure for founding an EWC but moreover the all important contacts to employee representatives in Europe necessary to submit an application to found a SNB. In

addition, most employee forums had only recently been set up. Thus, they are preoccupied with developing a functioning local employee representation system.

The situation in France is more complex and less critical but may help to understand the difficulties British employee representatives are confronted with. Despite the elaborate and strictly enforced legal framework in France, the employee representatives in our case studies face similar problems: lack of resources, discontinuity and lack of union support.

Among our case studies the French subsidiaries are very small (the only exception is Building Ltd with 2500 employees). As the number of employee representatives and the financial resources depend on the company's size resources are scarce.

We already take a lot of our private time – outside of our working time – to take care of the local problems in Paris. If we had to contact other people in order to know if they are interested or not – we both have labour-intensive jobs. There is just a lack of time. (Shop steward Insurance Plc, France)

We have the possibility to set up an EWC as [IT Plc] fulfils all the necessary criteria – because we have two large enterprises with a large number of employees in Germany and Spain – but not in France where we are only a few. At the moment we are at this point. We as employee representatives count on an EWC, yet at the moment it doesn't exist. And as we are only a few and overstressed, we just don't have the time to set it up. (Shop steward IT Plc, France)

A particular problem for the French subsidiaries is the high degree of fluctuation. Most works council members (e.g. at Household Plc, Insurance Plc, and IT Plc) were elected in 2006, in the case of Automotive Plc only in the last 2008 elections, i.e. two months prior to the interview. Shop stewards (“délégués syndicaux”) were appointed only recently (Automotive Plc and Household Ltd) or a few years ago (Insurance Plc and IT Plc). The low degree of continuity makes it hard to develop the expertise necessary for effective employee representation. The shop steward at IT Plc puts it in these words:

I would say we are still in a training phase. OK, that's maybe exaggerated but let's say: “I've still to learn my task as a shop steward.” And the headquarters has to learn to do things in a certain order, to share decisions they didn't share before, to give information they previously provided only randomly.

Thus, they have to communicate more, to discuss more. (Shop steward IT Plc, France)

Regarding the continuity of employee representation there is a clear exception in France: Packaging Ltd. Here a long established works council exists with a traditional CGT majority. In addition, prior to being taken over by Packaging Ltd it belonged to a multinational with an EWC. Hence, immediately after the takeover the French works council enquired about an EWC. The answer they received was that there was no EWC at Packaging Ltd. Also the German headquarters doubted whether the German Works Council was interested in an EWC (this argument might be true as at the time the AUB, an employer friendly employee organisation that pursues an official policy to concentrate on local issues, controlled the German works council). However, the French works council came to a special arrangement with the German headquarters regarding European level information and consultation. Management agreed to an annual meeting between the French works council and the German headquarters to discuss matters that go beyond the competences of the local management.

An important resource for setting up an EWC are trade unions. As shown above (see Table 5: Sources of EWC knowledge, p. 37) this is confirmed by our survey. The shop steward at IT Plc France expressed a similar view:

When I was elected as an employee representative I said: “I need a trade union.” At the beginning it was particularly a need for legal information as I don’t know Labour Law by heart. It was a need for resources. So I have searched the Internet for “information scientists trade union”. And there were the CGC and the computer anarchists. And I thought [IT Plc] wouldn’t be ready – for the computer anarchists, I mean, that would be too much. (Shop steward IT Plc, France)

However, most British and French respondents lacked adequate union support. In the British cases all employee representations were non-unionised. In France, with the exception of Building Ltd where unionisation is impeded by management, a union section with a shop steward existed. At Automotive Plc, though, union membership was only pro forma because according to French law important rights (mainly the right to represent employees in the obligatory annual negotiations) are restricted to trade unions. Nevertheless, there were only two cases in which the relevant trade union addressed the issue of an EWC. In the case of Household Ltd the German IG Metall and the French CFDT tried to establish contacts between

employee representatives of different European sites some years ago – albeit without success. The shop steward at IT Plc attended a union training seminar regarding EWC but due to time restrictions couldn't complete the whole course. She remained, though, the best informed respondent in France.

The significance of union support is most obvious in the case of Building Ltd France where the local management pursues a strict anti-union policy. Union membership is “forbidden”. The French subsidiary is divided into a large number of legally separated companies. The French headquarters has refused to set up a joint works council. As the individual companies are relatively small, the local works councils have limited resources while any attempt to establish contacts between local works councils is suppressed.

Interviewer: Are you member of a trade union?

Respondent: No. Nobody here is ...

Interviewer. Nobody is unionised?

Respondent: No. They don't like it too much here. It's not appreciated. I nearly lost my job because I ran for the works council. My direct superior, the director of services, didn't appreciate that I ran for the works council. At that time it was taboo. (Works council secretary Building Ltd, France)

In all other regards Building Ltd France is a case where a lack of resources shouldn't matter. It is by far the largest French subsidiary in our sample with about 2500 employees. However, as it is divided into a lot small units and does not posses a joint works council, resources are as restricted as in the other cases. Our respondent, the works councils' secretary at the French headquarters fulfilled this task for over seven years but still feels the need to learn more about their legal rights because without union support employee representatives have to familiarise themselves with Labour Law and the results of collective bargaining. Otherwise they are completely dependent on the information provided by the human resource department.

We have had this collective agreement for around a year. However, the works council didn't have the time to study it in detail. We are not many [people]. We are all alone. (Works council secretary Building Plc, France).

### **5.2.2 Uncertain added value**

Evidence would suggest, though, that the question of limited resources would be irrelevant should employee representatives be convinced of the need of an EWC.

If I considered it [the EWC] necessary and if I considered it important, I would push the issue. And I am sure that I would have got a majority in this case. And as for myself, I would set other priorities in this case. (Chair of joint works council IT Plc, Germany)

However, particularly German interviewees appear unconvinced of the EWCs' worth, rejecting the assertion that the advantages of such a European body far outweigh the perceived trials and tribulations of both founding an EWC and ensuring that such a body functions as a collective European employee representative structure. Concerning the last point respondents might find such reservations with experiences in a considerable number of existing EWCs, as research in this area suggests that EWCs struggle to represent the interests of all its members (Waddington, 2006; Whittall, 2007, 2009, Wills 2000; Telljohann 2007; Knudsen et al. 2007, Carley and Hall 2006). Interestingly the majority of EWC survey respondents, around 60 percent, suggested that it had had no real impact on their work at the national level.

A number of interwoven factors appear to help us understand German works councils' reservations about the EWCs added-value. The first concerns the question of competition between sites, i.e. management benchmarking, the very reason trade unionists' have shown a considerable amount of interest in this body – after all the EWC is seen as an institution for developing transnational solidarity (Whittall 2000, 2009; Knudsen et al. 2007, 2008). According to the majority of German survey and case study respondents benchmarking does not represent a reason to set up an EWC. Of the six case studies only two, Household Ltd and IT Plc, had had to contend with the relocation of production.

As is demonstrated below, this was particularly a stance of German works councils, employee representatives in foreign subsidiaries adhering to a different position. While French respondents share the scepticism with regard to the competences of an EWC in comparison to the legally enforceable rights of employee representatives in France, they consider the advantages of such a body to be more important than its limitations.

Thus they have only a consultation, right? Do they also have a right for action? (Shop Steward Household Ltd, France)

It's a good thing for all, in general. As all subsidiaries are automatically represented, I mean the European ones, it's certainly a good thing. (Works council secretary Household Ltd, France)

In general, employee representatives of foreign subsidiaries favoured an EWC, seeing clear benefits in such a structure. Unfortunately, expectations of foreign subsidiaries appear to go beyond what is legally permissible within the Directive, respondents seeing in the EWC a vehicle for harmonising terms and conditions rather than a simple tool for informing and consulting employees. The benchmark here being the superior vacation and working time entitlements of German employees. Interestingly salary was invariably viewed as a variable that could not be easily compared, this due to the great variance in the cost of living. Discussing the added value of an EWC an employee respondent from Household Ltd UK noted:

Holidays and also their working week, which is another thing that crops up, because in Germany they tend to finish quite early on a Friday and it is another thing that has been “why cannot we finish early on a Friday?” (Employee representative 1 Household Plc, UK)

Another concern involved the more important question of benchmarking. Unlike their German counterparts, evidence shows that employees at some French and UK sites appear more threatened by benchmarking exercises. When questioned about benchmarking the following respondent had this to say:

Obviously I am only privy to a certain level of information from the [production] side of things. So if the management have gone to France (plant) ... It was case of when we got the speed to, I can't remember what it was now, [that management said] “we are now running faster than France, we are making more than France, let us keep it like that”. So yes there is [competition] between countries, it is not just between plants in the UK, it is the French plant and this plant. And that does happen and still happens. (Employee representative 2 Building Ltd, UK)

Moreover, benchmarking has a human face. It involves the owners visiting the foreign sites on a regular basis. Such guest appearances result in a marked change in the sites' working environment. Employees are conscious that their future is dependent on German management's assessment of their performance. Such an assessment it needs to be noted is often part of an international benchmarking exercise. Before such a visit a great amount of detail is dispensed in improving the cleanliness of sites as well as getting production times up to maximum speed. The stress and insecurity involved in such visits encompasses the whole workforce, from the operator on the shop floor to the local plant manager:

[J]ust the tension. Everybody is running around like headless chickens' trying to get their reports done to present to Dr [Y]. They [departmental managers] have to present that [report] to the [plant manager] so he can see what they are going to say. Yes there is a tension and likewise when they [UK management] go over to Germany, there is a tension. "Is everything going to be OK or are we going to get shouted at depending on the state of the company, the turnover, what business is coming in?". (HR manager Packaging Ltd, UK)

I can remember one visit a few years back; (the owner) came over to decide whether we were going to get 20 million pounds investment ... Well when they say that to you, you say "well hang on a minute we have got to go all out here" ... To say that someone is going to come here and to invest 20 million pounds, it sounds a lot, it is a lot. It puts pressure on you. If they say "you have got a [Building Ltd] visit coming up" we know what the standards are going to be, we have all been here long enough now. (Employee representative 1 Building Ltd, UK)

Apparently less assured of their long-term future, employees outside of Germany view the EWC as an important potential platform for gaining access to central management. Whether such access eventually represents a collective response to neutralise social dumping or rather an individual attempt to promote national interests, what Wills (2000) ironically calls (international nationalism), remains an open question. The fact remains that an EWC would certainly be better than what is on offer now, the right to sit at the "high table" with central management.

However, it is just this right which foreign subsidiaries seek which German employee representatives appear to fear the most. Hence, though German respondents were by no-means categorically opposed to an EWC, after all to have been so would have placed in question what Miller (1999) calls universal principles trade unionism based around collective representation and international solidarity, they were unwilling to initiate the procedure for setting up an EWC. In fact, a position appears to prevail whereby German works councils believe that foreign subsidiaries should take the initiative in setting up an EWC, a demand which we have seen they would naturally support.

### **5.2.3 Modell Deutschland**

The more sceptical view of German respondents with regard to the added value of an EWC may be closely linked to the perceived continued advantage German employees enjoy via Modell Deutschland. A system which empowers German

works councils with certain rights. By default it makes employee representatives feel immune to the aggressive practices of central management. On the other hand, however, such a perspective needs to consider that German works councils have been far from “immune to the aggressive practices of central management” in the last years. Thus, the close proximity of German works councils to central management might offer nothing more than a “false sense of security”. It does not totally explain why German employee representatives’ rejection of the Directive.

The fact that German employee representatives in German multinationals function within an industrial relations setting which provides them with an array of co-determination rights, ensures that relations to management are very familiar (especially in privately owned companies), appears a major reason for German works councils questioning the value of an EWC. In four of the case studies, IT Plc, Household Ltd, Automotive Plc and Insurance Plc employees had access either to a supervisory board or economic committee.

As for Building Ltd the works council pointed to the traditionally good working relationship with the owners irrespective of their renowned opposition to certain forms of co-determination rights, specifically supervisory boards. This can be explained by what Simon (2005) calls the “emotional ties” that prevail in privately owned enterprises. In the case of Building Ltd, for example, such “emotional ties” are fermented through the owners’ active involvement in the local community, regularly attending the local church and gun club. Such a high public profile is reported to produce a sense of loyalty and close identification with management interests on the part of works council. For example, discussing how a French employee had been fired at the request of central management for attempting to set up an EWC, the Building Ltd works council demonstrated no sense of obligation to challenge such a managerial act. If anything this information was shared with us as an aside to demonstrate managements’ opposition to the Directive. Hence, where works councils represent what Kotthoff (1981) refers to as an “organ of management”, German employee representatives are unlikely to see the need of an EWC.

It needs to be acknowledged, however, that German works councils, unlike their foreign counterparts, potentially have easy access to management. Moreover, because of managements’ “open-door” policy works councils often play, or at least have the feeling that they play, an important role in company strategy. In light of these legal rights and the privilege of having regular personal contacts with management, a piece of legislation that talks of the right to be informed and consulted appears benign.



Furthermore, the benefits of German legislation not only produces a sense of apathy towards the Directive on the part of German works councils, but equally helps reinforce parochial tendencies observed amongst our German respondents. We are not claiming that this is a German problem alone; Costa and Araújo (2008) make a similar point in relation to Portuguese employee representatives. According to Hyman (1999) the immediate, in the case of EWCs the national and local levels represent the natural sphere employee representatives veer towards. The “local” is culturally and politically a haven from potentially intimidating external opponents; be it low cost labour in the new Member States or the 40 hour week worked in the UK. To different degrees parochial tendencies were to be observed in all six case studies. In one extreme case, Insurance Plc, provincial tendencies even had far reaching negative consequences for relations between the different German works councils, employee representatives disagreeing over the formation of a joint works council. Although speaking on behalf of the situation at Building Ltd, the message being promoted by the works council could have been made by at least four of the other five case studies:

But as the [German] works council I could be very egoistic, and to some extent I am. After all I am elected by the workforce here ... I have to ensure that when I go to an EWC meeting [talking hypothetically], and even though I see advantages in an EWC, that [Germany] survives. That means I have to enter into a critical dialogue with our managing director, and hopefully reach agreements over investment and units [here]. (Chair of joint work council Household Ltd, Germany)

In addition, the local focus of works councillors’ appears reinforced by the workforces’ limited horizon. The works council at Automotive Plc, for example, indicated that any attempt to set up an EWC would have to contend with opposition from the workforce. The works council made this assertion based on the difficulties they encounter in fulfilling their joint works council responsibilities, the workforce constantly asking about their whereabouts. Costa and Araújo (2008: 314) make a similar point that an obstacle to setting up an EWC involves the fact that:

The defence of employees at workplace level is a priority, and this priority is reinforced by the fact that the elected bodies are the direct representatives of their own workers and are obliged to respond to their wishes.

The shop steward (“délégué syndical”) at Automotive Plc France expressed a similar view:

We live in Europe but we are still enclosed in our frontier. Yet we don't make the step to convene everybody although we live in a worldwide structure, a worldwide enterprise in the end. (Shop steward Automotive Plc, France)

In essence what the German Automotive Plc respondent was saying applied to the other case studies, namely that "visiting other German sites and meeting with other employee representatives based there (usually in the same union) causes problems: visiting and meeting with people from foreign subsidiaries is likely to cause a revolt."

A reluctance to share access to management with foreign subsidiaries, namely to participate in joint meeting with management to discuss the direction of the company, does not necessarily exclude a lack of interest in accommodating foreign subsidiaries as well as it does not threaten what Lecher et al. imply could be referred to as the "home advantage" (1998: 224–25). On the contrary, case study respondents implied a willingness to negotiate with management on behalf of foreign subsidiaries. As is shown below, such a position is best described as the Diaspora factor. Again it represents from the host country perspective another feasible argument for not setting up an EWC, the assumption being that key functions of an EWC are already in place.

## **5.3 Parochialism and Diaspora**

### **5.3.1 Parochialism – Limited Horizon**

As already noted, existing EWC research demonstrates that a major obstacle to good EWC relations, measured as the coordination of collective European interest, is hampered by the lack of common identity amongst EWC delegates (Knudsen et al. 2007; Huijgen et al. 2007, Telljohann 2007, Kotthoff 2007, Müller and Rüb 2007). Knudsen et al. (2007: 11), for example, note that EWC delegates arrive on the European scene 'with different experiences, perceptions and expectations.' Such a perspective, we would argue, even more so applies to employee representatives who have failed to take advantage of the EWC Directive. At least EWC delegates are confronted with alternative value systems. Hence they are often required to go through a period of self-reflexion which involves questioning employment practices traditional to their environment (Whittall 2007).

This brings us to another variable that plays a significant role in undermining, particularly that of employee representatives in the host country, actors' commitment to setting up an EWC. It involves the question of parochialism, the notion

that one's local environment, an environment which provides not only a strong sense of security but the closely associated factor of recognition, recognition from the local workforce and management alike, represents an obstacle in the foundation of EWCs. As Hyman (1999: 96) rightly notes:

We are shaped by our direct experiences, immediate milieu, specific patterns of social relations. Broader identities and affiliations are founded on the direct, immediate and specific, through intersubjectivities which link these to the external and encompassing.

As seen in the section dealing with added value, particularly the part which discusses Modell Deutschland, German works councils not only have the feeling that their interests are catered for within the existing arrangements, but they understand the rules of the game. Moreover, local arrangements are the source of their power and influence, "they define who I am and what I can do" (recognition). As one German trade union officer noted:

... German works councils fear EWCs because they do not possess the necessary skills to be competent within such a structure. (IG Metall officer)

The workforce also plays a not unimportant role in intensifying the pull of the "local". Potentially more inclined towards parochial tendencies than works council representatives, the embeddedness of the latter in trade union structures beyond the factory gates going somehow to widen their horizon, the workforce is often reluctant to support such foreign adventures (Whittall 2003). Naturally, in a global market such reluctance takes on added value as does the fact that some of the companies in question, Building Ltd, Packaging Ltd and Household Ltd, were the main employers in the area:

[T]he chair of the joint works council, responsible for six sites, has a relatively good life because the products of these six sites are not in competition with each other. The danger associated with a EWC that represents 9 production sites with identical products is that naturally competition exists, namely a potential plant egoism in which one is only concerned about their own plant. So far we could always be supportive of each other, and this is difficult with new plants and identical products. The biggest challenge is reaching a reasonable distribution of investment and product units. (Chair of joint works council Household Ltd, Germany)

These factors ensure that local representatives can feel inhibited and hence reluctant to found an EWC:

...we are elected by the people here, not from the people in Europe and not from workers from the other German plants. (Chair of joint works council Automotive Plc, Germany)

The above respondent, for instance, noted that the local workforce is critical of their work as chair of the joint works council, a position that ensures that they can often be absent. As a consequence it is not uncommon that the respondent actually receives fewer votes than their deputy, a person who has a profile on the factory floor. According to an IG Metall officer responsible for Household Ltd a fear prevails amongst company representatives that the workforce will view the EWC as nothing less than an opportunity to travel at their expense around Europe, staying in smart hotels and enjoying the delights of the local cuisine.

None of this should come as a surprise. After all industrial relations researchers and practitioners have long had to contend with the fact that workers' fixation with the "immediate" (Hyman 1999) ensures that labour solidarity is a very fragile and rare commodity, especially in times of economic insecurity. The great proponent of world councils, Charles Levinson (1972), for instance, was forced to concede that international solidarity was plagued by what he termed "polycentrism" – national chauvinism. Due to its lack of mobility, labour and their trade union structures have been historically disadvantaged, dependant on building company specific and national patterns of collective relations (Lecher and Naumann 1994; Mittelman 1997). As Offe and Wiesensthal (1980) note in their work on "class theory and organisational form" the diverse nature of capitalist organisation creates an in-built heterogeneity within trade union structures.

Seen from this perspective the failure to set up an EWC should not come as a surprise. Interestingly, German works councils were not totally opposed to EWCs, they simply do not view such an institution as a priority area, especially in-light of the rights already enjoyed. For example, German works councils exhibited a willingness to support foreign subsidiaries move to set up an EWC, but they had to "demand it":

Okay we thought about it and asked ourselves "do we not have to do something". Equally the Spanish could do something. They have the same rights as we do. But nothing happened. If other countries want it then they have contact to us. (Works council member IT Plc, Germany)

Furthermore, an appreciation of foreign subsidiaries' right to have access to central management involved in some cases a willingness on the part of German works councils to facilitate such contact to central management. Here, employee German representatives are a substitute for an EWC, what we refer to below as the Diaspora.

### **5.3.2 A clear conscience – Diaspora**

Some of our German respondents' demonstrated traits to what Kotthoff (2006) labels the Diaspora factor. This involves German works councils taking on the role as the spokesperson of the 'Diaspora', i.e. speaking on behalf of the foreign subsidiaries 'scattered' across Europe. Seen from this perspective the German works council is the "advocate and guardian angel" of foreign subsidiaries. In this role:

The chair uses their close relations with the German management to "do something for the colleagues in the other countries", "to exert a bit of political pressure", and "to positively accompany the process". (Kotthoff 2006: 75)<sup>6</sup>

For example, the chair of the joint-works-council at Automotive Plc indicated they had had contact with Spanish employee representatives. Initiated by the Spanish employee representative the individual in question was interested in discerning what daily allowances German employees were entitled to when posted to work on foreign sites. The request for information came about after Spanish employees had complained at being forced to live in inferior accommodation compared to their German colleagues who they worked alongside – this, it was assumed, was due to their inferior daily-allowance. Interestingly, the German employee representatives were not only forthcoming in providing information about German daily-rates, but successfully lobbied German management to improve the rates paid to Spanish employees. A similar case also is to be observed at IT Plc. As the respondent notes, this time it involved the redundancy of Spanish workers:

A recent case involved like I said redundancies in Spain. They sent us something to let us know that something was about to happen, and requested that we support them morally or anyway we could. And we got our representatives on the supervisory board to ask questions to find out what was happening down there. The Spanish colleagues then reported on what actions they had undertaken, what they had done in Madrid. They closed the training department which involved around 20 people... (Works council member IT Plc, Germany)

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6 This was translated from German into English by the authors.

The intervention of the German works council seemed to have some effect. Even the HRM director for Europe, otherwise rather critical towards employee representation, took Spain as an example of a situation where bad human resource management leads to conflicts. Finally, the German board appointed a new human resource management in Spain.

The Diaspora concept can also be applied to the works council at Household Plc and Insurance Plc. At Household Plc the works council was called upon by the IG Metall to support Czech unions request to get access to its Czech production site. As the Household Plc respondent notes it was more than willing to put pressure on the German management to facilitate union recognition:

... we informed, and this was the wish of the Czech trade union officer, our management that "we want to visit the Czech Republic, we want to see the factory, we want to ensure that trade union officers are allowed to come into the factory and look at the factory, and we want to do this together with the union. And if possible together with the factory manager consider how a trade union or employee representative structure can function. (Chair of joint works council Household Plc, Germany)

At Insurance Plc the respondent described how posted German workers function as European missionaries for the works council in Germany. Posted workers keep Germany in touch with developments at foreign sites, in particular bringing to light employment issues which the local workforce is unhappy about. In addition, posted workers help inform the local workforce of the support they can expect from the German works councils:

[The local workforce is] represented by the German works council, also when this involves individual conflicts. Also single cases, for example, when an employee is not happy with their salary or receives less social benefits than say in Germany, the employee at the foreign subsidiary contacts the German works council. We do not have any problems with the language because as it should so happen an Italian colleague is a member of the works council and other languages are also present. (Works council member Insurance Plc, Germany)

However, the argument that European representative structures exist by default due to the presence of a Diaspora, making the EWC redundant appears problematic for a number of reasons. First and foremost, the commitment to raise issues with central management on behalf of foreign subsidiaries depends very much on

management's willingness to co-operate. As the works council at Household Ltd was to learn in connection with the Czech trade union request such a voluntary system of representation breaks down once management refuses to enter into discussions. In this case the Diaspora is no substitute for the EWC Directive – the existence of an EWC would have offered Czech workers a platform to raise the issue of trade union recognition.

The main finding, however, which undermines the Diaspora argument concerns the lack of contact that German works councils have to either employee representatives or the workforce of foreign subsidiaries. As a consequence interviews undertaken in both the UK and France unearthed no evidence to corroborate the picture painted by the German works councils. Ironically in the case of IP the well informed German works council was not even aware that their London offices possessed an employee forum and that its members were very keen to contact their German counterparts. It is also important to note, that when such contact prevailed it involved the foreign subsidiary taking the initiative. Surely the notion of Diaspora requires German employee representatives to have an overview of developments outside of Germany as well as regular contact to employee representatives at the various foreign subsidiaries. This was not the case. Ironically employee representatives at the Household Ltd UK site stated that they had been to the German headquarters only the previous year, but that they had not had contact to works council there. A similar picture emerges at IT Plc, too, employees from foreign subsidiaries often required to participate in training seminars at the German headquarters:

Okay there are a lot of Bulgarians that come here to learn about the products. But we have never had contact to them. (Works council member IT Plc, Germany)

In summary, there was no evidence which supported the notion that existing relations between the German works councils and foreign subsidiaries, relations which entailed the former speaking on behalf of the latter, prevailed. When contact did occur this proved not to be sustainable – once the issue in question had been addressed actors resorted to their old custom and practices. It did not represent a catalyst to develop such relations.





## 6 Different types of internationalisation

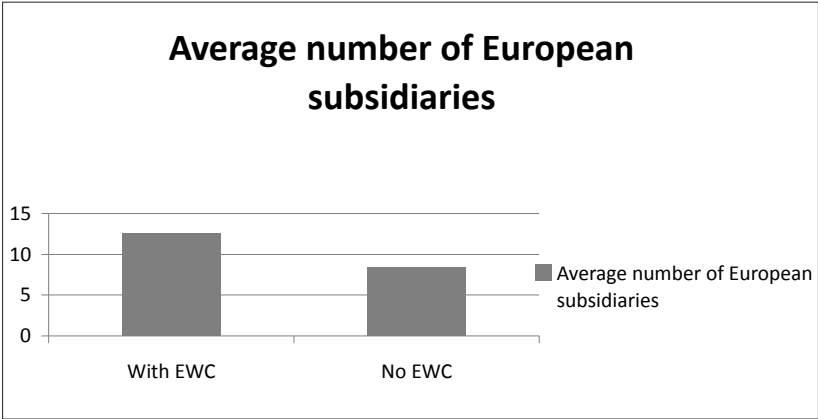
According to a common thesis the existence of a European Works Council depends on the internationalisation of the company or group. In highly internationalised companies the need for a European level form of employee representation should be more obvious than in companies that are present in international markets but where such markets remain national in character due to the fact that they retain a high degree of organisational autonomy. However, it is not easy to empirically prove or disprove this thesis. First of all it is not even clear how to define “internationalisation”. The mere number of European subsidiaries, for example, might just be an effect of the size of a company or group. The relation of domestic to foreign employees is a clearer indicator of internationalisation but doesn’t necessarily lead to clearer results with regard to the probability of an EWC. For instance, in the survey carried out by Lecher et al. (2001: 184f) it is demonstrated that the probability of an EWC increases only slightly, yet not significantly in companies with a higher proportion of employees abroad.

Apart from the difficulty of measuring “internationalisation” on the basis of statistical data, it needs to be acknowledged that there are different types of internationalisation with regard to economic activities or management structures that sometimes have opposing consequences regarding the probability of an EWC. The particular situations in our case studies help to differentiate between these different types of internationalisation – the more so as a common trait of our cases is the recent development towards a higher degree of internationalisation. In some cases this refers to an increase in the significance of benchmarking due to reorganisation of production (Automotive Plc, Building Ltd) or relocation of main economic activities to the New Member States (a Czech production site at Household Ltd, a Bulgarian research and development office at IT Plc). In other cases it involves employee representatives complaining about internationalisation of management structures making it more difficult to represent employee interests at local or national levels.

### 6.1 Statistical evidence

From a statistical point of view the stats show, as should be expected, that companies with an EWC ( $n=39$ ) have more foreign subsidiaries (12.6 in average) than companies without an EWC ( $n=77$ , with an average of 8.4 subsidiaries). This discrepancy is statistically significant ( $T=3.03$ ,  $p=.003$ ).

**Figure 3: Internationalisation**



Average number of foreign subsidiaries

However, internationalisation is not only dependent on the number of foreign subsidiaries in the European Economic Area (EEA) and the relation between domestic and European activities (e.g. proportion of employees in foreign subsidiaries and domestic employees (host country)) but also on the distribution and size of the European subsidiaries as well as the significance of the European market in relation to other foreign markets. If a group has only a small number of large European subsidiaries in which each has a considerable number of employees, setting up an EWC will be far easier than in a group with the same proportion of European employees spread over a large number of small subsidiaries. The latter is the case for most of our case studies. For instance, explaining the reasons why IT Plc has no the French shop steward refers to the company’s structure:

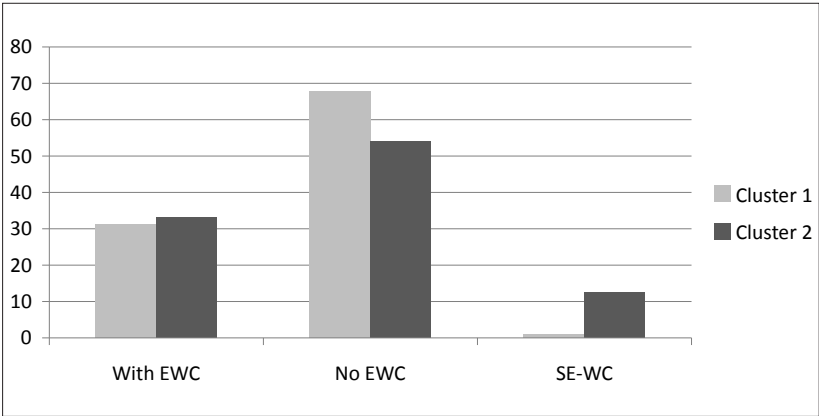
However, knowing we are 70 countries with around 4000 employees you can deduce that each subsidiary doesn’t have many employees [...] Actually, it’s IT Plc’s structure that does not consist of one or two countries which account for all the employees, but it has many subsidiaries with only a few employees. (Shop Steward IT Plc, France)

A similar structure can be found in other companies of our sample. While in each case there exists at least one foreign subsidiary with more than 150 employees (i.e. they pass the thresholds set by the EWC directive), most subsidiaries are considerably smaller. Even in the companies with more than 10,000 employees

in Europe (Building Ltd, Household Ltd, and Insurance Plc) most European subsidiaries have less than 200 employees.

Regarding the distribution of European subsidiaries our survey allows us to identify two clearly distinct company clusters. Cluster 1 (n=93) covers companies whose European subsidiaries are mainly located in Germany, France, UK, Netherlands, Austria, Spain, Italy, Poland, and the Czech Republic. Cluster 2 (n=24) covers companies with a higher proportion of subsidiaries in Bulgaria, Denmark, Estonia, Greece, Malta, Norway, Latvia, Lithuania, Finland, Ireland, Portugal, Romania, Sweden, Slovakia, Slovenia, and Cyprus. Cluster 2 companies have considerably more foreign subsidiaries than Cluster 1 companies (on average 23 compared to 7 countries). Furthermore, there are significantly more companies without EWC in Cluster 1 (67.7% vs. 54.2%) while most companies with a European company structure belong to Cluster 2 (3 companies vs. 1 in cluster 1).

**Figure 4: Clusters of internationalisation**



The two clusters can be seen as an indicator of two types of internationalisation. German companies with a lower degree of internationalisation concentrate on a set of core EU Member States (France, UK, Netherlands, Austria, Spain, Italy) and their focus on the New Member States is concentrated mainly on Poland and the Czech Republic. Interestingly all our case studies belong to this cluster – irrespective of their size or the relationship between foreign and domestic employees.

## 6.2 Economic structure

With regard to economic structure the meaning of internationalisation depends on several factors. First of all this involved the homogeneity or heterogeneity of the European sites. Are the European subsidiaries comparable with regard to their economic activities? In companies with production sites in several European countries the need for an EWC might be more obvious than in companies where most foreign subsidiaries are only sales companies. Among our case studies the latter is clearly the case for Insurance Plc and to a lesser degree for Household Ltd (that has opened a production site in the Czech Republic) and IT Plc (that recently moved part of its Research and Development to Bulgaria).

Another factor is the strategy of expansion, in particular the purpose of foreign production sites: Do these sites serve as a market entry strategy? Or is production moved abroad to make use of comparative advantages in the form of higher productivity, lower wages, subsidies, lower taxes, etc. In the former case foreign subsidiaries retain a national focus; thus employee representatives might see no advantage in setting up an EWC. In the latter case, however, a European works council might be a safeguard against benchmarking between production sites.

The argument that benchmarking between European production sites plays no role because foreign sites mainly serve as market entry is frequently used by respondents of three of our cases studies (Packaging Ltd, Building Ltd, and Automotive Plc). In the case of Building Ltd the argument is closely linked to the nature of the products, heavy construction materials where transportation costs are relatively high. According to the German human resource manager Building Ltd adheres to a strategy which stipulates that the distribution of its products should not exceed 200 km – hence it is dependent on having production facilities directly in its key markets.

[Building Ltd] went to the UK in 1988/89, at time when demand was high, the bubble burst in 1991, at the very time when we built two new factories, one in ... the other in ... The market was declining by 40 % within 3 months. The UK was not subsidised by the [headquarters], it had to survive by itself. This says a lot about the firm's philosophy, these years, 88, 89 and 1991, were very influential in influencing [Building Ltd]'s view that countries are responsible for themselves, it explains quite a lot about the relationship between England and Germany and their will to survive without the support of others.' (Human resource manager Building Ltd, UK)

At Packaging Ltd the chair of the German works council explained that foreign subsidiaries were founded or taken over to achieve access to national markets. As an example he refers to the plant in Poland that was built following the request of an important customer who moved part of its production to Poland. In a similar way the already existing plant in France was bought to gain entry to the French market where Packaging Ltd now is the market leader. However, during the tour of the German plant we noticed large quantities of packages with Japanese imprints. The respondent told us that these were produced for an Australian customer who exports many of its products to Japan.

In the case of Automotive Plc international expansion originally was guided by the strategy to locate production sites near the main sites of its customers, i.e. car manufacturers. However, Automotive Plc changed its production strategy several times in the last decades, at times concentrating core activities at single place and then distributing the same activities amongst its other production sites. Being situated close to the customers' production sites remains a factor. However these subsidiaries may be very small. In France the company has 7 so called "antennae" sites near the production facilities of French car manufacturers – each with less than 10 employees. These small teams are responsible for customer support and the installation of new equipment. Most employees of Automotive Plc France work at the main site near Paris. In the UK employment has been reduced from 240 in 1997 to less than 80 in 2008 (this reflecting a decline in the size of the British car industry). There is no production left. The British subsidiary focuses on selling and developing designs – including the completion of significant contracts outside the UK (e.g. Russia, India, Australia and Romania). Generally, a flexible workforce supports the group globally.

At the moment the Automotive Plc's strategy aims at a highly integrated structure – the group's new motto is "one face for customer". In recent years there has been a move to develop a consistent approach to project good management practices – a document was developed at the headquarters outlining how project management should be undertaken. This also applies to accounting reports and schedules. Such a strategy clearly has consequences for the autonomy of European subsidiaries. In France both respondents discussed how autonomous Automotive Plc France is in relation to the German headquarters. While the works councils' secretary stated that French management is "completely autonomous" and that it wouldn't be "unusual" if the German management took a decision affecting French employees without consulting the French works council, the shop steward

had to concede that this had happened when a complete department was closed some years ago:

The decision was certainly taken in Germany. Even if one says that the French management is autonomous, it's wrong. It's Germany who makes the directives. (Shop steward Automotive Plc, France)

### **6.3 Management structure**

Finally, internationalisation can refer to management structures: How centralised is management? How dependent or independent are the foreign subsidiaries? A highly centralised management means that local management does not have too much room to manoeuvre and this might lead to situations where local employee representatives feel the need for centralised interest representation at European level. Some of our French respondents complained that local management's hands are tied, particularly regarding wage increases. Hence, the obligatory annual negotiations are dominated by a third party that is absent: the director of human resources at the German headquarters. In these cases it makes sense to negotiate directly with the German management. At Packaging Ltd the French works council has achieved an agreement about an annual meeting with German management where issues are discussed that exceed the competence of the French management.

An extremely integrated management structure can be observed at Insurance Plc. All European subsidiaries are led by a German manager. Furthermore, German employees are regularly dispatched to European subsidiaries. Thus, the German influence is very strong, local management is completely dependent on decisions taken in Germany:

Although we are three separate business units in the UK, we are Munich led. Whatever we do down here is reported to or is controlled from an area that is not fully controlled here. Maybe some one from Munich should come to our staff forum. (Employee representative Insurance Plc, UK)

In other case studies local management has more autonomy. However in three cases (Automotive Plc, Household Ltd, and IT Plc) recent developments towards more centralised management structures can be observed.

The first moves towards a more internationalised management structure can be observed at Household Plc. Most European subsidiaries were founded during the 1960s as sales companies for the major European markets. At that time the

company strategy was to transfer the company's family culture to their European subsidiaries. This matched the company's marketing strategy based on the image of solid products "made in Germany" that could be more expensive because of their superior quality. For instance, the secretary of the French works council vividly described how, in the early 1960s, the company conveyed the task of setting up a French sales company to a young French person of modest middle-class background who gathered a couple of equally young people to build a company with a distinctive family touch.

Someone, who came not exactly from the lower classes but a modest class background, not very high, and who founded the company with people who at the time had an age of 30 to 35 years. [...] And he has really built a family company that is very hard to reproduce. Now, it's more a business company, i.e. with less heart, less feeling but much more is demanded from employees. (Works council secretary Household Ltd, France)

What has changed in the last years, however, is not only the culture. The French company's founder, who had the title of a PDG ("Président-directeur général"), had a great deal of autonomy. They could decide on most issues independent of the German headquarters. When they retired they were replaced by someone with far less autonomy, someone who was given the lesser title of DG ("Directeur générale"). Due to intensified European competition Household Ltd changed its business strategy. While high quality standards still play a key role, the company has become more aware of cost factors and as consequence subsidiaries have to follow tighter guidelines:

At the end of 2000 the power was transferred to a person picked by the headquarters as a DG. Since then things have changed considerably, a much harder management regime exists, clearly the family spirit has disappeared. (Works council secretary Household Ltd, France)

This poses the problem for employee representatives that their local counterparts are not only less autonomous in their decisions and bound to tighter requirements by headquarters but in some cases it is not even clear who the local counterpart is for certain questions. In such situations the need for a European level employee representation becomes more evident.

The case of IT Plc makes it even clearer how controversial the internationalisation of management structures can be. Since 2007, following the acquisition

of an USA based competitor, human resource management at IT Plc has pursued a strategy of internationalisation which have had immediate repercussions for industrial relations. The German works council mainly has to deal with two kinds of consequences: conflicts between German employees and their foreign superiors and a struggle between the German works council and management about the global harmonisation of regulations that are subject to the works council's co-determination rights. Regarding the first issue the underlying problem is that in the framework of the new "International Business Units" some German employees now have foreign superiors that are unfamiliar with German labour law.

As works council we have the problem that often – as an effect of this internationalisation which includes teams – employees have superiors for instance in the USA who deal with their staff in a completely different way than how you'd do it usually in Germany. They have no problem to fire someone overnight. They just don't understand that when they say that they don't need a function any more, the next week the employee is still there – in Germany. They just don't understand it. You can't fire a staff member just like that. Thank Goodness! (Works council member IT Plc, Germany)

The second issue relates to the competences and rights of the German works council. In the frame of the new internationalisation strategy IT Plc's managements wants to introduce global standards that partly affect issues that fall under the German works council's co-determination rights. While the works council insists on its rights, management argues that the German works councils cannot negotiate rules applying to all employees worldwide.



## 7 Management's point of view

If one analyses the reasons for the non-existence of a legally guaranteed institution of workers interest representation (as the EWC is one) a traditional approach would be to ask the ‚cui bono’ question: Who benefits from the fact that no EWC was founded in an enterprise? And an equally traditional answer would be: The management, of course! Therefore, from a theoretical-analytical point of view ‘resistance from management side’ would be expected to be one of the key answers to the leading question of the project: Why do so many German multinationals fail to implement the EWC directive?

The problem with this answer is that it is empirically not correct: Of course, there are companies where the management – for reasons to be discussed below – is not enthusiastic about the establishment of an EWC and as a consequence tries to prevent it in different ways; but in general our empirical data suggest that only a minority of companies affected would be strongly opposed to a concrete works council initiative to install an EWC. Most management seem to take a basically neutral stance towards the issue; no manager would actively encourage such initiatives but, in general, managers would – with remarkable exceptions – accept it if the workers representatives wished to take the first steps to install a SNB.

This is not very surprising if one looks at the usual size of companies affected by the directive: The EWC directive is restricted to bigger companies, and therefore to companies which usually have a works council according to the German law (‘Betriebsverfassungsgesetz’). This means that the management is ‘used’ to institutionalised workers’ interest representation – even with a much wider spectrum of competences than granted under the EWC directive. From the German management’s point of view the EWC may be regarded as a rather harmless institution with comparatively very restricted competences.

In the following we will concentrate on those cases where the management played a relevant part in the non-implementation story – thus somewhat overemphasising the negative aspects of managements policies toward this European institution. We will first present management’s main arguments against EWCs (7.1); in step two we will also look at possible positive aspects of EWCs from a management perspective (7.2).

## 7.1 Why managers do not like EWCs

Managers' criticism of the EWC directive does not stem from a general anti-European attitude. Despite the fact that some of the managers also reproduce the well-known arguments against the supposedly exuberant 'regulation-mania' of the EU legislative bodies with the result of a tendency to over-regulation which stifles any entrepreneurial spirit, most of the managers interviewed outed themselves as 'pro-European'. Even UK managers stated that they were "great fans of Europe" and criticised Brussels for bad PR.

The opposition towards the EWC is also not always a result of a general anti-union or anti-codetermination position. Of course, a general anti-union attitude is quite widely spread in family-led companies in Germany. A British manager sums up the position of his German colleague as follows:

'Peter has always fought against unionisation. When I say fought, it is just something he just does not particularly like for the organisation. He knows though that there is nothing he can do about it because if the individual or a group of them want trade union recognition there is not a damn thing he can do about it.' (HR manager Packaging Ltd, UK)

And some managers from UK also thought that they were 'not keen to become unionised' – a point of view shared by a few French managers who told stories about their 'war' against the communist CGT. In these cases a general anti-EWC attitude is the direct result of a general anti-union attitude and a matter of course which does not need special explanation.

'No. It is not something that they (the workers' representatives) feel we should do. And I certainly feel that it is not felt that we should do something from this end either.' (HR manager Packaging Ltd, UK)

Proper anti-EWC-arguments, therefore, were mainly brought forward by members of the more moderate management faction who thought that they needed to substantiate their position. The main arguments were:

- cost factor
- bureaucratization
- fear of transparency
- plant autonomy
- local culture

### **a) Cost factor**

A EWC produces additional costs which management generally believe to be a waste of money that should be prevented. As they are sceptical of the institutions value anyway, the vision of several workers' representatives flying across Europe in order to have pointless meetings for which the company has to pay is hard to bear for many interviewees. On several occasions the interviewers were asked whether they knew how much a flight to Riga or Lisbon cost. That the company would even have to pay for interpreters because many workers' representatives do not speak foreign languages caused shakes of the head.

### **b) Bureaucratization**

It is a widespread belief amongst managers that only a maximum of entrepreneurial freedom can lead to economic success. Bureaucratic regulations in general are seen as problematic, and in the eyes of many managers, the establishment of a new EWC would be an inexcusable example of an increased bureaucratization of management processes – instead of deregulation of the economy. An EWC would simply mean another committee whose members think they should try and influence the management policies, another committee which management has to inform or even consult before major entrepreneurial decisions are taken.

Especially in Germany, where you do not only have a 'Betriebsrat', but maybe even a 'Gesamtbetriebsrat' and/or a 'Konzernbetriebsrat', and where you have workers representatives in supervisory boards a further institution seems to be superfluous to many of the interviewed managers. Additionally, one of the fears is that the German works council with all his competencies might serve as a kind of role model for the EWC.

In our company 'there is a willingness that we don't create a European type forum, European works council. Why? I think because of the fear of German works council veto, and that it could become even bigger, European wide.'  
(Head of HRM Insurance Plc, UK)

### **c) Fear of transparency**

'Fear of transparency' about working conditions via EWC information channels was a standing topos in most of the management interviews. It is argued that such transparency would only produce dissatisfaction amongst the Group's workforce. For example, in the UK employees receive on top of their basic salary a contribution to a private pension scheme, this amounting 20% of their salary. On the other hand German employees benefit from considerable, around 2 weeks, more

holidays a year. Then there is the extreme cases involving employees in Eastern Europe whose terms and conditions are considerably inferior to those of their Western Europe counterparts. If all the different working conditions in the various countries covered by the EWC directive would become transparent it would only be a question of time until the EWC would ask for assimilative action.

You have to consider very carefully whether there is any gain, not only for the entire group, but for the employees and therefore for the individuals. One thing is clear, and that is one good reason not to do it. We just spoke about the different salaries in each country. That is one thing which is hard to compare in the first place – how to tell a Chinese boy that he is earning 5% of the UK salary although he is doing the same job. This is one of the good arguments for the family: “We are not doing that because then ten thousand in Russia and another nearly 1000 people in China will want to increase their salary because we are working in the same company”. (Product manager Building Ltd, UK)

The probable result of increased transparency would be dissatisfaction and unrest amongst employees:

I can see it from that point of view. Because then all you are doing is causing total unrest. Unfortunately there is cheap labour and if organisations can get people in to do it at the rate the employees are happy to work for and then they find out that their counterparts in another part of the organisation are getting more then I can understand them being aggrieved at that. And so I can understand why the parent company perhaps would not want that to be transparent. (HR manager Packaging Ltd, UK)

A different example of transparency leading to dissatisfaction related to special expatriate allowances in one of our case study companies: Someone going to London from Germany would be paid the going British rate, plus an additional allowance for housing, the inconvenience of the move and schooling (this for certain key positions). This can cause some issues as you can have two people sitting next to each other, one is posted worker from Germany and the other is UK based, with the worker from Germany getting a lot more money. In the past these allowances were much higher and it caused an issue – now there is a set formula and it is far more appropriate and people don’t see it as such an issue. However, there is a scenario where the delegates from Germany live in places where UK workers cannot afford to live, i.e. central London. Most UK employees live outside of the city and have an hour’s commuting each way everyday.

In several interviews it becomes obvious that management prefers the classic ‘divide et impera’-strategy: Keep employees of different plants apart from each other; this prevents unwanted comparisons about working conditions as well as any act of solidarity.

The company is a series of islands and the question is whether you wish to push them together as a continent because as a series of islands it is easier. (Site manager Building Ltd, UK)

We want to keep them (i.e. employees and their representatives) very separate, we are not in favour of them having contact. (Product manager Building Ltd, UK)

#### **d) Plant autonomy**

Several managers mentioned the decentralised structure of the group as a major reason why a supra-plant body of workers’ representation would not fit to the company. All the plants of a group are somewhat in competition against each other as they are continuously benchmarked and controlled. Therefore the plant one is employed at is the entity for workers to identify with – and not the workers in competing plants

I have not even thought about it – because each country is deemed (different). It is almost divide and conquer. I am not sure as a corporate group that gets identified with. (Site manager Building Ltd, UK)

In addition it is quite obvious (and is linked to the transparency issue) that owners prefer to keep plants separate. This does not only refer to workers but to local managers as well. Asked how working conditions compared between Germany and the UK, a UK manager thought:

I have no idea how they compare, I do not have any contact with Germany. I have no need to have contact because I believe whatever they do over there would not have any bearing over here. (HR manager Packaging Ltd, UK)

Plant autonomy in this case means that the manager thinks that they have to work in a specific UK context, others have to work in other contexts and have worked out different strategies – and all should be successful. Therefore, again, it would not make any sense for employees to compare standards among the different plants because working standards are only one single element of an overall production

model. If a EWC, for example, would want to raise working standards in a Russian plant to those of European standards it would simply destroy the specific competitive advantages of this local production model which might eventually lead to the plant's closure

(...) because what has worked for us well involves informality, speed, ability to be flexible, the idea of putting the systems (i.e. group wide standards) in place is not so attractive because it maybe viewed sometimes as something that will slow us down. (...) "Why would we want to change it?" (HR manager Building Ltd, UK)

A UK manager states, for example, that the German owners

are of the strong belief that the individual organisations within the company should be and remain autonomous within their particular zone. (HR manager Building Ltd, UK)

In a different group it is also questioned

whether there would be any added value in having a European wide group – especially when what so much of what we do is locally driven.' (Head of HRM Insurance Plc, UK)

Therefore, moderate managers can often live well with local workers' representation bodies but not with supra-plant institutions. Local works councils or employee fora consist of people who have a genuine interest in the prosperity of this specific plant. Management views the value of those local institutions involving the engagement of employees; employees behave better towards the organisation and an overall improved productivity maybe the result. In addition it is counted as a positive effect

that they are allowed some influence, also ideas that would not ordinarily be there (come to light) would be raised. It allows for jointly resolving problems. (HR manager Household Ltd, UK)

For this reason some companies even established an employee forum in the UK before they were legally obliged to do so because of the EU-Information and Consultation Directive, also hoping that management might be in a better position to influence what was going on in this forum. In one of the companies we researched it was felt that a pre-emptive approach would be better. By not waiting

until employees called for such a Forum, management would be in a position to determine how such a body should work – ultimately its remit. Secondly it was felt that such a forum would be a good means of attaining employees’ “feedback”. This was also linked to a recent employee global survey – one key finding was that people wanted better communication. The forum was therefore seen as a means of informing staff but also understanding their views.

But managers are quite sure that their employees – despite being interested and involved in local affairs – have no real interest in an EWC:

No. It is not something that they feel we should do. And I certainly feel that it is not felt that we should do something from this end either. (HR manager Packaging Ltd, UK)

#### **e) Local culture**

Interestingly, managers often refer to ‘culture’ and ‘diversity’ when arguing against the supposedly standardizing effects of a supranational institution such as the EWC. In the first instance ‘culture’ is used to refer to ‘national culture’. For example, the manager of an UK plant of a German multinational reflects upon the question whether ‘his’ plant is German or British:

We are (name of group) in the UK, we recognise that we are part of a large (name of group) organisation, but we are very autonomous. And so to an extent we are a UK company and we view ourselves as such, because we are primarily made up of British individuals and we have a very British culture. (HR manager Building Ltd, UK)

Hence, this specific national culture should be respected; therefore local managers are often declared opponents of any standardization procedure – no matter whether they stem from EWC policies or are part of a centralized strategy by the group management.

Sometimes interviewees even refer to supposedly characteristics of specific national social characters, for example, when a British manager says about their German superior:

I think Germans are suspicious full-stop if Peter (UK MD) is anything to go by. I think they are very closed in, they are not a very open people sometimes. I don’t ... So that might be it, they just do not want people to know what is going on. (HR manager Packaging Ltd, UK)

But ‘culture’ is also used in terms of ‘corporate culture’. With respect to EWCs it is sometimes argued that such an institution would simply not fit the present corporate culture:

I do recognise that given that the culture of the company is that people run things individually it would actually be going against the corporate culture and ethos suddenly to bring those together again. (...) And I wonder whether or not... you know there is a hesitancy to put the works council in place because people may feel that they have to abide by certain rules and regulations that may not necessarily be relevant in their country. (HR manager Building Ltd, UK)

If you have an individualistic corporate culture any institution which might somehow restrict your individual freedom is regarded as ‘problematic’.

Some managers’ opposition to the EWC is based on a view that, in general, diversification within Europe is a positive thing:

You have to ask the question is there a benefit for a company which is so diverse in each country. That is the first question. The second question with all the European legislation, not as a principle, I am a big friend of the EU for various reasons, but in some areas is it beneficial to make everything equal? The background of each area of Europe is different, their approach is different. The mentality is different, especially with regards employment legislation. We are talking about the interest of local mentality. You have some joint basic interests across Europe, but the interests of the individuals in England might be different to individuals in Germany and in fact they are. The focus is different. There is the problem. (Product manager Building Ltd, UK)

As it is ‘difference’ and not ‘equality’ which is the basis of competition and innovation any move to harmonise those differences does not make sense from a managerial perspective. Hence, the whole EWC project is viewed as redundant as such an institution involves a levelling scenario.

Obviously, many managers (consciously or unconsciously) dramatically overestimate the power of EWCs and the possible effects of such an institution. How a body which meets once or twice a year and mainly has information and consultation rights shall be able to exert such an influence and lead to a standardization of working conditions and a levelling of cultural differences among European plants remains unclear. Maybe this is due to the fact that several of the interviewees were not well informed about this European institution; a few managers had



not even heard about the EWC until shortly before the interview; others admitted that they would need legal advice in case of a possible foundation of a SNB as they did not really know very much about the EWC. Therefore the function of these exaggerations concerning possible effects of an established EWC simply seems to be to provide some kind of rational argument to support management's opposition to establishing an EWC.

## **7.2 Why do some managers see positive aspects of EWCs?**

Despite the fact that management's assessment of the EWC as an institution of workers' interest representation is rather negative in general some positive arguments also come to light. There is also a small group of managers which adhere to a modern, participative and transparent style of management. Such a style should not only be applied to their plant but also be an appropriate approach for the whole of Europe. Those managers openly position themselves against what they call the 'old school' of human resource management which is more focussed on keeping relevant information back.

I do not want to go and tell my staff what is going on, why should I tell them.  
(HR manager Insurance Plc, UK)

Therefore, learning from different cultures and different strategies or even just the work practices of foreign plants is regarded as a positive experience and a possibility to learn and improve the processes in one's own plant.

I would view this as a very positive thing. I think this would be very positive for the employees as well. It would be interesting for the employees to know what happens out in Germany and for some of that to be brought back and to be fed back to them. (HR manager Packaging Ltd, UK)

In this sense transparency would be something positive as it could provide people with the necessary information to enable them to learn and 'grow'. Furthermore, if people really want to access the necessary information they have the means today to do this.

However, I also feel that people need to be treated like grown ups and we can explain that we are coming from different places and different cultures and actually if people want to find that out they can go and find that out anyway

if they are that interested. I don't think there is any point in hiding things from people or being defensive about them. (HR manager Household Ltd, UK)

Besides this general argument, managers – especially those with no close contacts to the group's headquarters – also sometimes think there is not enough transparency in the company. It might be helpful for them if there would be an institution which would promote an improved transnational flow of information.

As you can probably tell from my own point of view sharing knowledge... having this knowledge does not have to mean that we have to be limited in terms what we do and how we go about it, but I would much rather know what people are doing so that we can see whether we are sitting well within the whole corporate ethos or whether we are not, or whether we are looking to change it. (HR manager Building Ltd, UK)

Yes, I think so. Because managers would be able to see how managers over there work, how they deal with things and perhaps it would make them have a different view on things and perhaps increase their confidence, their ability in what they do is right or not right, enable them to change things or say "what I do is OK". Sometimes I think you need to see a comparison to say "is what I am doing right or are there better ways of doing it?" (HR manager Packaging Ltd, UK)

In this context an EWC is regarded as a body that might support such an exchange of information. An EWC would help

to share practice and sometimes attitude exchange. Sometimes it is useful to see how people work differently at your level. (HR manager Household Ltd, UK)

## 8 Trade Unions' point of view

Throughout the project we benefited from the unequivocal support of German trade union officers working for the IG BCE, IG Metall and Verdi. Not only did these officers agree to be interviewed on numerous occasions, they also played an integral part in guiding the project through various scientific committee meetings organised by the Hans-Böckler-Stiftung. Their deep and candid insight into their union's European politics, specifically their unions' stance on EWCs, helped uncover another variable that goes some way to understanding why Germany does not have more EWCs relative to the number of companies covered by the Directive. In addition, we were able to draw on the experience of trade officers from Unite, a British union which has very good working relations with the German union officers we interviewed. Contact with Unite not only helped us in undertaking our fieldwork in the UK, but equally offered a non-German perspective which greatly complimented the views of officers from Verdi, the IG Metall and the IG BCE. As will be observed many of the problems concerning EWCs raised by German union officers are not specific to the German situation, but would appear to be generic.

As we shall see, something confirmed in the work of Whittall and Kotthoff (2012), German unions' would appear to have a view of EWCs which can be best described as highly complex. Of course, it would be short sighted of us not to recognise the important time and effort German trade unions have invested at different times in EWCs. But it would be equally inappropriate of us to ignore their often ambiguity towards EWCs and Europe as a whole and as a consequence their reduced activity when it concerns setting up EWCs. Although writing over 20 years ago that Europe represents a catch-22 (or as union officers are adept to say the rock and the hard place) situation for German trade unions Streeck's (1991) assertion is as relevant as ever. As in the 1990s, German unions continue to see the benefit of Europe, a market for German exports, but equally recognise it represents a potential door through which precarious employment standards could pass. Discussing the threat of the European integration for *Modell Deutschland* Whittall (2007: 27) argued:

Germany like other European Member States is having to contend with a radically new macroeconomic regime. With the advance of European economic integration, a byword for production transparency, low unit costs and labour flexibility, governments and corporate interests are increasingly committed

to improving economic performance by promoting a deregulation of labour markets.

In many respects the EWC could be conceived as the paragon of German union's suspicion of Europe. Not only is the Directive much inferior to its German counterpart, the Works Constitution Act, but there prevails a fear that this institution might be used to spearhead company collective bargaining, such micro-corporatism a threat to the collective bargaining role of German trade unions.

As noted earlier trade unions' EWC stance is no small matter. This is demonstrated by the fact that in the two historical periods in which there occurred a notable surge in the foundation of EWCs, 1994-1996 (Article 13 Agreements) and 1996 to 1999 (Article 6 agreements), trade unions generally but German unions specifically played a central role in both encouraging and advising potential EWC delegates. Such commitment, though, would appear to have been unsustainable, and hence should be considered another factor which explains why over two thirds of German companies have failed to take advantage of the EWCD, i.e. German unions' inability to promote the EWC cause.

## **8.1 The EWC challenge**

Discussing the challenge of transnational trade unionism, Peter Scherrer, former general secretary of the European Metal Workers Federation (EMF), wrote an article entitled 'Between local temptations and European necessities'. Responsible amongst other things for the automotive sector, an industry strongly affected by global competition, Scherrer (2007) is well placed to comment on the problems associated with developing trade union work beyond the national setting. As already asserted, trade unions have good reasons to be obsessed with what Hyman refers to as the powerful pull of the "immediate" environment; a pull which imposes obstacles to the development of what Erne (2008) calls Euro-democratisation. We will return again and again to this key question in the paragraphs that follow. The question involves 'A trade union Europe: to be or not to be?' (Hege, 1997: 499).

Undoubtedly, the fan fair with which trade unions welcomed the passing of the 1994 EWC Directive should not be underestimated, not only did it represent a potential new dawn in European industrial relations but it also brought to a close thirty years of struggle to win workers a voice in companies which had long broken out the confines of local labour markets. As we shall, though, theoretical commitment to the EWC cause and proclamations of international solidarity describe only one side of the trade union coin. The other side of the coin demons-

trates that theory and practice represent an often insurmountable hurdle (Erne, 2008). Discussing the situation in the 1990s, Lecher et al (2001) note that trade unions were conspicuous by their absence within in EWCs. Similarly Waddington (2011) draws our attention to the lack of resources made available for European industrial federations on the part of national union members. Evidence once again of unions' inability to bridge the national/European divide. Although somewhat dated, Charles Levinson's (1972: 141) interpretation of the problems appears as valid as ever:

The difficulties lie largely with the unions themselves, in their ability to really turn from purely national commitments and concerns to more international ones. For many organisations, the basic purpose of the international trade secretariats (ITS'S) is to help bolster the strength of national affiliates, rather than to develop more meaningful international co-operation.

The recent and at times very polemical discussions surrounding Lisbon Treaty, mirror in many respects the difficulties trade unions face in their EWC work. As in the case of the Lisbon Treaty the key factor concerns the question of sovereignty, the transferring of power to a higher order.

In an article by Whittall and Kotthoff (2011) dealing with trade union involvement within EWCs, they maintain that this institution remains to all intents and purposes a "trade union free-zone". A study of five EWCs, Whittall and Kotthoff (2011) discern that although trade unions have played a key role in setting up EWCs, their involvement post Special Negotiating Body has proven either non-existent or described as peripheral at best. Kotthoff and Whittall (2014: 254) conclude:

We uncovered no evidence to corroborate Lecher et al.'s (2001) assertion that national unions have been forced away from a policy in which Europe, particularly EWCs, is a niche issue, to one whereby Europe is integrated into union policy generally. On the contrary, EWC delegates and union officers outlined that Europe generally and EWCs specifically remain peripheral issues for trade unions.

Discussing this issue in relation to a developing European system of industrial relations, in which EWCs should be set up would play a central role in such a development, the work of Armingeon (1998) is very informative here. Armingeon (1998: 74) rightly directs us towards the problem "institutional inertia", an ability

to ‘resist pressures to adjust for a long time, even where these are growing stronger’. As Hege (1997: 503) notes:

The coordination of bargaining policies and a fortiori the building of common structures require that national powers of regulation be at least partially relinquished.

Armington’s (1998) work on institutional inertia is very useful in depicting potential challenges faced by unions in relation to EWCs specifically and transnational relations generally. Sociological in essence Armington outlines 5 factors which contribute to unions’ inability to change. These include:

1. Stability: made up of a set of rules and procedures institutions provide actors with stability, whereby they understand in a Goffmanesque way the rules of the game. Hence, trade unionists within their national environments not only know what to say but equally when to say it. Within the confines of an EWC such assurance is not guaranteed, it has to be developed.
2. Instability in external environments: already assured of a certain degree of stability within their own environment, trade unionists are conscious that “modern” external environments are characterised by instability, i.e. concession bargaining or plant closure. This can lead to scepticism with regards the benefits of change. For example, German trade unionists often refer to the inferior rights of the EWC Directive, these providing mere rights of information and consultation compared to the co-determination of German works constitution act.
3. Transferability of knowledge and skills: institutions, specifically old institutions according Armington, are made up of members that possess knowledge and skills that are specific to their organisation. Such qualifications and the influence this implies are likely to be redundant in the new organisation. Furthermore, the new organisation might require actors to learn new skills, for example, a foreign language. Certainly, in the case of EWCs such challenges have been shown to create a degree of adversity if not fear towards this European institution.
4. Threat to internal structures and relations: the larger the organisation the more likely institutional inertia will remain a problem. This is due to the fact that the introduction of new rules and members will bring with it a redistribution of power. While some members of the network might see their position enhanced

within the new institution arrangements others might fall down the decision-making ladder.

5. Threat to organisations: as in the case of point four, change can have consequences for an organisation within a network. For example, the EWC Directive is directed towards employee representatives within a company and not trade union structures. As a consequence this could have repercussions for the finely tuned German dual system of industrial relations. It has not gone unnoticed, for example, that the Directive is associated with a certain logic, the eventual promotion micro-corporatism, a development which would have catastrophic consequences for German trade unions whose main power based underlined by industrial collective bargaining.

The question of union inertia is no small matter for the application of the EWC Directive, especially if we remember that plant actors knowledge of the Directive (see. table 7), both in terms of its existence but also application, depends very much on trade union support. In short the role of trade unions in setting up EWCs is far from insignificant. On the contrary it is essential. As an officer of Unite the Union noted, 'After 1999, I think the only way you are going to get an EWC is if the unions help the employees to make the request.' Applying the conceptual framework offered by Armingeon (1998) we now turn to consider in greater detail the relationship, often contradictory, between German trade unions and EWCs and what inertia factors are at play which might hinder German trade unions' being more assertive in setting-up EWCs.

## **8.2 German Unions' EWC stance: from an active to a passive player**

As indicated on numerous occasions throughout the book statistics suggest two key periods prevailed in which actors, in particular trade unions, rushed to set up EWCs. The so-called pioneer phase 1988 to 1994 when around 40 companies followed a pre-emptive approach. Acknowledging that a Directive on European employee representation would come sooner rather than later the likes Thompson (French EWC founded in 1988) and Volkswagen (German EWC founded in 1991) took the initiative to be ahead of their time in setting-up an EWC. Within these firms there prevailed a belief that they would be well placed to customise such an institution. Un-be-knowing to these companies at the time their strategy proved beneficial for future EWCs that followed up until 1996. Acknowledging the foresight of these pioneers as well as conscious of a mistrust of EU employee

representation law in some business quarters, European legislators built into the EWCD a voluntary clause, Article 13, which gave actors an open hand in devising a structure which would inform and consult employees prior to September 1996. It was this political concession to business that led to a stampede to found EWCs between 1994 and 1996. A union officer from the IG BCE noted that in the first foundation phase the IG BCE developed a strategy whereby it focussed on German companies with supervisory boards where it had good contacts to get “the ball rolling”. As a consequence it was able to support the foundation of around 20 EWCs prior to 1994; EWCs the respondent argues that represented role models for other companies to follow post 1994.

Union officers interviewed talked in glowing terms about these two time periods, a time when the question of EWCs was ever present on trade unions’ agenda, unions on average helping to found between 10 and 12 EWCs per year according to one respondent. A similar picture emerges in the UK, too. It was suggested that in the mid-1990s that the Transport and General Workers and the Amalgamated Engineering and Electrical Union were jointly negotiating around 45 EWC agreements. Today such figures appear light years away, unions in both countries happy, and content, if they can reach the bold number of 3 EWCs per year.

Undoubtedly, the feeling of euphoria amongst trade unions across Europe that greeted the passing of the EWCD in 1994 should not be underestimated. Until this point the European tapestry had been dominated by business interests, a social Europe, in particular a Europe which empowered employees with representative rights, remained to all intents and purposes a blank sheet. It would be wrong to argue that German unions “merely” felt obliged to take advantage of the EWCD now it was there, although there might be more than an ounce of truth in such an assumption. Rather, it would appear that they got caught-up in the enthusiasm that surrounding the passing of the Directive.

Union officers report that the EWC for a short period of time was an important point on an already full trade union agenda. In the case of the IG Metall, for example, it had an EWC project group in place as early as 1992. With the passing of the EWCD this was superseded by an EWC team – a structure which exists until this day. Existing of 8 members the team was designed 1) to help set up new EWCs, this involving advice on the content of an agreement, training and finally facilitating contacts with unions and employee representatives outside of Germany, 2) advising existing EWCs and 3) representing the IG Metall on European bodies such as the European Metalworkers Federation in Brussels.



The enthusiasm that overcame German trade unions proved in the main unsustainable, though. Even in the case of the IG Metall, generally acknowledged as the one German union to have been highly committed to the EWC cause (EWC team), respondents reported there exists considerable room for improvement. A number of factors emerged which ensured the EWC has become at best a-side-isue and at worst a structure which should be treated with a considerable amount of caution. This last point seems to have prevailed once the reality of setting up and servicing such EWCs slowly sank-in. Towards the end of the 1990s there occurred a marked downturn in EWC interest amongst German trade unions, from the union executive through to local branch officials according to union officers interviewed. A key problem here, one that trade unions still seem to be grappling to come to terms with concerns what one respondent referred to as “EWC mainstreaming”, i.e. ensuring that the EWC filters through to all policy departments irrespective whether they are responsible for collective bargaining, gender or training. In short, that the EWC becomes embedded within union structures rather than simply being an issue considered important by a few “enlightened” individuals as was reported to be the case in the 1990s and in some respects continues to be the case up until today. One officer summed up the situation by arguing:

EWCs are only relevant in the different unions as long as individuals exist that try to put these issues onto the agenda. The issues disappear as soon as these people retire or leave the union. There are not structures in the unions to make these issues more important.

Another union officer reported how surprised he was to discover how his union’s interest in EWCs had deteriorated considerably on returning from a lengthy sabbatical around 2005:

I left in 2002, and concerning the foundation of new EWCs and the support of exiting EWCs this did not really take place. It was left to individuals who had a particular interest in a particular EWC.

In fact, the research team was very surprised when it visited the union in question to hear that the then department responsible for EWC affairs, the co-determination department, had virtually outsourced responsibility for EWCs to their European industrial federation. Hence, we were informed that any questions we might have about EWCs in Germany, in particular the foundation of new EWCs in their sector, should to all intents and purposes be directed to the European Industrial Federation. An officer from Unite the Union was very critical of such an approach, noting that

it made their work extremely difficult when it came to setting-up EWCs which involved the union in question. A cumbersome and elongated situation exists in which the British union officer is required to contact the European Industrial Federation in question, which will in turn put pressure on the German unions to get the German works councils in question to commit to start the Special negotiating procedures. The British officer argued that such strategy plays into the hands of management, allowing the firm in question enough time to convince employee representatives that such a body is nothing more than a white elephant: ‘you [employee representatives] are not going to get any advantage from this and so why waiste the company’s money?’”

Although the outsourcing of EWC responsibility was not apparent amongst the other unions researched, a not unfamiliar picture emerges. In the case of one union an officer from this union viewed the research in question as an ideal opportunity to determine how many EWCs fell under the unions or rather his jurisdiction. When contacted they could neither determine how many EWCs existed in which their union was involved or for that matter how many companies in their sector were actually covered by the Directive. In case of the IG Metall a respondent reported that although on paper their union had an EWC team made up in the main of officers from the union’s key departments, something admired by other unions within and outside of Germany, the individuals in question were inactive, and moreover they failed to ensure that the EWC was on their department’s radar. The EWC tasks were left in the main to one or two individuals.

What explains, though, the fragile nature of trade union EWC policy, a policy dependant on a small circle of committed individuals? Why have trade unions failed to put in place structures that would lead to an institutionalisation of the EWC, whereby policy makers, as in the case of gender, consider the implications new policy positions could have for the union’s EWCs work? Undoubtedly, the question of resources tops the agenda. In some respects the colossal nature of founding and servicing EWCs only dawned on trade unions once the Directive had been passed and the scramble to take advantage of the legislation materialised after 1994. As noted on numerous occasions throughout the book, unions have not been helped by the fact that the Directive does not formally recognise them beyond that of external expert. Hence, any involvement with EWCs can produce costs the union has to incur. In the case of two of our unions, IG BCE and Verdi, this has led to EWC responsibilities being incorporated into the co-determination department. As a consequence, the EWC is not only one of many issues that officers from the

co-determination department have to address, but an issue that falls quite down the pecking order in terms of importance. One officer noted:

More telling issues are important such as membership loss, collective bargaining and preparing for works council elections.

As Whittall and Kotthoff (2011) note, the question of resources is a highly political issue, resource allocation depicts priority areas set by unions. Of course, in a period of declining membership and ever increasing tasks, the shadowing of company restructuring processes and plant closures, advising works councils on the intricacies of open-clauses as well as negotiating an ever increasing number of company collective agreements, unions' resources are stretched to the limit. As officers indicated, first and foremost resource allocation is determined by the "bread and butter" issue of collective bargaining. This brings us back to an issue we came across on numerous occasions throughout the research, namely the parochial nature of industrial relations. A facet of 19th century industrialization, employee representation was part of a political and economic process born within the national state (Hyman, 2001). For this reason trade unions continue to be prisoners of their industrial relations heritage. It would be wrong to believe that individuals who have been able to bridge the national-European divide, officers who have fought to place Europe on the union's agenda represent the enlightened few. Rather they are officers who on the whole are not confronted with challenges pertaining to the national environment.

The problem of resources, however, would appear to be compounded by a general mistrust of EWCs, a fear that EWCs could open the flood gates to what Marginson (2000) refers to as the Euro-company. Partly, confirmed by Kotthoff and Whittall (2014), such a development represents the emergence of European collective negotiations in which the EWC plays a central role. Clearly, the advance of International Framework Agreements spearheaded by EWCs gives credence to such a development. With management increasingly in favour of centralizing business units, putting in place European industrial relations structures would appear on the surface the next logical step. Whittall and Kotthoff (2011) indicate, though, that this has been a scenario trade unions have feared ever since the inception of the EWCD in 1994. Formally excluded from EWC meetings and unable to break-out of the national setting the EWC is perceived as a threat to national collective bargaining. One union officer summed up the situation when discussing agreements signed by EWCs:

We have a very centralized structure and there exists a lot of mistrust, especially in the collective bargaining department, concerning these EWC agreements...

Such apprehension, however, is not restricted to the union headquarters. The headquarters is the mere pinnacle in a chain of important interfaces. An IG Metall officer summed up the relationship between the two levels when stating: 'The IG Metall EWC department is the mid-wife. The parents are the local union officers...' Although the officer in question was specifically referring to the IG Metall officers from the IG BCE and Verdi indicated such a description was applicable to their situation, too.

With resources scarce trade unions' EWC policy depends greatly on the involvement of local officers. These front line actors can be responsible for numerous tasks such as locating potential companies covered by the EWCD, supporting those firms which have already set up an EWC as well as functioning as an EWC coordinator. This last responsibility is a task designated by the European industrial federations and requires officer to police EWCs, in particular ensuring that EWCs don't trespass into the key trade union domain of collective bargaining. Like in the headquarters, though, the problem of inertia discussed by Armingeon (1998) can also be observed amongst local union officers, in some respects it is even more pronounced at this level. A number of national union officers from Germany and the UK pointed out that:

Local officers dedicated responsibility for EWCs, i.e. they are European Metal Workers Federation representative, do not always wear a European hat or do not see the importance of Europe.

It has simply to do with the fact that they only have a national perspective, and I think that that goes for all trade unionists. It has to do with the fact that our members are not running around at the European level, but rather in national plants.

[S]o they (local union officers) often with their workload, often saw EWCs as of secondary importance. They will only go to an EWC if there is an emergency.

Of course, like their counterparts in the headquarters local officers have to contend with the problem of resources, too. To all intents and purposes their resources are even more stretched. Certainly, the deregulation tendencies of the last two decades

means that factors perceived external to the immediate work situation only help to exacerbate what is already a very precarious situation for local union officers. According to an IG BCE officer such a state of affairs can even lead to local officers blocking the foundation of EWCs. Discussing situations whereby a union or employee representative outside of Germany requests the IG BCE to facilitate contacts with German employee representatives in an attempt to set-up an EWC the following embarrassing problem can prevail:

So I don't contact the plant directly because there is a local officer who is responsible for the plant. The first thing I try to do is convince this individual that they should do something, especially when I recognize that the enquirer is really keen to move this on but their German counterpart is only blocking the process. I don't like this situation ... But the fact is that our colleagues, the local officers, have different views about EWCs. And this has had the consequence that in the last few years very little has been achieved ...

But other factors come into play, too, factors which on the surface might appear irrelevant but have a great bearing on such officers' willingness to make Europe an agenda issue they are willing to address. These include, for example, language and cultural barriers, the last concerning differences in industrial relations practices. Trade union respondents referred to this as the competence issue, the fact that local officers and works council chairs alike potentially feel threatened in an environment in which their skill sets are not applicable. Here, respondents' associate skill sets with power, the ability to use their in-depth knowledge of national law as well as rhetorical ability to influence and control events:

When we have trade union officers which are not prepared to learn a few foreign words although they sit on EWCs, and by the way in the meantime English is the language of EWCs ... in such a situation we do not participate in European dialogue and then we do not have any competence and hence we are irrelevant.

To a greater or lesser extent all three German unions are shown to have been unable to bridge the national/European divide. In response to Hege's question one would have to conclude that it is very much the case of "not to be". Although the 1990s were marked in the main by enthusiasm towards EWCs on the part of trade unions, the initial euphoria proved unsustainable and as a consequence EWC work failed to become institutionalized within trade union structures. As the proceeding

section suggests, though, there appears to currently exist a commitment to rectify past mistakes.

### **8.3 Bridging the divide: rectifying past mistakes.**

In the early years the IG Metall adhered to a policy whereby it worked intensively with between 15 and 20 EWCs. But what appears at first site a manageable figure eventually proved a too bigger challenge:

Prior (existing strategy) to this the IG Metall EWC department solely focussed on between 15 and 20 EWC. This very intensive relationship used up too much time and resources and in addition marginalised the local officer whose job it should have been to take responsibility for these EWCs.

Although respondents located a number of issues that need to be rectified if union structures and fulltime as well as lay union officers' view of the EWCD is to be improved (a key requirement if unions are to be encouraged to be more active in locating whether a firm is covered by the Directive as well as active in helping to set up an EWC), they all agreed that the main task concerns demonstrating the value of such a European institution. As noted in this and other works the EWCD's standing in Germany is often undermined by the fact that EWCs are considered "toothless tigers". Possessing mere rights of information and consultation, the EWC is a poor step-daughter compared to the representation rights works councillors are empowered with under German law. Primarily, the task faced by unions concerns addressing a view that has long prevailed throughout the various unions which perceives the EWC as being nothing more than a travelling circus and a great strain on the union's already stretched resources. Union officers noted:

We used to only have to train IG Metall members, now we have to convince them about the need of an EWC ... We all come up with various good examples in the course of our daily work but we need to become better at our own PR and hand these stories onwards (IG Metall officer)

Sometimes it is a struggle to convince the departments of how important EWCs are – the new Directive has helped in some ways. Training on the new Directive is a means of getting access to the departments. (Verdi union officer)

If I want to convince German colleagues about how important it is to set up an EWC, then I am required to provide examples where positive results could not have been achieved without the help of the EWC. Or that negative deve-

lopments were reduced because of the EWC. You must not, though, offer any false promises - rather realistic successes ... That it is possible to influence processes, that a sense of European solidarity can be created. That one not only thinks about their site, but rather the joint European interests. We have to make a greater effort to make our successes more public. (IG BCE union officer)

Union officers referred to this as the PR challenge, using the various committees throughout the union as well as media sources to raise the EWC profile. It was noted, though, that such an exercise is greatly dependent on gaining the support of the unions' executive, without this level of support any new strategies are doomed to fail. Discussing this issue one respondent observed:

The idea was to operationalize EWC work ... Namely that EWC work should be dealt with within existing representative structures, by trade union officers etc... For this reason we thought the work in the departments, namely the co-ordination of the departments was not necessary. But this system did not function. It could only have functioned if such work was made a priority and the political support from the leaders existed. And I have to admit this was simply not the case.

The importance of the union executive supporting EWC policy was also raised by an officer from the IG Metall. The officer in question implied that their work, in particular status within their union, had been greatly improved once the union's general secretary, had become chair of the EMF's Company Policy Committee. This was also confirmed by an officer from Unite the Union. The experience of their IG BCE counterpart has proven similar. After failing to make the EWC a more prominent issue amongst officers and members the individual responsible for European affairs was empowered by the union's executive to develop a new EWC strategy in 2007, something we will return to below.

Although unions appear to be faced with similar dilemmas in connection with servicing not only existing EWCs but locating and founding such structures in firms still failing to apply the EWCD, the varying circumstances, i.e. the number of firms covered by the Directive in their respective branches, has had an impact on the strategies applied to address the problem of setting-up new EWCs. The IG Metall EWC department, for example, adheres to what it refers to as a "pragmatic approach". This approach appears to have been developed in response to criticism it had to contend with on the part of the EMF and the ETUC. Prior to the recasting of the Directive the European level union representatives appeared conscious that

their lobbying of the European Commission to proceed with negotiations to revise the EWCD were potentially being undermined by poor density rates, specifically in Germany. As a consequence the IG Metall was set an 80% coverage rate target by the EMF, a figure the German metal union felt was not only unrealistic but unfair considering how it was perceived as generally leading the way in terms of its EWC work, i.e. the number of EWCs it had helped set up as well as its supportive involvement in many EWCs, specifically the Opel EWC renowned as a role model other EWCs should follow.

In the past the union has predominantly depended on what it referred to as the cold call strategy, viewed as nothing more than a glorified sales exercise whereby the union contacts works councils about founding an EWC. Such an approach proved to be a fruitless exercise. Instead a new approach evolved whereby the EWC team determines 1) whether there was an interest in such an institution and 2) whether there was a real need for an EWC, i.e. different sites producing the same products. An IG Metall officer takes up the story:

Going back to the pragmatic approach, we no longer work on the basis of a list of companies that we systematically have to work through. We concentrate our efforts on companies which have indicated a need or interest in contacting colleagues from other countries ...

Once this act of clarification has been achieved the local union officer responsible for the firm in question will be commissioned to make the relevant contact. This too represents a new departure for the IG Metall. In the past the IG Metall adhered to a strategy whereby it poured its limited resources into a selected group of EWCs, between 15 and 20 altogether (large companies where the IG Metall has a strong presence). However, IG Metall officer argued that this led to a couple of mistakes, in particular the headquarter's relations with local officer. For example, in the case of the chosen few EWCs local officers were often kept on the outside, the EWC department the main point of contact. Not only did such an approach run counter to union policy whereby local union officers are responsible for representing the union at plant/site level, but equally such a strategy meant that the EWC department 'did not really support local officers, they were often left to their own devices.'

In the case of the other two unions the IG BCE and Verdi, only the IG BCE appears committed to improving its EWC work. Verdi on the other-hand would appear to be still to be overwhelmed by the challenges brought about by amalgamation – the EWC officer in question having to service in principle 8 different



branches within one union. Concerning the IG BCE's commitment to modernise its EWC work the officer responsible for EWCs has had the task of devising a structure independent of individual union officers committed to the European cause, a strategy which had proven unsustainable in the past due to the fact that many of these same officers left a void when they retired. The solution involved developing a decentralised approach whereby particular individuals would be made accountable for the union's EWC work:

[a] regional structure so that we could ensure a level of breadth concerning our EWC work. And that is where we are currently at, creating training programmes, three national seminars, for ten regional officers.

These regional officers are to be officially made responsible for EWC issues. In addition to their other responsibilities they are to be allocated extra time necessary to deal with EWCs. In short, the EWCD is now part of their official job remit – which means that as a consequence EWC policy is no longer left to the simple whim of an interested and committed individual.

#### **8.4 Summary: Where have all the Germans gone?**

On taking up the position EWC/European officer within Unite the Union the person in question reported how they first felt a sense of euphoria at the prospect of working together with German trade unionists, 'I kind of thought "Germany, fantastic, Verdi, IG Metall and IG BCE, all working brilliantly"...' As German respondents have implied, though, such a perception can be quite misleading. In fact, the officer reported how disappointed he had been with certain German unions' EWC policy, in particular their lack of initiative in helping to set up EWCs. Quite clearly German unions, although they are far from alone here, have struggled to come to terms with the challenges brought about European integration, a fact which is most highlighted in its EWC policy.

Undoubtedly problems of resources and skills sets should not be underestimated when trying to discern why German unions have struggled to come to terms with the EWCD, in particular why they have not invested more time and effort in supporting the foundation of EWCs since around 2000. Certainly, the key actor in unions' chain of responsibility, the local union officer, could be forgiven for not putting aside more time to deal with EWC issues. As one officer noted, 'there are only so many hours in a day and so many days in a week.' However, the question of resources can also be used to throw a veil over political factors that might ex-

plain their inactivity in this area. In particular, German unions appear concerned that the EWC could represent a potential catalyst for European micro-corporatism, a development which would run counter to the dual nature of German industrial relations which ensures collective bargaining is the domain of trade unions.

In sum, German unions' are faced by the proverbial catch-22 situation dilemma. If they decide to adhere to a "to be" strategy, to raise their EWC profile by committing more resources to setting up and subsequently servicing such structures, this might be wrongly conceived as condoning micro-corporatism and so opening the floodgates to company level bargaining. Alternatively a "not to be" strategy, remaining on the European periphery, could condemn trade unions into the wilderness, too. By shadowing the foundation process unions would be far better placed to influence the EWCs agenda and ultimately ensure that such a European structure refrains from negotiating trade unions' "bread and butter" issues, pay and working time. Certainly, union officers interviewed suggest the start of a sea-change in unions thinking is underway – a realization that an abdication of responsibility might not be the best approach. Whether this new founded interest (enthusiasm?) is sustainable rather than dependent on individual sponsors will ultimately test unions' resolve to address the "to be or not to be dilemma". If they are able to successfully overcome the dilemma we might experience a new wave of EWCs being founded.

## 9 Conclusion

In the last two decades the European Union has passed a battery of employee legislation which has helped to lay the foundations for a European system of industrial relations. It is no exaggeration to say that the right of employees to information and consultation can be viewed as an important part of the *acquis communautaire*. Although we take such a development for granted today, just over twenty years ago a quite different perspective prevailed. The dominance of economic interests within European policy made it quite difficult to imagine a Zeitalter in which European legislators and European social partners would co-operate to use legislation and the negotiation table to put in place an IR infrastructure designed to complement its national equivalents. Even though the then President of the European Commission, Jacques Delors, spearheaded a European social agenda with the launch of European social dialogue at the Val Duchesse meeting of social partners in 1985, the late 1980s and early 1990s promised much but offered little. Multinationals with the avid support of the British government under the leadership of Margaret Thatcher and John Major fought a rearguard battle against a European social agenda. Using the tool of veto that dominated inter-government relations prior to the Maastricht Treaty they successfully gridlocked trade unions' demands for greater employee rights.

Undoubtedly, a key milestone in signalling a tempering of opposition on the part of business towards European social policy was the passing of the EWCD on 22 September 1994. The importance of this date can never be exaggerated enough. It represents the unveiling of a platform through which social partners have been able to experiment with new ideas at a transnational level and to support the European Commission in passing employment legislation from mobbing at the workplace to the right to be informed and consulted by management. Concerning the very directive itself, around 1000 undertakings have set up an EWC according to the most recent ETUI EWC databank figures (ETUI, 2013). Moreover, an ever increasing number of EWCs have even surpassed the information and consultation rights set down in the Directive. As the arrival of transnational framework agreements in recent years demonstrates, they have developed into negotiation bodies (Telljohann et al, 2009; Müller et al, 2012, 2013). In addition, a “few” EWCs would appear to be even moving in the direction of their national equivalents by taking on the guise of a “co-manager” (Kotthoff and Whittall, 2014).

Seen from this perspective the future of European industrial relations, with EWCs at its helm, seems to look very promising. One might even endeavour to

say that developments at the European level, especially the emergence of EWCs as an active representative institution have gone some way to confirming the faith “optimists” invested in EWCs. As this report demonstrates, though, a word of caution is advised. The halcyon days of EWCs, 1996 until the beginning of the new millennium, a period in which their appearance seemed to be a stampede to set-up EWCs has long gone. The decline has been so severe that the foundation of a EWC now represents a unique occasion. In short, a not inconsiderable number of undertakings remain EWC free-zones. It would be wrong to assume the tapering off of new EWCs represents a decline in the importance of European industrial relations. Such a claim would do a disservice to those EWCs and actors within the realm of European social dialogue which continue to make strides in representing the interests of employers and employees at a transnational level. The fact remains, though, that a EWC glass ceiling has emerged.

As outlined in the introduction certain countries would appear to be far more underrepresented than others, a clear north-south divide respectively representing those Member States with a high/medium as opposed to a low EWC implementation rate. Naturally, the obvious and somewhat strange exception to the rule here is Germany. Not only does Germany belong to the northern grouping geographically and culturally, the latter because of its industrial relations traditions, but for many industrial relations academics and practitioners Modell Deutschland epitomizes the very social dialogue character promoted by the EWCD. Although the EWC glass ceiling is not a mere German problem alone, the fact that the vast majority of German companies covered by the EWCD (approximately 72 % according to our estimations in 2007) still have to set up an EWC, would imply there is something specific about the German situation.

This then raises the question why German multinationals are underrepresented in terms of existing EWCs, or more specifically why employees within German companies have failed to take advantage of this legal option made available to them since 1994. After all multinationals are only required to set up a SNB to negotiate an EWC once employees from two Member States make such a request, the initiative lying very much with the latter.

The following report has attempted to answer these questions. Seen from this perspective it also represents a shift in the focus of current EWC research, one which moves away from analyzing how existing EWC function to one which hopes to explain why in total terms the number of EWCs in Germany remains quite modest. Ultimately, this involves an explanation of circumstances and variables that might encourage employees to demand of management the creation of

a SNB. A survey of German works councils in companies covered by the EWCD and six case studies of firms falling within the remit of the EWCD but failing to take advantage of this option, revealed four key factors that hinder the setting up of an EWC: The first, concerns the knowledge issue, namely the unawareness of the EWCD's existence. The second involves the application of the EWCD and the issue of corporate transparency. The third factor, deals with the matter of added-value and finally fourthly the role of trade unions in setting up EWCs.

## **9.1 Knowledge deficit**

Strange as it might sound our survey uncovered evidence to indicate that the low number of German EWCs can be partly attributed to a knowledge deficit: an unawareness of the EWCD. A not inconsiderable, around 20 % German employee representatives, remain oblivious to the EWCD's existence. Of the rest, just-under 50% could only claim a fleeting awareness of the Directive. How do we explain this deficit? Our research revealed that the industrial relations system would appear to play a defining role in actors' knowledge of the Directive. Certainly, those German respondents who claimed to have either a very good or good appreciation of the Directive, around 80% according to our survey, put this down to two important sources, trade unions and other works councils. Where there exists a strong industrial relations infrastructure in which employee representatives are actively involved the knowledge deficit is unlikely to be a defining factor in explaining the non-existence of EWCs.

Certainly, the six case studies involving employee representatives from Britain, France and Germany support the finding that there exists a strong correlation between industrial relations systems and knowledge, in particularly the strong presence of a trade union within the company. For example, the dual character of German industrial relations, a metaphor used to describe close working relations between works councils and trade unions cannot be emphasized enough. Four of the works council chairs, and one vice-chair, had not only been trade union members for a considerable number of years but they were also actively involved in various trade union committees and works council networks as well as members of supervisory boards. All five respondents demonstrated to various degrees an understanding of the EWCD's existence. The one case of a works council unaware of the EWCD involved the vice-chair of Insurance Plc. Significantly, this individual did not belong to a DGB trade union but rather the Deutscher Handels- und Industrieangestellten-Verband (DHV), a union affiliated to the Christlicher Ge-

werkschaftsbund (CGB). Interestingly, the chair of this same works council was reported not to be a member of a trade union. It was in the one case study where Modell Deutschland was least developed that the knowledge deficit prevailed.

The industrial relations factor was confirmed when considering the situation in France. Of the six case studies only three had heard of the EWCD. In the other three case studies, two had never heard of the Directive before whilst one interviewee indicated a very vague knowledge of the EWC, unable to explain in any great detail the function of such a European institution. Once again we observed a close correlation between knowledge of the EWCD and a strong trade union presence at company level. In three companies, the respective works council secretaries were active trade union members. Moreover, contact to trade unions not only ensured that respondents were aware of the EWCD existence but equally such contact helped explain the value associated with this European institution.

The notion that the presence of a strong industrial relations system can have a positive impact on employees' awareness of the EWCD was most prevalent in subsidiaries based in the United Kingdom. Of the three countries studied the United Kingdom proved home to the least developed industrial relations system. In all six case studies there existed at best a few individual union members', with none of the companies in question recognizing the respective branch level unions. In the three cases where we gained access to employee representatives, these involved newly elected individuals, who in many cases had been hand-picked by management. These respondents were found to be struggling with their new role, effort and resources were invested in comprehending their responsibilities as an employee representative role as an employee representative. In particular, none of these individuals were either union members or for that matter aware of the EWC's existence. Certainly, from this perspective evidence strongly suggests that any initiative to found an EWC is very unlikely to originate out of the UK.

### **9.1.1 Addressing the knowledge deficit**

Nearly two decades after the passing of the EWCD our research demonstrates that a not too insignificant number of employee representatives still remain unaware of the EWCD's existence – that they have rights which can require management to share important European-wide information about business developments and strategy. In this case we discerned a strong correlation between EWC knowledge levels and industrial relations systems, in particular strong variance between French, German and British IR.

For this reason any attempt to address the deficit problem has to acknowledge the different historical circumstances and traditions of the industrial relations systems under consideration. Starting with Germany this factor would seem to be the least prevalent of all three countries. Our case studies revealed that a mere one German works council indicated they had never heard of the EWCD – the one company in which Modell Deutschland was least ubiquitous. Hence, even though the knowledge deficit is not insignificant it does tend towards the lower end of the scale. This would suggest that any improvement in information policy, especially on the part of trade unions, is likely to increase the overall awareness of the EWCD but not necessarily total number of EWCs. Other variables need to be considered to explain the German situation.

In the case of France and the UK in contrast, the respective poor to non-existent industrial relations systems uncovered in the six case studies implies certain benefits can be associated with an EWC information campaign designed to raise employees' awareness of this European institution. Of course, this will require a certain amount of imagination discerning who is responsible for such a campaign as well as options available in gaining access to French and British employees. In the case of French employees the presence of an industrial relations infrastructure, even if this at times is either meagre or undermined by ideological differences between the various union federations, in the form of works councils and trade union representatives would imply that access on the part of national and international trade union federations is less potentially problematical. First and foremost French employee representatives are more than likely to have an e-mail account and contact number. In addition, unions have other mediums which they have at their disposal to gain access to employee representatives, i.e. union websites, union magazines and various trade union committees. In short, there exist various interfaces between employees and trade unions.

In the case of the United Kingdom, however, a far more difficult situation reigns. Although we discovered that the effects of the European information and consultation directive is having an impact on British industrial relations, three of our case studies Household Ltd, Insurance Plc, and Building Ltd having recently set up a works council in response to this legislation prior to our visit, this move was management led and by default management controlled. Consequently, these works councils were a management appendage rather an institution through which employees could independently speak. Such a situation deprived members of the necessary representative tools taken as given in France and Germany such as a works council office equipped with a computer and telephone line to the outside

world. Furthermore, all six case studies represented what is widely referred to as a “trade union free zone”. At best there existed a few unorganized trade union members. In short, the British employee representatives we had contact to, individuals without an EWC, were imprisoned within their corporation, cut off from the outside world, accessible only through the prison warders, members of the personnel department. Hence, our research would suggest that any campaign to inform British employees’, or for that matter employees existing within a similar industrial relations environment, of their European representative rights would appear to be restricted to one source, the philanthropic actions of employee representatives in possession of more favourable resources. In our research German works councils represented the obvious source of organizational resources and influence. In all six case studies a situation prevailed whereby German works councils not only had access to central management but equally important excellent working relations with management. Therefore, it is not inconceivable that management when called-upon could facilitate contact between German works councils and their foreign counterparts. Undeniably, there exists an important pre-requisite if this is to happen. German works councils have to take the initiative. Certainly, in two cases, Automotive Plc and Household Ltd, the former had had contact with employee representatives outside Germany and had in fact supported Spanish employees in their fight for a higher daily allowance, whilst the latter indicated that in light of new developments in the Czech Republic (opening of new factory) it might have to consider visiting this new site. The fact remains, though, we uncovered other factors which places in question German employee works councils representing a potential medium through which foreign subsidiaries can be informed about their European rights. It is these which we will now turn to consider.

## **9.2 Transparency probel**

Any claims that German works councils represent a potential avenue for addressing the EWC knowledge deficit within foreign subsidiaries, however, requires that the respective actors are not only informed of the EWCD’s existence but also that their undertaking is covered by the Directive. Both survey and case study data uncovered a widespread belief that “the EWCD does not apply to us”. This is not an insignificant finding. Around one fifth of survey respondents were convinced that the EWCD was not applicable to their particular situation. Whilst the majority of case studies referred to this issue as the cause for the lack of an EWC within their company.



Our case study research discerned this perspective was founded on a general in-transparency or insufficient knowledge on the side of our respondents concerning their company's corporate structure within Europe. A false assumption according to the data we had our disposal. According to the TUM EWC databank for Germany the six case studies complied with the employee threshold requirements set down within the Directive, namely that a minimum of 1000 employees of which at least 150 have to be employed in two countries within the EEA.

In the best case scenario interview respondents were able to indicate in which countries their corporation was present. Such knowledge, however, did not usually extend to how many sites or offices this involved or for that matter how many people were employed and whether these were represented by a works council or trade union. This problem is shown to be a particular issue amongst family owned companies. Of the 274 family companies covered by the EWC Directive according to our data set, a mere 51 had set up an EWC.

Our research findings reveal that due to reasons initially involving employment law, a wish not to comply with the German co-determination law, but equally a concern with attaining favourable tax rates, companies construct corporate structures which equally on the surface ensures that they remain under the threshold set by the EWCD. Hence, a situation reigns whereby firms can use existing corporate structures designed to circumvent German employment law to actively promote in-transparency at a European level, a strategy made easy by the fact that unlike shareholder companies they are not required to release yearly financial reports. Such circumstances help procure a situation whereby employee representatives, in particular we are talking here about German works councils (their French and British counterparts are unlikely to have even heard about the EWCD), believe that any such application is doomed to failure and so a waste of scarce time and resources.

### **9.2.1 Addressing the transparency problem**

Attempts to tackle the transparency problem will be confronted by two problems, the issue of knowledge as well as the question of interest in the EWCD. Unlike the matter of whether employees have heard of the Directive the knowledge factor here involves the notion of whether potential future EWC members possess a legal understanding of the Directive. This concerns what we call "the face value" problem, namely that employee representatives unequivocally accept management's assertion that the current corporate structure does not require the company to comply with the EWCD. Our six case studies indicated a general unawareness

that German company law, something German respondents possessed an excellent understanding of, differed in one important way to the EWCD. Unlike German law the EWCD is applicable even in situations when a “unitary management” structure does not prevail, namely direct influence over subsidiaries. This is because the EWCD definition of influence is far broader in that it applies the concept “controlling company”. A controlling company, for example, can be a firm that holds a majority of another undertaking’s subscribed capital. Hence, we would argue that one solution to addressing the low implementation rate within German companies could involve making employee representatives aware of how European legislators broadened the notion of a controlling company to overcome managerial strategies to circumvent similar legislation at a national level.

The next issue concerns an interest in setting up an EWC. Challenging management’s assertion that the EWCD is non-applicable requires not only resources to determine the legislation’s applicability, but it involves a real interest in comprehending the need for such an institution.

### **9.3 Limited resources and the question of added value**

Although we can observe that the knowledge and transparency deficits are factors which partly contribute to explaining why so few German companies have an EWC, especially in the case employee representatives from foreign subsidiaries, the matter of added-value best explains why German works councils have not spent more time 1) informing themselves about the rights they are entitled to and 2) determining the Directive’s applicability. A short visit to their respective company website would prove sufficient to confirm any suspicions they might have had. As we discerned websites often give a candid breakdown not only about the total number of people employed in Europe but also in the different European countries. Consequently, this places in question management’s applicability line of argument. Information about sites, for example, would be sufficient to try and determine the existence of employee representatives within these locations. Case study research, though, discerned a lack of interest in the main.

In particular, German respondents could be observed taking a calculating assessment of the benefits to be gained out of setting up an EWC: Firstly, this concerned the legal advantages associated with the EWCD compared to those provided by the German and French legal systems. Of course, in the UK the late arrival of such representative rights in the form of the Information and Consultation Directive, a Directive which still has to have an impact, we discovered that

a different opinion prevails. British respondents were very much in favour of setting up an EWC, seeing such a structure as another institution to compensate for their sparse representative rights as well as a means of possibly gaining access to Germany's superior employment terms and conditions.

In the case of Germany, though, employee representatives pointed to the fact that they have access to national rights that surpass what the EWCD can offer, mere information and consultation, plus the effort involved in proving the EWCD's applicability. Added to this is the fact that they would be required to challenge management's assertion that the EWCD is non-applicable. Finally, German works councils were confident that any problems that arose could be best solved locally, either by utilizing the excellent social dialogue that in the main characterizes relations with management, or alternatively by bring pressure to bear through the co-determination rights that they have at their disposal. Evidence gleaned from interviews with German works counsellors demonstrated the predominance of an industrial relation's culture of trust and loyalty, especially in the case of family run companies. This helped procure a "winning team" mentality, a belief that there is no need to change existing arrangements which have stood the test of time. In addition, the question of "plant egoism", or in this case "country egoism", should not be underestimated. German respondents appeared aware that the existence of an EWC would involve sharing access to central management, a fact that could potentially threaten their "special relations" status.

Respondents from foreign subsidiaries valued the EWC far higher than their German counterparts. French and British employee representatives viewing the EWC as a possible institution for the harmonization of employment conditions and a neutralization of potential benchmarking across Europe. Unlike German works councils, however, in the British and French cases resources necessary to start the process of founding a EWC were a real problem – this was not a hollow excuse that could be detected in some of the German cases.

### **9.3.1 Addressing the Limited resources and the question of added value**

When attending to the subject of added value it needs to be considered that the focus is very much on German employee representatives, German works councils exhibiting a belief that their close relations to central management buffers them against the negative effects of Europeanization, plant closure and social dumping. We uncovered proof, however, that such a stance can actually lead to a false sense of security. Although in only two cases, Household Ltd and IT Plc the export of

jobs outside of German could be observed, competition between different countries in the form of benchmarking was widely prevalent. In particular, respondents from foreign subsidiaries discussed at some length so-called “royal visits”, central management making a courtesy call. Designed to keep foreign subsidiaries on their toes, it would be naïve to believe that such courtesy calls do not have potential consequences for German sites.

Even if, as some German works councils claimed, foreign subsidiaries had been opened to serve local markets rather than to escape “high cost” Germany, this does not stop management acknowledging human resource management practices, in particular flexible working time practices prevailing in other European countries from a management perspective could be considered for implementation nearer to home. The old act of whip-sawing is not a one way street. There is nothing stopping management sharing information gleaned from their recent foreign trips with German works councils, especially if such information concerns production-line speed times, hourly labour costs, holiday entitlements and unsociable working ours. This fact could ultimately play an important role in convincing German works councils of the necessity to setting up an EWC. German union officers responsible for European affairs indicated that the task of persuading works councils of the value associated with EWCs in the short run was their responsibility. However, as we shall now demonstrate such a position and potential trade union commitment to the EWC cause is hampered by various difficulties.

## **9.4 Trade unions and the EWC dilemma**

In the previous sections it has either been directly or indirectly suggested that the factors which hinder the setting up a EWC, the knowledge deficit, the transparency deficit, the problem of resources and added value requires a trade union reaction. Trade unions need to take the initiative. Such an assumption is based on a number of factors.

Firstly, historically in periods where EWC growth has occurred trade unions have played a pivotal role. Unions laid the ground for the setting up of SNBs, this requiring using their pan-European contacts to bring employee representatives under one roof, next they schooled such representatives in their EWC rights and finally they often oversaw the negotiation of EWC agreements so to protect against management imposing a minimalist deal to keep costs down (a once a year meeting and low seat allocation). Secondly, fearful that EWCs might challenge their role as an employee representative trade unions have developed policy posi-

tions which insist that EWCs defer to their authority. This requires not only a trade union presence on EWCs but equally that any European agreements must be co-signed by a trade union officer. In short, trade unions have delegated themselves responsibility for servicing existing as well as setting up new EWCs. Finally, there is the issue of resources. Trade unions possess both the know-how, the procedure to be followed in founding an SNB and negotiating an EWC agreement, but most importantly the necessary international contacts to other trade unions in countries where foreign subsidiaries are based. This is an important requirement in discerning the applicability of the EWCD. Furthermore, this last task often involves trade unions using their power to challenge management strategies designed to hinder transparency.

Our research, though, discerned that trade unions would appear to have reached an historical point whereby they are reluctant to “actively” (they are still supportive of the EWC principle) champion the right of employees to an EWC. In the case of British and French unions a situation prevailed whereby they were hesitant to commit limited resources if the responsible German unions were unwilling to take the initiative. This suggested that the latter had very little interest in setting up an EWC.

German trade unions on the other hand implied that the EWC “window of opportunity” had passed by. Although there had been a wave of enthusiasm in the 1990s to found EWCs, the current climate is marked by sense of apathy. Such a mood is the result of a number of factors. These include, a general sense that Europe is too abstract, too far removed from the daily concerns of the majority of union members, a fact that is not made any easier by a lack of resources. Then there is the question of necessity, the belief that those firms’ possessing an EWC are those most likely threatened by benchmarking. Such logic, however, fails to comprehend that many of those companies still without an EWC have failed to utilize this legal option because they are convinced of its non-applicability. This represents the proverbial catch-22 situation. A situation would appear to prevail whereby unions are unwilling to start a new campaign to set up EWCs because of a conviction, mainly amongst union officers not attached to the union’s European office, that there is a general lack of demand for this European institution. On the other hand demand would seem to have declined as affected employee representatives remain unaware of their EWC rights (knowledge and transparency deficits) or the value of the EWC.

## 9.5 Final note

This research project has attempted to understand the existence of a German EWC glass ceiling. Why is it that in total figures Germany is home to the most number of EWCs but at the same time boasts one of the lowest implementation rates of any country employing workers within the EEA? We have discerned a number of variables which might explain how this glass ceiling might be smashed. Although some of these might be specific to Germany, in particular a conviction that employees' interests are best served through the tried and tested practices of *Modell Deutschland*, questions concerning 1) whether employees' know of the EWCD, 2) whether employees' believe the EWCD is applicable to them and 3) whether they are willing to challenge management, are generic problems irrespective of the national context faced by most undertakings without an EWC.

As indicated above we do not believe that problems which hinder the foundation of EWCs to be insurmountable. However, when reviewing these problems in great detail we have come to the conclusion that any solution(s) are dependent trade union activity in the area of EWCs. Certainly, the last round of negotiations over what was the eventual recasting and not the reform of the EWCD suggests a lack of willingness, or at least a lack of a mandate, on the part of BusinessEurope to make the foundation of EWCs easier. This would require, though, certainly in the case of German trade unions, a renewed enthusiasm for the EWC cause. In turn this will be dependent not only on an acknowledgement that this European institution can complement national representative practices but more importantly an understanding of how EWCs and trade unions can co-exist. Historically, the emergence of the dual industrial relations system in Germany suggests that such a task is not beyond these two actors.

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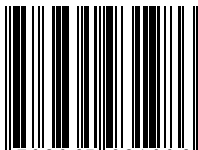
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In 1994 the European Works Councils Directive was adopted. It marked a major breakthrough for workers' representation at the European level. Twenty years later, however, the outcome of this legal provision remains ambivalent. While around 1,000 multinationals have set up a European Works Council, a considerable number has failed to take advantage of this legal option. The lack of implementation is particularly pronounced in Germany, a country with well-organized works councils. Hence, the question arises: What factors prevail that wittingly or unwittingly hinder German employee representatives from setting up a European Works Council?

Based on a research project funded by the Hans Böckler Foundation this book provides possible answers to this question. As will be demonstrated, four reasons appear to explain the dearth of EWCs in German firms. These include, (1) a knowledge deficit about the legal provisions and a lack of transparency regarding company structure; (2) limited resources and the uncertain added value of a European Works Council; (3) attitudes of German employee representatives regarding foreign subsidiaries; and (4) different types of internationalisation.



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