

**The Joint Committee on Enterprise, Trade and Employment  
European Work Councils and legislative provisions for dispute  
procedures.**

**Wednesday, 8 February, 2023**

**Opening Statement by Dr. Jonathan Lavelle (University of Limerick)**

## **Introduction**

Thank you to the Joint Committee on Enterprise, Trade and Employment for the invitation here today to discuss European Work Councils (EWCs) and legislative provisions for dispute procedures.

By way of introduction, I am a senior lecturer in employment relations at the Department of Work and Employment Studies, Kemmy Business School, University of Limerick. My research interests are focused on employment relations with a particular interest in multinational companies (MNCs). Along with colleagues at the Department of Work and Employment Studies we have undertaken a number of research projects on MNCs in Ireland – for example *Employment Relations in Multinational Companies: Cross National Comparative Analysis*; *Multinational corporations, sub-national governance and human resources*; and *American multinationals and the management of HRM in their European subsidiaries*. EWCs have featured as a sub-theme in many of these projects but for many reasons they tend to be under researched in the Irish context.

### **EWCs what are they?**

European works Councils (EWCs) are institutions that bring workers across Europe together to be informed and consulted by central management about transnational issues within the company. EWCs were introduced via the EU Directive on the establishment of a European Works Council (94/45/EC) in 1994, with a recast of the Directive in 2009 (2009/38/EC). This directive was transposed in Ireland in 1996 – the Transnational, Information and Consultation of Employees Act 1996, and subsequent amendment in 2011 (S.I. No. 380/2011).

The purpose of an EWC is to provide workers with information and consultation rights in companies on issues of a transnational nature. These includes issues such as the economic and financial situation of the company, closures, mergers, new technologies, relocation and changes in employment.

Drawing on the ETUI European Works Councils Database (<https://www.ewcdb.eu/>):

- There are over 1,200 EWCs in operation; representing 50% of eligible MNCs.
- EWCs are primarily found in the metal (423), services (269) and chemical sectors (201).
- The Country of headquarters of EWCs are Germany (281), USA (184), France (134), UK (95), with Ireland at 11.

### **Brexit – catalyst for interest in EWCs in Ireland**

The number of EWCs located in Ireland have been relatively low with the result that they have received little attention in comparison with other employee representative structures. However, Brexit has acted as a catalyst for a significant increase in the number of EWCs located in Ireland. The UK was a common location for EWCs for non-EU headquartered MNCs (e.g. MNCs from the USA, Japan etc.). Non-EU headquartered MNCs have the option to choose a location for their EWC. With Brexit, EWCs can no longer be headquartered in the UK and therefore MNCs needed to transfer their EWC to another EU member state by 31<sup>st</sup> of December 2020. And Ireland has been identified as location of choice for many MNCs looking to relocate their EWC. This was not surprising with many industrial relations practitioners (trade

unions, employer groups) predicting an influx of EWCs into Ireland post Brexit. *Industrial Relations News* estimates that as many as 100 EWCs may have relocated from the UK to Ireland. This represents a significant increase in the number of EWCs located in Ireland and has arguably, for the first time, put a spotlight on EWCs in Ireland.

### **EWCs and dispute procedures in Ireland**

One of the implications of the influx of EWCs to Ireland is that it has drawn attention to a concern around how disputes in relation to EWCs are processed and resolved. SIPTU had flagged concerns going back to when the legislation was originally introduced in the mid-1990s but the issue has come to the fore again in the last 3 years. As previously reported by many experts, a key limitation of the legislation transposing the EU Directive on EWCs in Ireland into law is that the normal industrial relations dispute resolution machinery in Ireland (the Workplace Relations Commission (WRC) and the Labour Court) do not apply. This is unusual within the Irish industrial relations environment as both agencies are responsible for resolving industrial relations and employment rights disputes in Ireland. The omission is also unusual in the context of the transposition of similar EU Directives, e.g. The Employees (Provision of Information and Consultation) Act 2006 which transposed the EU Directive on Information and Consultation (2002/14/EC) and provides access to the WRC and Labour Court in situations of dispute. Both the WRC and Labour Court have a very positive reputation among all stakeholders in the resolution of industrial relations disputes in Ireland.

For many commentators, the provisions for dispute resolution in the EWC legislation are not fit for purpose. Trade unions, employers, employer groups, industrial relations practitioners, have all campaigned for this issue to be addressed. SIPTU lodged an official complaint with the EU

Commission in March 2021 – the Commission has subsequently issued an infringement notice to Ireland regarding the implementation of the Directive (2009/38/EC). Specifically the Commission noted concerns around the enforcement of rights. More broadly, a review by the ETUI on the transposition of the EWC Directive across member states, also notes concerns around enforcement and sanctions associated with EWCs across countries.

It appears that there is a consensus among trade unions, employers, and industrial relations experts that there is a straightforward solution to this problem of EWCs and dispute resolution in Ireland - amend existing legislation to include access to the WRC and the Labour Court to help resolve disputes in relation to EWCs.

### **Developments at EU level and EWCs**

Whilst the history of EWCs as a concept date back to the 1960s, the subsequent introduction of such an institution in the mid-1990s means that this structure of employee representation is largely in its infancy. Attempts are ongoing to try and develop this institution as a forum for employee voice at a transnational level. This is quite a difficult task and so it was no surprise that a recasting of the directive took place in 2009. A summary of changes introduced by the Recast Directive in 2009 included clearer definitions of ‘information’, ‘consultation’ and ‘transnationality’, employers obligation to provide training, the presence of ‘experts’, changes to the subsidiary requirements, among others.

EWCs continue to be the subject of examination and debate. For example the ETUC point to problems around employers frustrating the establishment of EWCs, lack of proper information and consultation and

the misuse of confidentiality clauses. BusinessEurope on the other hand see no reason for a revision of the Directive citing concerns around the impact changes may have on decision making, social dialogue within the company and enforcement penalties.

The European Parliament (2<sup>nd</sup> February 2023) have voted to adopt a report (led by Dennis Radtke, MEP) to further strengthen EWCs. Proposals set out in this report include the need for timely and effective information and consultation for worker representatives, strengthening subsidiary requirements, clarifying the scope of confidentiality, improving dispute resolution, ensuring penalties are effective, dissuasive and proportionate, end the exemption of pre-directive agreements and ensuring better access to justice. The European Parliament have now called on the EU Commission to take action.

We are likely to see more debate and changes to EWCs into the future.

Thank you.