

European Works Councils: An experiment in workplace democracy which remains more relevant than ever

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*Many businesses operate across a number of different European countries, but the multinational nature of these businesses can make it difficult for workers to be adequately represented in company decision-making. As a way to alleviate this problem, so called European Works Councils have been created to enable workers' representatives to play a role in managerial decisions at the European level. With 2016 marking the 20th anniversary of these bodies, **Romuald Jagodziński** assesses their legacy, arguing that current trends among multinational businesses make this form of representation increasingly vital for protecting the interests of European workers.*



September marked the 20th anniversary of European Works Councils. These bodies have been set up to comply with legislation (beginning with the [EWC Directive](#) in 1994) obliging multinational companies to provide information and engage in consultation with workers' representatives on managerial decisions taken at the European level which have an impact on workers.

This legislation was urgently needed. More and more companies now take decisions at a supranational level without any regard for the interests of workers and they often ignore national level social dialogues. The Belgian [Caterpillar](#) issue, where the closure of a plant in Wallonia implied the loss of around 2,000 jobs, is a recent case in point. The experience of the more than 1,000 European Works Councils that have been created over the last two decades, representing more than an estimated 17 million workers, together with academic studies and policy evaluations, provide enough evidence to draw conclusions on how important these bodies have been and where their future trajectory lies.

What are European Works Councils and what do workers need them for?

The [EWC Directive](#) applies to all companies with 1,000 or more workers and at least 150 employees each in two or more EU Member States. It obliges multinational companies to establish a European Work Council to bring together workers' representatives from different countries with central management. The objective of the works councils is to exchange information and for workers to be consulted on the transnational strategy of the company.

Such councils are made necessary by the fact that companies tend not to think, plan or act within national boundaries. Strategic managerial decisions are more often than not taken at the central (multinational) level and affect all subsidiaries, no matter where they are placed. However, until the mid-1990s, worker representatives at the company level acted on a national or local basis. Trying to defend workers' interests or challenge company strategy at the local level is like trying to stop an avalanche once it reaches the bottom of a mountain. In the multinational companies of today, the only effective way to discuss strategy is at the supranational level (central headquarters).

And some companies acknowledged this long before EU legislators did. In the 1980s, some works councils of French multinationals started inviting foreign workers' representatives to their meetings on an informal basis. Pioneering agreements were signed in the mid-1980s, and by the time these spontaneous bottom-up workers' initiatives became institutionalised in 1994 in the form of the EWC Directive, a total of 46 companies had already established European Works Councils. Soon hundreds more would follow in their footsteps.

No rose without thorns

The first European directive on workers' information and consultation was a result of employees' initiative responding

to real needs and hoping to protect their interests in a globalised world. It is a rare case of bottom-up EU integration. European Works Councils are chronologically the first genuinely European institution of interest representation at the enterprise level. They are a workers' component of the common market in European firms. They inspired the adoption of further European directives on workers' rights to information, consultation and participation. They also contributed to recognising workers' information and consultation as a fundamental right in the EU charters.



Moreover, European Works Councils are by far the most widespread form of workers' representation, covering more than an estimated 17 million workers who are represented by some 20,000 delegates. They thus reflect a growing recognition of the need to respond to and complement existing national channels of information and consultation with their counterparts at the EU level. Concrete examples of their work include, among others, influencing management to develop outplacement plans for workers in cases of plant closures, preventing plant closures by work sharing between factories and countries (e.g. General Motors), proposing social plans in case of collective redundancies, and spreading good practice from one country to another, improving intra-company communication.

European Works Councils are also a concrete example of democracy in the workplace and as such help tackle the democratic deficit of the EU. They have proven themselves capable of delivering added value to the European economy, by improving employee-employer communication in transnational contexts and by contributing to finding better, socially acceptable solutions for handling restructuring.

But despite European Works Councils becoming a firm part of EU industrial relations, there are nevertheless visible cracks in this largely positive image. First, it is still the case that 39 per cent of the agreements produced in such bodies are so called pre-directive agreements. The possibility to conclude agreements exempted from the requirements of the law was an incentive given in the original EWC Directive to foster voluntary negotiations (about 480 companies used the possibility). These European Works Councils still function and the rules of the Directive still do not apply to them (e.g. in the case of improved definitions of information and consultation, training rights, and access to the support of trade unions). Of course, not all pre-directive agreements are of bad quality, but for those European Works Councils that struggle to have their rights acknowledged, being outside of the currently binding framework is a serious obstacle.

Second, according to various studies the rights officially provided to European Works Councils are too often ignored and violated. A survey among [EWC members](#) showed that only small minorities of councils are informed before decisions are finalised (24 per cent) or before they are made public (37 per cent), while even smaller proportions are consulted before these critical time points are reached (20 per cent and 30 per cent respectively). Worse still, 13 per cent of European Works Councils are not informed and 30 per cent are not consulted at all. To add insult to injury, a recent [survey among managers](#) showed that managers confirm these findings and do not seem troubled by the

disregard for workers' rights. It is hugely disappointing given that these are the core rights and the principal purpose of European Works Councils.

Third, European Works Councils are often refused access to the information and consultation procedure because management presents it as a 'local' issue and not a transnational one. In a globalised economy, especially in companies operating within the EU's single market, there are arguably few managerial decisions of strategic importance that have only a local impact.

Finally, in their transnational work many European Works Councils still lack the necessary resources to operate effectively. For example: seven in ten councils meet only once a year, with only two in ten meeting twice a year. Some councils meet more frequently in restricted meetings, but this hardly seems sufficient to maintain an on-going dialogue with management, establish the ability to work as a team, process highly technical contents (e.g. related to mergers, take-overs or financial statements) and produce opinions expressing workers' views.

Furthermore, European Works Councils' members face major communication challenges (linguistic and cultural), as they come from different countries and regularly speak different languages. Experience shows that working together is not a given, but is usually the result of laboriously forged trust and understanding. Prerequisites are sufficient time, meetings, trainings, expert advice and guidance, and last but not least, sufficient material and financial resources provided by the company.

Passing the hot potato to the member states

The EU law on European Works Councils aimed to address the challenge of globalisation for workers and limit the negative consequences they face. It did so only partially: the directive itself was a political compromise and thus remained vague or silent on some crucial aspects (e.g. the definition of transnationality and access to company sites for the members of councils). In some areas it passed the hot potato to the member states (e.g. linking the EU and national systems of workers' representation, enforcement and sanctions) obliging them to develop a more detailed and precise regulation.

National legislators, however, were reluctant to interpret the directive in this manner. They stuck with the minimum obligations and in many cases simply copy and pasted from the directive. Eventually the workers and their representatives did not see much of a difference in their legal situation. They are often left virtually without the [right to seek justice in courts](#) against the abuse of their rights, or they do not believe that justice can be delivered, as sanctions for companies are [embarrassingly low](#) (starting for instance at only 4 euros in Poland). This is one of the reasons why after more than two decades of European Works Councils, we have seen so few court cases, and even fewer successful ones, despite obvious violations by companies.

What future for European Works Councils?

In the preamble to the EWC Directive, there is an expression of appreciation for the achievements secured and a declared commitment to creating more and better European Works Councils. From this point of view three questions arise. First, have EWCs proven themselves useful and will they be relevant for the future of working across Europe?

The answer is that they have never been more needed than now and the demand for such institution is bound to rise in future. The pace of restructuring in businesses across Europe is constantly picking-up and has become a stable feature of company life. Information and consultation rights are the bare minimum required to protect workers, who are the living tissue of the European economy. At the same time, the EU suffers from democratic and legitimacy deficits that can be addressed by providing working men and women with concrete benefits; this is where the EU can prove that it truly stands for more workplace democracy and protection for workers.

A second question, is whether more European Works Councils will be created in the future. Many councils have already been created and over 980 are still active today. But this is most likely not enough. According to some [estimates](#), a large number of companies remain who could potentially have a European Works Council. At the

same time, the amount of new councils created every year is declining. After an initial burst in which 70-90 European Works Councils were created between 1997 and 2000, the rate descended to 30-50 a year, with figures around the lower 30s recently.

The key issue is whether the thresholds for the application of the EWC Directive should be lowered, or whether current coverage should first be maximised under the existing rules. Whatever the answer to this issue may be, one thing is certain: currently, we do not know how many companies in Europe could have a European Works Council, let alone what that number would be if thresholds were changed. There is no European reporting obligation and only a few member states apply obligatory registries recording employee figures. This gaping information deficit necessitates a policy answer.

A final question is what form future legislation to tackle the shortcomings of European Works Councils should take. The first option would be another revision of the EWC Directive. Some argue this would be the most effective way of addressing deficiencies in the current legal framework. Others argue that proper enforcement by the European Commission and sound implementation of the 2009 directive would be the best way to improve the situation on the ground. The most effective approach would likely be the best of both worlds: effective application of the existing 2009 directive combined with its reform in the near future.

Clearly, after 20 years, European Works Councils have become an important part of European industrial relations and a vital tool for workers. They are not without their problems and have not always been capable of rising to the challenges of contemporary economic trends. At the same time, they have emerged to meet the genuine needs of workers, and many have proven their value in protecting employees' interests. They are a concrete, palpable benefit of EU integration for workers and a practical application of the fundamental right to information and consultation. Workers need this type of representation now more than ever. And if the EU indeed wishes to establish a 'Social Europe' then strengthening European Works Councils would be a good place to start.

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