

Don't German Employees Value European Works Councils? Understanding the Low European Works Council Rate in Germany

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1 INTRODUCTION

In the last two decades the European Union has implemented numerous legal measures to promote the development of a European Industrial Relations System. Foremost, here was the passing the European Works Council Directive in 1994. The Directive was designed to provide employees with a representative sphere at a European level. It represents a clear acknowledgement that industrial relations practices embedded within national environments threaten to be surpassed by the rootless and virtual character of multinationals. Increasingly, the function of local management involves implementing decisions over investment and company strategy taken thousands of miles away. Hence, a situation exists in which the “local context of decision making and influence” becomes increasingly irrelevant.

Access to top management at a European level, though, requires that employees take advantage of any newly won rights – such rights are often only an option. As data suggests, though, many employees have not taken advantage of this option. According to the latest ETUI figures approximately two thirds of all multinationals supposed to be covered by the EWC Directive still have to set up a European Works Council (cf. Kerckhofs 2006, 29). Interestingly, Germany can be seen as an exemplary case. Not only have more than a quarter of European wide undertakings their headquarters in Germany but also a relatively high number of these has failed to set up a European works council (approximately 330 companies in 2007, cf. Whittall et al. 2008). Hence, this paper reviews findings of a two-year study into the reasons why so many German multinationals have failed to set up a European Works Council. Undertaken by the department of sociology at the Technische Universität München (TUM), the project

involved three steps: 1) the production of a comprehensive database of German multinationals covered by the EWC directive, 2) a survey of these companies and 3) six case studies of German companies covered but failing to take advantage of the EWCD. Here, we conducted interviews with management and employee representatives from Germany, France and the United Kingdom.

1.1 Hypotheses

The question of why so many community-wide undertakings have failed to set up an EWC, an issue increasingly raised at conferences on EWCs, has in the main been neglected by researchers. Excluding this study a mere four similar projects dealing with this issue, Blokland (2002), Lecher et al. (2001) Costa and Araújo (2008) and Stoop (2008), are known to us. Of these, two are quite dated (Blokland 2002, Lecher et al. 2001) and in the case of Lecher et al. (2001) the non-implementation of the EWC plays peripheral role in a much wider research project studying how EWCs function.

In trying to discern reasons why actors fail to take advantage of the EWC Directive the paper draws on a number of hypotheses. Although we acknowledge that an array of factors can explain the low number of EWCs in German multinationals, for example, the size of an enterprise (Blokland 2002, Lecher et al. 2001) as well as management opposition (Blokland 2002, Lecher et al. 2001), we focus specifically on two variables. These include, the EWC Directive “knowledge deficit” and the perceived “added-value” of such a supranational body. 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.

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 16 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 is whether the EWC Directive is a so-called “oblivious” law.

As regards the second assumption, this focuses on what we refer to as the problem of transparency. In this scenario we contend that employee representatives though aware of the Directive believe, often because of managements’ assertions, that their enterprise is not covered by the legislation. In particular, this involves the problem of managerial structures, the fact that management puts 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. This based on the premise that the company does not breach the threshold criteria, namely that it employs 1000 employees of which a minimum of 150 are employed in two countries belonging to the European Economic Area (EEA).

Apart from a lack of knowledge concerning the EWCD, actors have to recognize the *added value of an EWC*. Here we refer to central management, German employee representatives (works councils) and employee representatives of foreign subsidiaries, all of them may have taken a conscious decision not to support the foundation of such

a structure. We offer various hypotheses to explain each actor's reluctance to found an EWC. These include:

- In the case of *management* three main variables appear to be influential. These include, firstly the cost of such a body. The employer is responsible for covering all EWC expenses related to travel, subsistence, administration, translation, training etc. Secondly, the EWC potentially encourages employees geographically dispersed to co-ordinate their activities in the promotion of cross border solidarity. Finally, such legislation runs counter to employers' increasing support for less rather than more regulation.
- Concerning *German employees'* interests we suggest 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).
- Regarding the interests of *employees from foreign subsidiaries*, we suggest that, in particular in other European countries with strong employee rights, employee representatives might share the same sceptical view on the weak nature of EWC rights. In addition, the issue of foreign direct investment (FDI) or, more generally, the competition and benchmarking between European sites might lead to parochialism and hence opposition to a common European body of employee representation.

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. Our second hypothesis suggests that employee representatives view the EWC as a "white elephant", a structure though adding to their work load does not improve their ability to represent their constituents.

1.2 Methodology

The paper is based on 6 case studies of German multinationals covered but still failing to set up an EWC as well as the results of a survey referred to above. To ensure a good mix we chose companies from three sectors metal, services and chemicals (see table 1), as well as firms with subsidiaries in France and the UK – this offered us the last factor influenced by the research team's language skills but also their knowledge of these three EU Member States' industrial relations systems.

Table 1: Case studies

	Packaging Ltd (= PL)	Building Ltd (= BL)	Automotive Plc (= AP)	Household Ltd (= HL)	IT Plc (= ITP)	Insurance Plc (= IP)
Sector	Chemical	Chemical	Metal	Metal	Services	Services
Activity	Paper and Plastic Packaging	Building material	Production equipment	Household appliances	Enterprise software	Insurances
Employees						
World	2500	22000	6100	16000	3500	6900
EEA	2400	9000	4200	14500	2000	4200
Germany	1750	3000	3000	10000	780	3450

France	200	2500	180	300	130	46
UK	125	n.s.	78	360	n.s.	550
Sites						
Germany	3	22	10	8	7	1
France	1	6	8	3	1	1
UK	1	10	1	1	2	2

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, IGBCE and Verdi responsible for EWCs as well as EWC experts at the ETUC, EMF, SDA and UNI Europa.

2 KNOWLEDGE DEFICIT AND LACK OF TRANSPARENCY

2.1 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 figure 1). However, nearly 50 percent admit to have poor or very poor knowledge. In France employee representatives at most of the sites visited "had heard" of the EWC, while the EWC was a new term for all employee representatives interviewed in the UK.

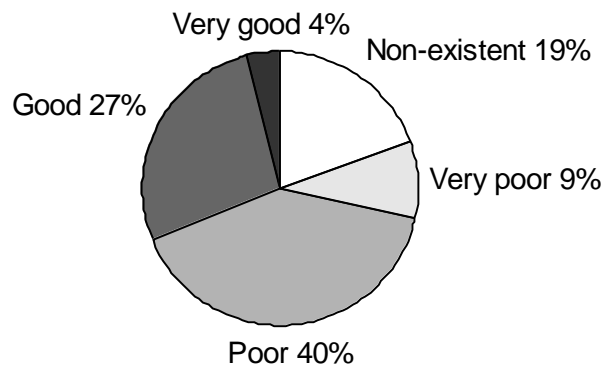


Figure 1: EWC knowledge of non-EWC respondents

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 figure 2).

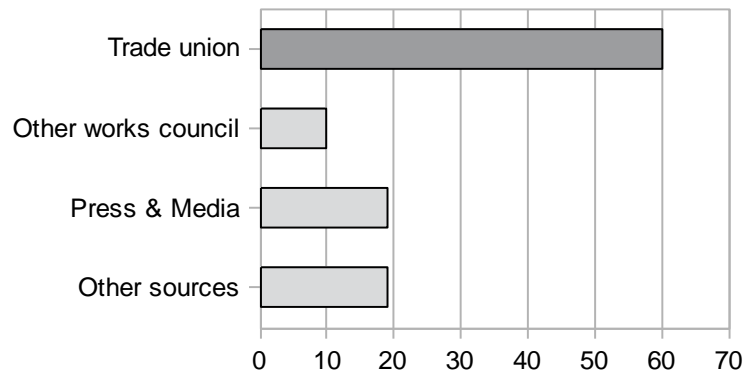


Figure 2: Information sources of respondents with very good or good knowledge of the EWC Directive

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 interviewee admitted to having heard something about a certain European institution but had difficulty in expressing the function of such a 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 committee d'entreprise were active trade union members. At IT Plc the shop steward took part in a trade union training course on EWCs during her holidays.

The situation in the UK represented an extreme scenario. This was due to the fact that of the three countries under study the UK possesses 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". 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. 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 Plc, UK)

Although in contrast to Germany and most French sites the lack of a trade union presence helped ensure 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 – a fact which suggests 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.

In summary, the knowledge that most German and several 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 considerable 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.

2.2 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 figure 3).

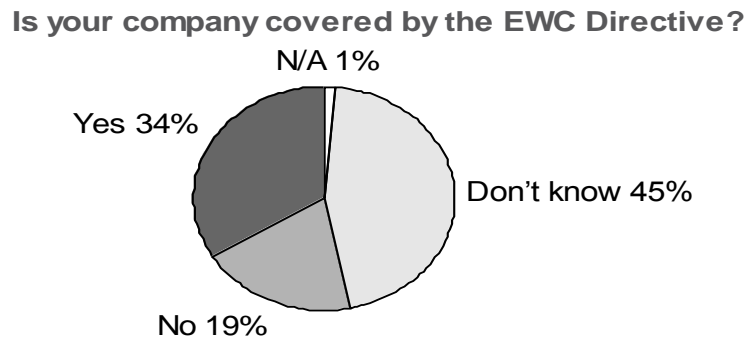


Figure 3: Applicability of EWC Directive

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 supporting the Hans-Boeckler-Stiftung research projects 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 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, particularly in privately owned companies, in relation to 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 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 company 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, presenting Building Ltd as a single company employing several 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 rather 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).

Although as noted above these constellations very often exist for tax reasons or as means of circumventing 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. The respondent was eventually forced, however, 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 been long aware of its legal responsibilities.

Such a managerial position, though, gains credibility 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'), 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 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, 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 figure 3, p. 8) 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 a lack of language skills and a lack of 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 two other factors which need to be considered in explaining the relatively low number of German EWCs. These involve limited resources and the EWC’s lack of “added value” or what Costa and Araújo (2008) refer to as employee representatives’ “sceptical view” of the EWC institution.

3 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 to prioritise. 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.

3.1 Limited resources

At first sight the argument of limited resources seems to be more convincing for the 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 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)

While the lack of resources is obvious in the case of the United Kingdom, 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 the same problems as their British colleagues, albeit to a lesser degree: 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 their 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)

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). This would suggest that that the low degree of continuity makes it hard to develop the expertise necessary for an effective employee representation.

Regarding the continuity of employee representation there is a clear exception in France: Packaging Ltd. Here a long established works council exists with a CGT majority. In addition, the site has been taken over by Packaging Ltd from another multinational group that had a European Works Council. 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 figure 2, p. 6) 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 continues to be 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 regarding European Works Councils 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 and 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 in a lot small units and does not possess a joint works council, also as in the other cases resources are restricted. 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 given 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).

3.2 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)

Particularly German interviewees appear unconvinced of the EWC's worth, rejecting the assertion that the advantages of such a European body far outweigh both the perceived trials and tribulations of founding an EWC as well as ensuring that such a body functions as a collective European employee representative structure. 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 right for consultation? 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 in different countries. 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. 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 positive assessment of their performance. Such an assessment 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. As the following respondent notes, 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] comes. They [departmental managers] have to present that [report] to [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)

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, although 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 of 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 to set up an EWC, a demand which does not seem reasonable given the scarce resources of many foreign employee representatives.

4 SUMMARY

Our case studies as well as our survey among German multinationals demonstrate how a lack of knowledge about the EWC directive and a sceptical view on the added value of an EWC shape the disinterest of employee representatives in this legal device. At the same time, the comparison of the positions of German, British and French employee representatives reveal instructive variations of how these two factors exert their influence.

In the case of German works councils 'knowledge deficit' refers rather to the applicability of the EWC Directive to their company. While most German respondents know the EWC Directive exists, they often have a limited knowledge about its contents and, in particular, do not know whether their company falls under the Directive. Accepting at face-value both the narrow definition of 'group of companies' within German law – as well as confronted by non-transparent company structures; they do not see necessity of questioning such assumptions. On the contrary in the United Kingdom our respondents had no knowledge about the existence of the EWC Directive. Only recently set up, the employee forums in British subsidiaries have still to develop a

general expertise in employee representation. The situation in France is less clear-cut. While some of our respondents had a rather good knowledge of the EWC directive, other respondents had no knowledge at all. As in Germany they depend on trade unions as a primary source of information which is completely lacking in the British cases.

In Germany and France, two countries with well established systems of employee representation, the lack of knowledge of our respondents is closely connected to the question of added value. Employee representatives feel no need to establish a deeper knowledge about European Works Councils as long as they are unable to estimate the benefits to be gained by such a European wide body. Acknowledgement of the 'added value' of an EWC is based on a calculation of several factors (comparison of resources necessary to set up a EWC and benefits expected from an EWC) and a decision about priorities. In the United Kingdom and partly in France the problem is rather a lack of resources than a disbelief in the benefits of a European Works Council. In the United Kingdom this is due to the weakness of the system of employee representation in general. British employee representatives still struggle to establish an effective employee representation at a local level. In the case of France there is a close correlation between resources and company size, smaller companies being under resourced as well as the high degree of fluctuation. In Germany on the other hand where works councils have at their disposal vast resources it is rather a disbelief in the benefits of a European Works Council or even the fear that such a body would threaten their close relationship to central management. Their estimation that setting up a European Works Council is a laborious process makes them avoid the efforts already necessary to establish the applicability of the EWC directive to their company.

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References

- Altmeyer, W. (2004), 'Die Konzernmutter muss ihren Sitz nicht in der EU haben. Urteil des Europäischen Gerichtshofes zur Informationspflicht des Arbeitgebers bei Gründung eines Europäischen Betriebsrats', in: *Arbeitsrecht im Betrieb* 4: 204–205.
- Blokland, A. (2002) *Accounting for the 'Missing' European Works Councils*. Utrecht: University of Utrecht.
- Blanke, T. (2006) *Europäische Betriebsräte-Gesetz. Europäische Mitbestimmung – SE*. Baden-Baden: Nomos.
- Costa, H. and Araújo, P. (2008) 'European Companies without European Works Councils: Evidence from Portugal', in *European Industrial Relations Journal* 14(3): 309– 325.
- Hyman, R. (1999) 'Imagined Solidarities: Can Trade Unions Resist Globalisation?', in P. Leisink (ed.) *Globalisation and Labour Relations*, pp. 94–115. Cheltenham: Edward Elgar.
- Kerckhofs, P. (2006) *European Works Councils: Facts and Figures*. Brussels. ETUI.
- Knudsen, H., Whittall, M. and Huijgen, F. (2007) 'Tillidsrepræsentanter i multinationale selskaber – betydningen af IKT i europæiske samarbejdsudvalg', in *Kritisk Debat*. Silkeborg: Denmark.

- Koch, K. (1996) 'Die Einsamkeit des Funktionärs in der Globalisierungsschlacht', *Gewerkschaftliche Monatshefte* 8: 494–502.
- Köhler, H.D. (2000) Labour Politics in International Firm Networks: Recent Trends in Employment Relations in the Car Industry. *18th Annual International Labour Process Conference*, University of Strathclyde, 25–27 April 2000.
- Kotthoff, H. (1981) *Betriebsräte und betriebliche Herrschaft*. Frankfurt am Main: Campus.
- Lecher, W. (1997) 'Europäische Arbeitsbeziehungen – offene Flanke der Gewerkschaften', *Gewerkschaftliche Monatshefte* 6: 360–70.
- Lecher, W., Nagel, B. and Platzer, H.W. (1998) *Die Konstituierung Europäischer Betriebsräte – Vom Informationsforum zum Akteur?* Baden-Baden: Nomos.
- Lecher, W., Platzer, H-W., Rüb, S. and Weiner, K-P. (2001) *Verhandelte Europäisierung: Die Einrichtung Europäischer Betriebsräte – Zwischen gesetzlichem Rahmen und sozialer Dynamik*. Baden-Baden: Nomos.
- Lücking, S., Trinczek, R. and Whittall, M. (2008) 'Europäische Betriebsräte: Was lehrt der deutsche Fall für die Revision der EU-Richtlinie?', *WSI-Mitteilungen* 61(5): 246–253.
- Miller, D. (1999) 'Towards a "European" Works Council', *Transfer* 5(3): 344–365.
- Mittelman, J. (1997) 'Restructuring the Global Division of Labour: Old Theories and New Realities', in S. Gill (ed.) *Globalization, Democratization and Multilateralism*, pp. 77–103. London: Macmillan.
- Simon, F. (2005) *Die Familie des Familienunternehmens: Ein System zwischen Gefühl und Geschäft*. Heidelberg: Carl-Auer-Systeme.
- Streeck, W. (1997) 'Neither European nor Works Council: A Reply to Paul Knutsen', *Economic and Industrial Democracy* 18(2): 325–337.
- Towers, B. (1997) *The Representative Gap: Change and Reform in the British and the American Workplace*. Oxford: Oxford University Press.
- Whittall, M. (2000) 'The BMW European Works Council: A Cause for European Industrial Relations Optimism?', *European Journal of Industrial Relations* 6(1): 61–84.
- Whittall, M. (2003) 'European Works Councils – A Path to European Industrial Relations? The Case of BMW and Rover', unpublished Ph.D. thesis, Nottingham Trent University.
- Whittall, M. (2007) 'European Economic Integration: the Threat to Modell Deutschland', in S. Lee and S. McBride (eds) *Neo-liberalism, State Power and Global Governance*, pp. 27–41. Dordrecht: Springer.
- Whittall, M., Knudsen, H. and Huijgen, F. (2009) 'European Works Councils: Identity and the Role of Information and Communication Technology', *European Journal of Industrial Relations*.
- Whittall, M., Lücking, S. and Trinczek, R. (2008) 'Understanding the European Works Council Deficit in German Multinationals', *Transfer* 14(3): 453–468.
- Wills, J. (2000) 'Great Expectations: Three Years in the Life of a European Works Council', *European Journal of Industrial Relations* 6(1): 85–108.