

The frontier within – why multinationals fail to set up a European Works Council

Stefan Lücking¹ and Michael Whittall²

Department of Sociology
Technische Universität München (TUM)
Lothstr, 17
80335 Munich
Germany

¹ Phone: +49 89 289-24233, E-Mail: stefan.luecking@wi.tum.de

² Phone: +49 89 289-24406, E-Mail: michael.whittall@wi.tum.de

ABSTRACT

the following paper reviews results of a study conducted by the Technische Universität München (TUM) into why a majority of German multinationals covered by the European works council Directive (1994) continue not to take advantage of this legal provision. After providing a brief outline of the project's research design, the main part of the paper considers reasons why employee representatives fail to set up a European Works Council. These reasons mainly concern (1) an knowledge deficit about the EWC Directive and a lack of transparency regarding the company structure, (2) limited resources and a disbelief in the added value of an EWC, and (3) cultural barriers and the problem of parochialism. Finally it discusses the increasing internationalisation as a factor that might make the benefits of an EWC more evident.

INTRODUCTION

After many false dawns European actors finally agreed to a revision of the European works council Directive (EWCD) in 2008. This recent development marks an acknowledgement, particularly on the part of the European Commission, that the Directive needs to be brought up-to-date. A unique breakthrough in the field of European social policy, the legislation collectively empowering employees within multinational undertakings in Europe with information and consultation rights, the geographical expansion of the European Union (EU) eastwards as well as economic integration necessitates a modification of the Directive passed in 1994.

The focus, however, of the revision predominantly concerns improving the function of existing EWCs. This in no way should surprise us considering that current research on this European institution highlights that an array of factors continue to undermine its ability to promote collective employee interests at a transnational level (Knudsen et al. 2007, Whittall et al. 2009, Waddington 2006, Wills 2000). Surprisingly, though, neither the revision of the EWCD or the current EWC research agenda addresses in any great depth the question of compliance. To date only a few studies dealing with this issue exist (Whittall et al. 2008, Lücking et al. 2008, Blokland 2002). In short, the non-implementation of the EWCD remains for whatever reason un-navigated territory.

Although Germany initially led the way in setting up EWCs in the period prior to 1996 (Marginson 2000: 10f), the picture today is somewhat quite different. While current 'compliance

rates per country... fall mostly between 34 and 40 per cent' (Kerckhofs 2006: 32), in the case of Germany it remains steady at around 28 per cent according Kerckhofs as well as to our own research (cf. Lücking et al. 2008). Ironically the UK and the USA, two countries with a history of opposition towards the Directive (Streeck 1997), have higher EWC rates, 42 and 38 per cent respectively (Kerckhofs 2006: 32).

METHODS

The paper reviews findings of a two-year study into the non-implementation of the EWC Directive in German multinationals. Undertaken by the department of sociology at the Technische Universität München (TUM) and funded by the Hans Böckler Stiftung, the design of the project combined qualitative and quantitative methods and was divided in three parts:

1. The first task was to develop a reliable *database on the coverage and impact of the EWC Directive in Germany*. Created in 2007, the TUM database drew information from three sources, the EWC data set provided by the ETUI, the Hoppenstedt German company database and additional research (consultation of websites and business reports as well as phone calls).
2. For the qualitative part of the project six German multinationals covered but not complying with the EWCD were selected as case studies in order to develop a deeper understanding why employee representatives in the German headquarters as well as in foreign subsidiaries fail to set up an EWC.
3. Finally, a postal survey was conducted among works councils of those enterprises which according to the database developed in step 1 are covered by the EWC Directive. Of the 463 German firms covered by the Directive, in total 424 were surveyed, namely companies where we knew a joint works council existed. Of the 424 questionnaires sent out 110 were returned, 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.

The paper is mainly based on the six case studies. Conscious of the need to accommodate sector and foreign subsidiary variables that might have a bearing on EWCD compliance rates, enterprises (two per sector) were chosen from the chemical, metal and service sectors. The eventual choice included firms with a tradition of works councils and trade unions. The research design was also strongly influenced by a requirement to include foreign subsidiaries, namely the views of employee representatives outside of Germany. This involved awareness here that the failure to comply with the Directive might be the result, for whatever reason, of German representatives' opposition to such an institution. Of course, we had to expect that such a hurdle might not come to light if based simply on the responses of German respondents. For this reason our choice of case study firms included undertakings with subsidiaries in France and the UK, two countries in which team members both possessed the necessary language skills as well as in-depth knowledge of employee relations.

Table 1: Case study companies

	Chemical	Metal	Services
Small, i.e. less than 10,000 employees	Packaging Ltd	Automotive Plc	IT Plc
Large i.e. more than 10,000 employees	Building Ltd	Household Ltd	Insurance Plc

Note: For reasons of anonymity we have altered the names of the companies.

Interviews were conducted with company employee representatives and personal managers in Germany, France and the United Kingdom as well as trade unions in all three countries. In addition, interviews with EWC experts helped uncover factors that could both hinder and promote the setting up an EWC.

FACTORS IMPEDING INSTALLATION OF A EUROPEAN WORKS COUNCIL

Knowledge Deficit And Lack Of Transparency

A key factor which explains the low numbers of German companies possessing an EWC relative to the number known to be covered by the Directive involves the lack of knowledge concerning this European institution. Closely linked is the issue of transparency. While actors have heard of the Directive there exists an assumption, one usually encouraged by management, that their company is not covered by this piece of European legislation.

Knowledge deficit. Strange as it might sound 12 years after the Directive was passed many employee representatives either remain unaware of its existence or, at least, have a very restricted knowledge of its content and the procedures to be followed to initiate the founding of an EWC. According to our survey among German works councils only 31% of the respondents without an EWC had good or very good knowledge of the EWC Directive (see Table 2). Around 80 percent of these respondents referred to trade unions as the main source of their knowledge.

Table 2: 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

Lack of transparency. The second issue concerns the problem of transparency. Although aware of the Directive employee representatives believe their enterprise is not covered by the legislation. In our survey, conducted only among companies covered by the Directive according to both the TUM and ETUC databases, 20 percent of non-EWC respondents said their company was not covered by the Directive, and 45% didn't know whether it was applicable. The main reason for these answers concerns the issue of how companies are legally structured, specifically whether a company fulfils the threshold level of a minimum of 150 employees in at least two European countries, which makes the Directive applicable. Seemingly persuaded by management's assertion that the Directive is not applicable, employee representatives neither see the need to check the authenticity of such a statement nor to develop alternative relations independent of any Directive. The issue of transparency particularly relates to privately owned enterprises which are not required to make information on management structures and revenue flows public (cf. Whittall et al. 2008, Lücking et al. 2008).

Limited Resources And Uncertain Added Value

In trying to explain this lack of interest concerning the applicability of the Directive another key point has to be considered: what Costa and Araújo (2008) refer to as employee representatives' "sceptical view" of the EWC when examining the low coverage rate in Portugal. 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.

Resource deficit. 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. In the German case the argument of "limited resources" simply depends on the priorities where to invest available resources. A German works council member of IT Plc explained why a discussion about setting up an EWC ended with a negative decision:

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.

In the case of British and French subsidiaries the argument of limited resources is far more convincing. First of all most European subsidiaries are very small. In most cases subsidiaries in France and the United Kingdom had less than 200 employees. As the number of employee representatives and the financial resources depend on the company's size resources are scarce. In addition, a particular problem for both British and French subsidiaries is the high degree of fluctuation. Most respondents had less than 3 years experience as employee representatives. The low degree of continuity, however, makes it hard to develop the expertise necessary for an effective employee representation. Finally, most British and French respondents lacked adequate union support. While, in the British cases all employee representations were non-unionised, in France a union section with a shop steward existed in all cases, with the exception of Building Ltd. Nevertheless, there were only two cases in which the relevant trade union addressed the issue of an EWC. Unlike their German counterparts, employees at some French and UK sites appear more threatened by benchmarking exercises. 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.

Uncertain added value. The question of limited resources would be irrelevant should employee representatives be convinced of the need of an EWC. However, particularly German interviewees appear unconvinced of the EWCs' worth. 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 first reason is that German employee representatives are unconvinced that an EWC with its mere information and consultation rights could be an effective European employee representative structure. Such reservations can refer to 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 et al. 2009, Wills 2000; Knudsen et al. 2007). A second factor 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.

Modell Deutschland – a haven from benchmarking? German respondents' view of added-value is closely linked to their access to central management and to the perceived advantage German employees enjoy via Modell Deutschland. On the one hand, as works councils at the German headquarters already have access to company information and are involved in influencing the business's strategy, the EWC might be conceived as a superfluous exercise. On the other hand, the German system empowers German works councils with certain rights making employee representatives feel immune to the aggressive practices of central management although, in reality, 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".

Cultural Barriers And Parochialism

In the end, the argument of "limited resources" has to be seen in light of the fact that actors are required to take decisions about what issues take priority. For most employee representatives, however, local issues have a clear priority. In addition, due to language and cultural barriers international contacts between employee representatives of the same company are extremely rare where no EWC exists. The shop steward of Automotive Plc France explained:

We live in Europe but we are still enclosed in our frontier. We yet don't make the step to convene everybody although we live in a worldwide structure, a worldwide enterprise in the end.

Parochialism. A main problem 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. This is confirmed in our case studies. Employee representatives appear to be completely occupied by local problems. In many British companies structures of employee representation were only recently built following the 2001 European information and consultation directive. The European level remains out of sight until the local structures work decently well. In Germany and France works councils and trade unions struggle with the degradation of industrial relations / the weakening of their position on national level. They feel that all their resources are needed to defend their position in local and national bargaining processes. In addition, German works councils not only have the feeling that their interests are catered within the existing arrangements, but they understand the rules of the game. Moreover, local arrangements are the source of their power and influence. Finally, the workforce also plays a not unimportant role in intensifying the pull of the "local".

Diaspora. The attitude of some of our German respondents conforms to what Kotthoff (2006) labels the Diaspora factor: German works councils see themselves as representatives of the 'Diaspora', i.e. the foreign subsidiaries 'scattered' all over Europe. Among our case studies the best example for this attitude is the German works council at Insurance Plc. In declining the need for an EWC, the interviewee painted a picture whereby posted German workers function as European missionaries for the works council in Germany. However, interviews undertaken in both the UK and France unearthed no evidence to corroborate this picture. Ironically the well informed German works council was even unaware that their London offices possessed an employee forum and that its members were very keen to contact their German counterpart.

Language and cultural barriers. Existing EWC research demonstrates that a major obstacle to good EWC relations is hampered by the lack of common identity amongst EWC delegates (Knudsen et al. 2007). Both the inability to communicate in a foreign language as well as a lack of understanding of employment practices within foreign subsidiaries particularly inhibits German employee representatives. Lacking the necessary skills to function within an EWC such individuals fear that their position of authority could be threatened.

INCREASING INTERNATIONALISATION AS SUPPORT FOR AN EWC

Factors, however, exist which suggest that a lack of compliance is far from insurmountable. On the contrary, the internationalisation of HRM, what Marginson (2000) calls the arrival of the Eurocompany, brings with it a changed “internal” environment which employee representatives irrespective of resources and skills can no-longer afford ignore. There potentially prevails an acknowledgement that European-wide benchmarking and competition over investment requires a transnational co-ordinated employee response.

A common trait of our case studies 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. In the case of IT Plc management has pursued a strategy of internationalisation of human resources which have had immediate repercussions for industrial relations. First of all conflicts arise from the new “International Business Units” because some German employees now have foreign superiors that are unfamiliar with German labour law. In addition, management wants to introduce global standards that partly affect issues that fall under the German works councils 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.

Tellingly, the one case study during our fieldwork that undertook with the help of the IG Metall to look into setting up an EWC, Household Ltd, was the one company which had experienced production relocation. Management’s decision to build on a greenfield site in eastern Europe, helped dramatically awaken the German works council interest in an EWC. Interestingly, the works council had been willing to accept managements’ assertion that the company was not covered by the Directive in 1996. Today, not only is solidarity with foreign subsidiaries suddenly an important agenda item now German jobs are under threat, but resources previously deemed too scarce to invest in such a time consuming exercise appear readily available.

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