# DÁIL ÉIREANN

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## AN COMHCHOISTE UM FHIONTAR, TRÁDÁIL AGUS FOSTAÍOCHT

## JOINT COMMITTEE ON ENTERPRISE, TRADE AND EMPLOYMENT

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*Dé Céadaoin, 22 Meitheamh 2022*

*Wednesday, 22 June 2022*

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Tháinig an Comhchoiste le chéile ag 9.30 a.m.

The Joint Committee met at 9.30 a.m.

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Comhaltaí a bhí i láthair / Members present:

| Teachtaí Dála / Deputies | Seanadóirí / Senators |
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| Richard Bruton, | Garret Ahearn, |
| Paul Murphy, | Ollie Crowe, |
| James O'Connor, | Marie Sherlock. |
| David Stanton. | |

Teachta / Deputy Louise O'Reilly sa Chathaoir / in the Chair.

## European Works Councils and Related Irish Legislation: Discussion

**Acting Chairman (Deputy Louise O'Reilly):** Good morning. I will start with an announcement about the public health arrangements. We will get to the witnesses' statements as quickly as we can. The proceedings of Oireachtas committees will be conducted without the requirement for social distancing with normal capacity in the committee rooms restored. However, the committees are encouraged to take a gradual approach to this change. Members and witnesses have the option to attend meetings in the relevant committee room or online through Microsoft Teams. All those attending in the committee room and environs should continue to sanitise, wash hands properly and often and avail of sanitiser outside and inside committee rooms, be respectful of others' physical space and practise good respiratory etiquette. If they have any Covid-19 symptoms, no matter how mild, they should not attend in the meeting room. Members and all in attendance are asked to exercise personal responsibility in protecting themselves and others from the risk of contracting Covid-19. Members participating in the meeting remotely are required to do so from within the Leinster House complex only. Apologies have been received from Deputy Matt Shanahan and Senators Paul Gavan and Róisín Garvey.

This morning we will have an engagement on European Works Councils and related Irish legislation. European Works Councils are bodies that facilitate information and consultation with European employees on transnational issues. EWCs are subject to the law of the member state in which they are located. They allow workers to be informed and consulted by management on the progress of the business and any significant decisions at European level that could affect their employment or working conditions. The impact of Brexit on EWCs based in the UK and Irish legislation regarding ECWs and related issues are what will be discussed here today.

I am pleased that the committee has the opportunity to considered these matters further with the following representatives. I welcome from the Brussels European Employee Relations Group, Mr. Tom Hayes, executive director; Ms Lisa McKeon, Europe, Middle East and Africa employee relations senior manager with Oracle Corporation; and from SIPTU, Mr. Gerry McCormack, deputy general secretary and Mr. Denis Sheridan, European Works Council expert.

Before we start, I want to explain to our witnesses some of the limitations to parliamentary privilege and the practice of the Houses as regards reference that may be made to other persons in their evidence. The evidence of witnesses physically present or who give evidence from within the parliamentary precincts is protected pursuant to both Constitution and statute by absolute privilege. Witnesses are again reminded of the long-standing parliamentary practice that they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. Therefore, if their statements are potentially defamatory in relation to an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative that they comply with any such direction.

The opening statements have already been circulated to members. To commence our consideration of this matter, I now invite Mr. Tom Hayes to make his opening remarks on behalf of the Brussels European Employee Relations Group.

**Mr. Tom Hayes:** Good morning. I thank the committee for the invitation to be here today. I will start by saying that BERG, the Brussels European Employee Relations Group, is not a representative body. We are more like a think-tank - an information sharing network of major multinational companies. We are not a secret society, although do not publish our membership

list. It is well known from publications like *Industrial Relations News* that members include companies like Oracle, Google, Amazon and IBM. We had a meeting near Barcelona last week and among our guests were representatives from SIPTU; Mr. Kevin Duffy, the former chair of the Labour Court; Fabien Zuleeg, the chief executive of the European Policy Centre in Brussels; and Wilma Liebman, the former chair of the National Labour Relations Board in the United States, who was appointed to that position by President Obama. We are a group of companies that is open-minded and will talk to anybody. We involve people in our meetings who are interested in developing and progressing good industrial relations.

As is obvious from my accent, I am Irish, originally from the northside of Dublin, although I have lost a bit of that. I have been living in France for the last 20 years and have been involved in industrial relations all my life since I left college in 1972. I joined the old Workers Union of Ireland and worked there before becoming a personnel director. Effectively, I have been a consultant since the early 1980s. In full and open disclosure, I have to say that my younger brother, Brendan Hayes, was the deputy general secretary of SIPTU for many years and then he was vice-chair of the Labour Court. I come from very much a labour background even if I work on the other side of the street these days.

I am not going to read our opening statement in full because I always find those things a bit boring and the members have read it themselves, but I will make some remarks around it. European works councils have been in existence since the early 1990s. The first legislation was adopted in 1994 and became law at national level in 1996. I have been involved with European works councils ever since that time. I have participated in negotiations and renegotiations of probably more than 100 agreements and continue to do so to this day. For instance, just in the last couple of months, I had a small background role in helping Amazon negotiate its first ever European works council agreement, which is based on Irish law, and I am currently working with Google and with several other companies to do the same. All of this information is in the public domain.

European works councils have, by law, to be based in the country in which the company is headquartered. For example, the European works council of Volkswagen is based in Germany, the European works council of Danone is based in France, and so on. The exception to this is where a company is headquartered outside the European Union or the European Economic Area. We are primarily talking here about American companies, but also about Japanese and Canadian companies and one or two others. For the most part, however, we are talking about American companies. In recent years, most American companies would have based their European works council in the UK. The primary reason for this is not because of the generality of labour laws in the UK but simply because of English. Most companies want to work in their own language. This has practical implications as well. I will give an example. There was a recent case before the central arbitration committee in the UK, which involved something like 1,100 pages of submission. The Americans read English badly, I would say, and speak it worse, but imagine if you had to study that in German, Swedish or Polish and have it translated. Then when the proceedings are taking place, you are sitting there wondering what is being said. You want to be able to work in the English language. When it became impossible to continue to base European works councils in the UK because of Brexit - and the European Commission has made it clear in a note of April 2020 that European works councils could not be based in the UK after Brexit - they began then to look at other options. The option of choice for many companies was Ireland. This was for the same reasons. We work in English and many of them have a significant footprint here. The multinational sector employs something like 275,000 people in Ireland, which is around 11% of the workforce. If we take it that for everyone directly

employed, at least one other person is indirectly employed, we can see the size of the footprint they have here. They have moved here. There is no official list, and they are not required to register, but we estimate from our own information that there is probably somewhere between 100 and 150 European works councils now based in Ireland. As I mentioned, that includes companies such as Amazon, Google, or it will shortly, Oracle, Hewlett Packard, Hewlett Packard Enterprises and so on. The Brussels European Employee Relations Group and I have been very prominent in encouraging companies to come to Ireland.

We are aware, however, of the fact that there is a significant gap in the law. The procedures that are necessary and should be in place to allow disputes between the employee side and the management side of a works council to be resolved when they cannot be in direct talks are deficient. When the original Act was written in 1996, it was anticipated that a series of statutory instruments would be made to flesh it out. They never were made. Only a handful of Irish companies have European works councils, that is, companies that are headquartered in Ireland such as the Kerry Group, Smurfit, Glen Dimplex and one or two others. There was never any pressure because there were never any disputes. Life being what it is, we tend to only deal with problems when we absolutely have to. Statutory instruments were never made.

We now face the situation where, with more than 150 European works councils in Ireland, we are looking at the real possibility of disputes. As we sit here, I am aware of one such dispute before the Workplace Relations Commission, WRC, this morning. That is the first one. I am also aware of another company that has written to the Tánaiste and Minister for Enterprise, Trade and Employment, Deputy Leo Varadkar, to appoint an arbitrator to deal with a dispute. An arbitrator has not been appointed because the statutory instrument is not in place to allow it.

When we became aware of this gap, we asked Mr. Kevin Duffy, the former chair of the Labour Court, to have a look at the matter for us to see if we were right in thinking that the legislation was deficient. Mr. Duffy wrote a paper, which I have given to the committee, confirming that the legislation was deficient. This was largely because of fact that statutory instruments had not been made. Rather than go back through legislation that was written in the 1990s to try to flesh that out, the better approach is to take the WRC and the Labour Court, which we have today, and devise a procedure which allow disputes to go to the WRC for mediation before they go to the Labour Court. We noticed, and Mr. Duffy confirmed, that such a procedure is already to be found in the Employees (Provision of Information and Consultation) Act 2006, which allows for a reference to the WRC, then to the Labour Court for a recommendation and then to the Labour Court for a binding decision if the parties have not been able to find a solution between them based on the first two steps. We think this is the way forward.

**Acting Chairman (Deputy Louise O'Reilly):** Mr. Hayes's time is up. The committee has taken his statement but I want to allow the representatives of SIPTU-----

**Mr. Tom Hayes:** I will conclude.

**Acting Chairman (Deputy Louise O'Reilly):** If Mr. Hayes wants to make concluding remarks, that is okay.

**Mr. Tom Hayes:** I am happy to answer any questions but my concluding remark is that the Brussels European Employee Relations Group and SIPTU are on the same page here, and I think Mr. Sheridan will confirm that. We both want to see a similar approach to dispute resolution. We will have arguments down the road, as that is the nature of labour relations, but we are both agreed that this is a suitable way forward. I thank the committee for listening.

**Acting Chairman (Deputy Louise O'Reilly):** I thank Mr. Hayes. I invite Mr. Denis Sheridan from SIPTU to make his opening statement.

**Mr. Denis Sheridan:** I thank the Chair and the committee for the invite. I am here to discuss the implications of how the Transnational Information and Consultation of Employees Act 1996 and the recast legislation of 2011 were transposed into Irish law. The Acts are derived from the EU Directive 1994/45/EC and the recast Directive 2009/38/EC on the establishment of European works councils, EWCs. The purposes of the directive and Acts were to set in place procedures for multinational companies based in the EU to inform and consult with their employees. Each EWC that is established is subject to the law of a member state where central management is based, but in cases where the central management is based outside the EU, it can nominate a legal base or member state of its choice. Prior to Brexit, the UK was a popular destination but since then, more and more companies are using Ireland as their legal base. In 2019, in the pursuance of a complaint against a multinational entity, SIPTU discovered anomalies within the legislation and in particular the redress pertained in the Act. SIPTU contacted the then Department of Business, Enterprise and Innovation and was requested to highlight the issues, which SIPTU did but received no further response from the Department. This was concerning as SIPTU could see that Ireland was the most likely destination for EWCs after Brexit. SIPTU engaged with a number of politicians on the matter and it was raised in private questions where the Government stated it believed the legislation was fit for purpose. SIPTU then wrote to the Tánaiste, Deputy Varadkar, whose response was that the legislation would be reviewed but again nothing was forthcoming. SIPTU was left with a scenario where it had to write to the Minister requesting that he proceed with the investigation of a multinational company for breaches of the EWC legislation, rather than the employees' representatives concerned utilising Ireland's industrial relations resolution mechanisms. Further to this, and on behalf of workers in Ireland, SIPTU had no alternative but to make an official complaint to the European Commission on 8 March 2021 about how the Government transposed the EU directive. The European Commission informed SIPTU that it had sent a letter of formal notice to the Irish Government on 19 May 2022 stating it had initiated an infringement procedure against Ireland on the matter.

As more multinational companies move their European works council legal bases from the UK to Ireland, it has become clear that the legislation is simply not adequate to deal with the disputes arising from it. Issues include a dispute resolved within the legal framework and penalties and punishments for breaches. As the normal State industrial relations resolution mechanisms do not apply here, as with all other worker legislation in Ireland, by submitting a complaint to the relevant Minister under this legislation, it will be heard under criminal law before the District Court. Herein lies a number of problems. First, on receipt of application from employee representatives in two member states, the company has six months to begin the process of setting up a EWC and to provide all relevant information concerning the company. Application of complaint for breaches in the first instance must be made to the Minister, who in practice will send it to the Workplace Relations Commission, which will then appoint the labour inspectorate to investigate the complaint and to decide if a criminal case must be taken. To date, no cases have been taken to court. This is the pattern of all complaints made under the legislation, leading to major delays in the resolution of complaints.

Second, after an application for an EWC is received, after three years have elapsed since the original application, the company has six months to apply the requirements of the second subsidiary requirements of the legislation for the formation of a EWC. It may take a further two years for a criminal case to be heard at the District Court so in theory, we are looking at

the possibility of no action being taken against the company for failing to provide workers with their rights for up to six years after the original application. There have been instances recently where requests of the State industrial relations resolution mechanisms and the Workplace Relations Commission to engage with companies for the purposes of resolving and setting up a EWC have been ignored.

Third, we also understand there is also a particular issue in respect of regulations not being made under section 7 of the Act. These regulations are required to enable the Minister to appoint arbitrators under sections 20 and 21 of the Act in the not-uncommon event of disputes over confidentiality and application of agreement. This feeds into what we have learned recently, namely, that the punishments for such breaches are not sufficient to act as a deterrent for potential breaches. On discussion with several relevant bodies, SIPTU has established that at the District Court, cases currently heard carry a maximum fine of €1,500. The reality is the company does not have to attend but only to send a representative and there is genuine fear that judges, who have no previous precedent to rely on, will penalise companies in the first instance, with fines ranging from as little as €100 upwards. This goes against what the European directive states in Recital 35 which states "The Member States must take appropriate measures in the event of failure to comply with the obligations laid down in this Directive" and in Recital 36, which states "In accordance with the general principles of Community law, administrative or judicial procedures, as well as sanctions that are effective, dissuasive and proportionate in relation to the seriousness of the offence, should be applicable in cases of infringement of the obligations arising from this Directive." Where is the deterrent and pressure to afford workers their legal rights if fines are as little as a €100? When this is measured against the fines imposed in other EU member states for breaches of the legislation, it is not adequate, as fines imposed in the courts of other EU states range from €15,000 to €50,000. This makes Ireland an attractive proposition when companies wish to move their EWC legal base. Irish law speaks about fines not exceeding €1,500 on summary conviction or a maximum of €10,000 on conviction on indictment. How could the Irish maximum fine be regarded as effective, proportionate, and dissuasive?

In conclusion, these issues not only affect workers in Ireland but all workers in Europe whose company has a EWC with a legal base in Ireland. SIPTU has at all times requested the legislation be brought in line with the industrial relations resolution mechanisms of Ireland, like all other worker legislation. For collective disputes, conciliation or mediation should be used in the first instance and when required, sent on to the Labour Court for a binding decision. We also request that the penalties for breaches are reviewed as SIPTU does not believe the current punishments are fit for purpose.

**Acting Chairman (Deputy Louise O'Reilly):** I thank both our witnesses. I invite members to discuss the issue with the representatives here. I remind any members participating remotely to please use the raise hand function and more importantly, lower the hand when they are finished speaking. As we have a speaking rota, I will refer to that but we have time. If there is any issue that does not come up during the course of the questions, people will be given a chance to put it on the record should they need to at the end, time permitting.

I will start with Deputy Bruton and Senator Ahearn of Fine Gael, who have 14 minutes.

**Senator Garret Ahearn:** The Deputy can go first. I have no questions at the moment.

**Acting Chairman (Deputy Louise O'Reilly):** I thank Senator Ahearn and call on Deputy Bruton.

**Deputy Richard Bruton:** First, I thank the witnesses for their presentations. They make a very coherent case. I will ask a couple of questions. At the moment, what proportion of companies operating in Ireland or in the UK, where it seems some of these works councils are coming from, have European works councils? Are these catering to the domestic market or has the UK been chosen as a base for companies operating in other European countries? Is this serving the domestic market or an overseas market?

**Mr. Tom Hayes:** I will give a couple of quick statistics. It is estimated there are probably around 2,200 companies within the overall scope of the European works council directive. Of that, about 14,000 already have a European works council. The reason the others do not is that they have not been asked by their employees to set one up. The numbers vary. We estimate there is 200 to 250 American companies that are within scope because of the number of employees they have in Europe. We think there is approximately 160 UK companies that have a European works council. The other big numbers can be found in three countries, namely, France, Germany and the Netherlands. There is a handful of EWCs in Spain, Italy and so on.

European works councils have a European focus. They are not domestically focused. They are about transnational issues,affecting the whole of the European workforce and not simply the workforce in an individual county. As I said in my opening remarks, a company is supposed to set up its European works council based on its domestic law - Volkswagen in Germany, and so on. So in the UK for instance, a company like HSBC or Rolls-Royce would have used UK law. Such a company cannot use that law any more. I do not know if, for instance, HSBC, the big bank, has brought any money with it, but it has moved to Ireland. It is a European rather than a domestic focus. I think that that is the way Mr. Sheridan would see it.

**Mr. Denis Sheridan:** As was said, European works councils deal with transnational issues. The directive defines a transnational issue as one that affects two or more countries. What we see more and more is that, for example, Germany will make a decision as to what happens in Ireland. That will be a transnational issue because it affects two or more countries. It is therefore not really a domestic thing; it is about the whole business. The company will take all the representatives from around Europe and explain the business to them, telling them what is happening in each individual company and in the business as a whole. A transnational matter, however, is one that affects two or more countries. That is what the directive clearly states.

**Deputy Richard Bruton:** It is a long time, as I recall, since we have discussed this, but at the time it is my recollection that a lot of the US companies that chose Ireland as a location were very fearful of some of the processes that were not traditional in either the US or here and that they regarded them as making it very difficult to make decisions. The US multinationals expressed a lot of concern that that was a source of great inflexibility in decision making. I would be interested to hear the witnesses' views on that. It sounds like a lot of those big multinationals from the US have changed their attitude to this. What has been the experience of companies that remained inside and those that remained outside the European works councils in managing issues, in the witnesses' experience? We know that in these sectors there can be disruptive changes that happen very quickly and that companies feel that if they do not respond, someone else will take over their marketplace very quickly. I would like to get an understanding of how that has worked in practice. I presume that if we bring in these tougher penalties and shorter timelines and easier enactment, we will see more and more companies that to date have not had works councils having to adapt to having them.

**Acting Chairman (Deputy Louise O'Reilly):** Mr. Sheridan, will you respond to that? Then I will call on Mr. Hayes.

**Mr. Denis Sheridan:** Deputy Bruton is correct in what he says. European works councils were transposed into Irish law in 1996, when we were coming off the back of a major recession and there was an onus on Ireland to attract multinationals, as the Deputy stated. However, one of the big things the Government did at that time - and this is why we believe the transposition was done in the way it was done - was go to great lengths to ensure that collective bargaining rights were not given through that legislation. One of the fears of multinationals coming into Ireland was that this was a means for collective bargaining. The Government at the time transposed the directive into Irish law, as difficult as it was, to alleviate those fears. The EWCs are not an industrial relations forum. Multinationals have seen that. They are a very good forum for the exchange of views on the business needs of companies. No industrial relations problems are discussed. Such discussions are not allowed within the EWC forum. The directive deals with that and states that EWCs are solely for the purposes of informing and consulting. A lot of multinationals have seen the benefits of this because a lot of good has come from having central management from around Europe sitting in the room with worker representatives from around Europe discussing business needs and what is happening within businesses. A lot of good has been done in that regard. Even though the EWC is not an industrial relations forum, I have witnessed industrial relations problems being solved by EWCs because central management comes into a room with worker representatives and sits down and discusses issues it will have. Industrial relations problems may arise from that but they are cut off at the pass. Multinationals that have good EWCs therefore see the benefit of sitting with and talking to their workers, and the workers in turn see the benefits of sitting with and talking to central management and seeing clear pictures. That is why the whole spectrum has changed. It is because we can see what is happening and we get a clearer understanding. Generally, if a decision is going to be made within Europe involving redundancies and closures, the European works council is informed first. Its representatives get an opportunity to look at the information given to them and to provide an informed response which assists the process such that when each country goes back to its locality, the workers can tell their members what has happened in order that there is a clear understanding. It is of great benefit to both sides.

**Acting Chairman (Deputy Louise O'Reilly):** Do Mr. Hayes or Ms McKeon wish to respond?

**Mr. Tom Hayes:** I will ask Ms McKeon to respond in a moment. Very strangely, I agree with Mr. Sheridan. Deputy Bruton is quite right that I was involved in the drafting of the legislation back in the 1990s and that there was a great deal of apprehension on the part of the American multinational community about it. People are always frightened of the new and the unknown, but the EWC has turned out to be a considerable communication channel between central management and employee representatives from across Europe. Both parties have learned how to work with the process, and the type of fear and apprehension that existed 20-odd years ago does not exist any more. The very fact that I am here today speaking not on behalf of these companies but with a knowledge of the way a lot of them think about these things is proof of that. If we were still fearful of the legislation, we would not be here asking for change. We are here asking for change to make the legislation more effective, not less, in order to make sure that the forum for dialogue between employees and their representatives, as put well by Mr. Sheridan, works effectively and that if there are problems - and there always will be problems because that's life - we have an effective way of resolving them.

I will anticipate a question about the penalties. Mr. Sheridan is right that the maximum penalty under Irish law is something like €12,000. It was £10,000. Would the business community be overly concerned if that were looked at in light of today's values? Provided it was a some-

what reasonable figure, I do not see that it would cause a great deal of concern. If the numbers were to be updated and uprated, I would not see that as a major cause for concern.

**Acting Chairman (Deputy Louise O'Reilly):** You are referring specifically to the level of fine, are you, Mr. Hayes?

**Mr. Tom Hayes:** Yes. I will not put a number on it. I have been too long in labour relations to give the game away. The Government could say it needed to look at a slightly different figure. Mr. Sheridan mentioned that the two countries with biggest fine levels are, ironically, the UK, where the maximum fine is £100,000, and Spain, where the biggest fine, €150,000, is available. The committee should not take me up wrong; I am not suggesting we go to those sorts of numbers. If, however, the figure were to move beyond £10,000, I would not necessarily see a problem with that. Ms McKeon has first-hand experience of this.

**Ms Lisa McKeon:** I thank the committee for allowing me to speak today. I will take the discussion back to Deputy Bruton's questions. He asked what has changed. In my opinion, the change is that the multinationals have grown up and we have seen, as Mr. Sheridan said, that the benefit of having the EWCs is the dialogue and the open communication. We need to step back and ask what the EWC represents. It represents the employees. While central management do discuss and have open dialogue about changes that are sometimes unfortunate, it is about knowing what the employees think and allowing the dialogue.

That brings us back to why we are asking for this proposal and for the dispute resolution, as Mr. Hayes and Mr. Sheridan pointed out earlier. It is to allow us to have the open dialogue. We have seen, through the work done in previous years, that open dialogue between the two allows for a resolution before we get to court.

**Acting Chairman (Deputy Louise O'Reilly):** I thank Ms McKeon. Deputy Stanton has his hand up. Does he wish to wait and take 14 minutes at the end or take the remaining minute now?

**Deputy David Stanton:** I just have a very brief question. Do we need primary legislation to deal with this issue, as recommended, or is it possible to makes some changes using regulation or secondary legislation?

**Mr. Tom Hayes:** I am not a solicitor or a barrister, but the advice Kevin Duffy, who is a barrister, has given us is that we would probably need very short primary legislation that could be drafted and enacted quite quickly. In other words, we would strip out of the existing legislation all references to disputes and all sorts of private arbitrators and stuff like that and put in a simple sentence that says any disputes arising over any matter involving European works councils, or special negotiating bodies which help set up European works councils, will go to the WRC and then to the Labour Court. That could be drafted and enacted quite quickly, especially as there is no social partner dispute over this, but we think primary legislation is required.

**Acting Chairman (Deputy Louise O'Reilly):** Do Mr. Sheridan or Mr. McCormack have a view on that?

**Mr. Denis Sheridan:** We agree with what Mr. Hayes has said on it. The legislation is already there. It just needs tweaking and amendments made to it. The primary legislation could be done very quickly. It is not as if you are going to be rewriting the whole thing from scratch, it is just certain aspects need to be changed.

**Acting Chairman (Deputy Louise O'Reilly):** I thank Mr. Sheridan. The next party on the rota is Fianna Fáil. Senator Crowe has seven minutes.

**Senator Ollie Crowe:** I thank all our guests for their time this morning. Returning to Mr. Hayes for a moment, in December 2020 in a letter to the Tánaiste he said he discovered from experience there are several matters that can give rise to disputes within a European works council. He then expanded and mentioned two very specific situations where there could be a dispute. One is where there is disagreement between the parties over the interpretation of agreements governing the EWC and the other is where the EWC is governed by subsidiary requirements. Will Mr. Hayes tell the committee about these two situations and how common they are?

**Mr. Tom Hayes:** Certainly. As is the nature of any sort of process that involves two parties, like management and employee representatives, there will always be a point where there is a disagreement over something. I will give the Senator quite a common example, namely, what is information. That includes when do we get information, when do we give information to the employee representatives and how much information should we be giving. Management will take a view it has given employees enough information and quite frankly, the employee side will generally the view management has not given enough. There can be disputes over that and there have been ones over that which have gone to the Central Arbitration Committee, CAC, in the UK. There could be a dispute over employees not being given enough training or not being given the right training. We have seen disputes around that. One of the issues before the WRC this morning is that very matter. Ironically, it is that training that was provided by Kevin Duffy to the EWC-----

**Acting Chairman (Deputy Louise O'Reilly):** There is probably no need to name names or entities.

**Mr. Tom Hayes:** I am not naming them.

**Acting Chairman (Deputy Louise O'Reilly):** That is fine then. I just want to be careful.

**Mr. Tom Hayes:** Yes. I will just say training that was provided by Kevin Duffy to this particular industry was not good enough. Good luck with trying to argue that case in front of the Labour Court.

EWCs are entitled to be assisted by experts like Mr. Sheridan so what is the extent of the mandate of an expert? What does assisted by an expert mean? Even more importantly, what is an expert? When I was in before the CAC in the UK I made the point an expert should bring certain expertise to the process to help it. I was told by the employers' side representative on the panel they can appoint anybody they want, even if it is the local dogcatcher. I do not agree with that because if you want expertise and experts to help in a dialogue they should bring a level of expertise. Whenever I am asked by any of the managements I work with who are the best experts I always say let us talk to the unions first.

**Senator Ollie Crowe:** I thank Mr. Hayes. He goes on to say that there are other issues that arise and that some other common causes of disputes can be identified. He referred to some examples of this in his second letter to the Tánaiste. Again, will he expand on these and give us some further examples of the disputes in other jurisdictions and who they were resolved or mediated?

**Mr. Tom Hayes:** In practically every jurisdiction, they jump straight from a dispute into

court. I know from discussions with the Commission that it is uneasy with that. Even though the Commission has a problem with Ireland at the moment, as Mr. Sheridan has mentioned, with the infringement proceedings, it quite likes the idea we are suggesting of mediation before judicial proceedings as offering a better route to resolving problems. Take France, for example. A dispute there between a works council and management could in the first instance go to a *conseil de prud'hommes*, meaning a committee of wise men, which is a sort of tribunal. If it is not resolved at that level it can then go into a superior court. To give a concrete example, some years back there was a proposed merger between Gaz de France and Suez, which was another big company. It was blocked for over four years because of disputes. In Germany, a dispute will go straight from discussions between the *Betriebsrat*, the works council, and management into a local labour court. That is more or less the common procedure in many European countries. As I said, the Commission would look favourably on an Irish model that could then act as a template elsewhere in Europe for the resolution of disputes through mediation and then a two-tier labour court involving a recommendation in the first place and then a binding decision.

**Senator Ollie Crowe:** I thank Mr. Hayes. I am conscious of time. In his first letter, Mr. Hayes said he was expecting more disputes following widespread restructuring that was happening due to Covid-19. Are those happening? Will he also expand on how a body that is established for the sharing of information and consultation can so often find itself requiring outside experts or mediation? Are these disputes rare or are they the norm in today's world?

**Mr. Tom Hayes:** They are bubbling up. You do not need to be a rocket scientist to work out that with the level of inflation we have following Covid-19, the downturn as a result of the war in Ukraine and other global factors, many multinational companies have to look at the structure of their operations. For instance, there is the lack of spare parts in the auto industry because Ukraine has a very sizable sub-assembly industry for the auto businesses and that is having an impact. We are in the early stages of seeing companies looking at restructuring, and, of course, restructuring is always painful. There is not question about that. Nobody likes to lose their job and nobody likes to tell somebody they are going to lose their job. That stuff is in the pipeline.

**Acting Chairman (Deputy Louise O'Reilly):** Would Mr. Sheridan like to comment, if that is okay with Senator Crowe?

**Senator Ollie Crowe:** Yes.

**Mr. Denis Sheridan:** I will give an example of what is currently happening with disputes. We are seeing companies that had previously negotiated with the employee representatives good EWC agreements with good provision within them, good meeting schedules and things like that. Suddenly, because they were moving from the UK to Ireland, which is a different legal base, and the way the legislation is they are simply coming over and implementing the second subsidiary requirements which is reducing the current agreement. This leads to disputes because all of a sudden there is an agreement in place and the company sees it as a mechanism with which it can move to Ireland and diminish rights under the agreement.

**Acting Chairman (Deputy Louise O'Reilly):** I have a quick question before Senator Sherlock comes in. The money has been mentioned and the current cap on awards here is €15,000. Is that right?

**Mr. Tom Hayes:** No, it is €12,500 or something like that.

**Acting Chairman (Deputy Louise O'Reilly):** In other jurisdictions it can go up as far as

€150,000. I will get to this at the end but perhaps the witnesses could reflect on it. We are going to have to look at what would act as a deterrent. I know the list of members is not published but it seems they have the capacity to absorb quite a lot. I wanted to put that in the heads of witnesses because I will ask the question at the end.

**Senator Marie Sherlock:** I am delighted we are having the hearing today and I thank SIPTU, particularly Mr. McCormack and Mr. Sheridan, for appearing before us today. I also thank Mr. Hayes and Ms McKeon for their attendance. In some ways we could probably have a number of sessions talking about the myriad issues relating to European works councils, which are probably very poorly understood even in the general workforce, let alone in the population. Brexit is a particular issue.

I have a number of questions on the effectiveness of the legislation and, in particular, the approach of the Department of Enterprise, Trade and Employment. Notwithstanding the deficiencies in the legislation, we have heard a number of highly concerning accounts today regarding the efforts by Mr. Sheridan - to whom great credit is due, together with SIPTU, for pursuing Kingspan - and I know other companies are in the mix. Mr. Sheridan has outlined a failure by the Department to engage. I think I heard Mr. Hayes mention earlier that he knows of at least one company that wrote to the Department last year and there may be others as well. We need to understand the approach of the Department and get insight into that. Will Mr. Hayes give us some insight on the delays in the Department responding when complaints have been made? It is an important feature.

**Mr. Tom Hayes:** I know we are not allowed to mention names but I think that is to do with individuals. The European works council involved, ironically, is the British Council. Anybody who knows anything knows the British Council is charged with promoting British culture, theatre and arts throughout the world. It has a European works council because it is also the biggest employer of teachers of English in the world. For example, it has 500 or 600 teachers of English in Spain, 400 or 500 in Italy and so on. Of course, the British Council, as an arm of the British Government, has had to move its European works council to Ireland because of Brexit and it cannot stay in England. Anybody who knows any Graham Greene novels will know the British Council was also a front for many British spies but that is another day's work.

The complaint is about confidentiality. The EWC complains that certain information it asked for is not being given because the management has said the information is sensitive and confidential and cannot be shared. The EWC, as I understand it, wrote to the Minister last December requesting him to appoint an arbitrator to hear this dispute. As I understand it, and I am happy to stand corrected if wrong, the Minister still had not responded to the request as of last week. The reason for not responding is that he cannot appoint an arbitrator because the statutory instruments that would allow him to appoint an arbitrator were never made. In that instance, we have an EWC waiting six months for the Minister to respond to a request for the appointment of an arbitrator. It is one concrete example of where we are.

**Mr. Denis Sheridan:** They were following the legislation. Under the legislation, for matters relating to confidentiality, one would write to the Minister. That is section 20 of the Act, and one would seek an arbitrator to come in. The Government was to appoint it. As Mr. Hayes has implied, section 7 of the Act was for the purpose of setting regulations for arbitrators and so on. It was never commenced so the Government simply did not respond. The British Council has now made a complaint to the European Union that it cannot get into the redress mechanisms of Ireland due to this.

There are also other companies coming in. Section 21 of the Act refers to arbitrators for issues around the agreement. One of the companies mentioned by Mr. Hayes tried writing to the Minister seeking redress under section 21 of the Act regarding the agreement. It got a response, simply, that it would need to go to the WRC with that. That was despite the legislation not providing for a party to go to the WRC. That, however, was the response.

As for our position, we approached the Department, which asked us to write a paper for it on European works councils, which we did. It told us it would review it and come back to us but we never heard from the Department again.

**Senator Marie Sherlock:** When was that paper sent?

**Mr. Denis Sheridan:** It was sent in 2019, prior to the completion of Brexit, because we saw what was happening with Brexit and we were anxious to resolve the matter. We contacted a number of politicians, who raised it through parliamentary questions. The Government has taken the line that the process is fit for purpose. We took it to the Tánaiste and Minister, who again told us it was fit for purpose but that he would review it. The Department did not come back to us and we were left with no choice but to make an official complaint to the EU. The Government's line to the EU, again, was the belief that the legislation is fit for purpose. That is all it has kept saying. An infringement notice has been passed because the EU has stated there are breaches of the directive that need to be rectified.

**Mr. Tom Hayes:** It is ironic that the European works council in a British Government organisation is complaining to the European Commission about an alleged failure by the Irish Government to implement European legislation, given Brexit and all of that. It is not a position we should be in.

**Senator Marie Sherlock:** I have heard those two complaints. There are at least two complaints and there may be other complaints to the European Commission. If I understand the comments correctly, the European Commission on 19 May wrote to the Irish Government. Has there been any information or do we know the stance of the European Commission at this point? Have the witnesses any insight into what is being said to the Irish Government and it needs to do?

**Mr. Denis Sheridan:** It issued the Irish Government with an infringement notice and it believes there are, primarily, a number of breaches of the directive that must be rectified within the legislation. It points in particular to Articles 10.1, 11.2 and 11.3 of the directive, dealing with how the directive was applied within Ireland with regard to disputes and so on. It has given the Government two months not only to respond but to take the measures to rectify the matter. That it is what has been done and what the Commission has stated to the Irish Government. The Irish Government continues to put out the line that it is fit for purpose but that is the position of the EU at present. The Government has two months to respond formally with what measures it will take to rectify the breaches in the legislation.

**Senator Marie Sherlock:** I am out of time. Does Mr. Hayes have any further insight on that matter?

**Mr. Tom Hayes:** Mr. Sheridan has put it well. My understanding from informal discussions is the Commission is concerned with deficiencies in dispute procedures. Again, ironically, the Commission would very much welcome what is being suggested by SIPTU and us. Not only would it resolve the problems in Ireland but it would act as a template for other countries per-

haps using mediation before people jump into legislation. We could go from being the bad boy of the class to being the top pupil.

**Acting Chairman (Deputy Louise O'Reilly):** Before we continue, I want to give Mr. Hayes the opportunity to withdraw the remark he made about the British Council.

**Mr. Tom Hayes:** I am sorry if I was out of line.

**Acting Chairman (Deputy Louise O'Reilly):** If Mr. Hayes could withdraw it.

**Mr. Tom Hayes:** My private opinion should not have gone on the record.

**Acting Chairman (Deputy Louise O'Reilly):** If Mr. Hayes could just withdraw the remark, that would be great.

**Mr. Tom Hayes:** I withdraw it.

**Acting Chairman (Deputy Louise O'Reilly):** Thank you. I call Deputy Paul Murphy who has seven minutes.

**Deputy Paul Murphy:** I thank the witnesses for their presentation. It is clear that we need legislation on this. I do not think we should rush it. We should look for submissions, however, because the devil is in the detail. When Mr. Hayes says that this could become the model across Europe, we want to make sure that it is a good model. There is something that I think is worth exploring further. Under the model Mr. Hayes is proposing for how we resolve disputes, the WRC and then the Labour Court, it seems to be a significant problem that there would be no mechanism for costs to be awarded. We are talking about some of the biggest corporations in the world, with practically limitless resources in terms of legal advice and so on, up against workers who would not be able to avail of similar resources. Is that not a significant problem and precisely why the companies that Mr. Hayes works with would like this sort of model whereby there would be a big mismatch between the workers resources and those of the employers on the other side?

**Mr. Tom Hayes:** No matter what we do, we will end up in the Labour Court. As Irish legislation in general stands, there are no provisions for costs to be awarded in the Labour Court. However, there is a way of resolving this dispute and that is by way of the agreements between EWCs and central management. In most of the agreements that myself and Mr. Sheridan have been involved with we make provision for expert assistance to an EWC. As I mentioned earlier, we are particularly concerned that the experts should be real experts who can genuinely assist an EWC in fulfilling its mandate. Central management provide financial resources to the EWCs to allow for the use of experts. Most of the companies I work with here in Ireland would have no difficulty whatever were some body such as SIPTU providing those resources and acting as experts to EWCs, helping them to take issues to the Labour Court or to the WRC should those disputes arise. Should SIPTU be paid for that? Certainly. Do I want to see barristers on both sides in industrial relations disputes? No, I do not. That is not helpful.

**Deputy Paul Murphy:** Does Mr. Hayes want to see barristers on one side?

**Mr. Tom Hayes:** No.

**Deputy Paul Murphy:** But in this scenario there could be barristers on one side, is that not the case?

**Mr. Tom Hayes:** I have just said very clearly, in the context of whether I want to see barristers on either side, that the answer is "No". Human resource managers, people like Ms McKeon, are more than capable of representing companies and experts like Mr. Sheridan are more than capable of assisting EWCs.

**Deputy Paul Murphy:** To go further on that on experts, does Mr. Hayes accept that it should be the right of the works councils to decide the experts themselves-----

**Mr. Tom Hayes:** Yes.

**Deputy Paul Murphy:** -----that the funding should be provided by the employer but that the-----

**Mr. Tom Hayes:** Let me just add a caveat. Of course it is their right to appoint the experts of their choice, but there should be some consensus about experts. I do not believe that, for instance, the local dog catcher, as was suggested to me at the CAC in the UK, could be an expert. I do not believe that. I believe that experts should have a certain degree of expertise that can clearly be shown to help an EWC and that can be set out in the agreement between that EWC and management.

**Deputy Paul Murphy:** Can I ask Ms McKeon what sort of agreement Oracle has or would like to have?

**Ms Lisa McKeon:** We do not currently have an agreement. We are in discussions. We just revert to subsidiary requirements.

**Deputy Paul Murphy:** I support SIPTU's point about the levels of fines, which is a real problem. Is the point I am making about legal representation for EWCs a concern, with the potential for significant imbalance if this model is adopted?

**Mr. Denis Sheridan:** Returning to the Deputy's comments to the effect that we cannot rush this if it is going to become a model for Europe. We have worked closely with the European Trade Union Confederation and the Irish Congress of Trade Unions on this. We have had discussions with the MEPs Chris MacManus, Denis Radtke and Gaby Bischoff. Denis Radtke wrote a report recently on the basis because the directive has to be changed. It was due an upgrade. On putting models in place, each country can only deal with its own model. We have to deal with Ireland. What we do may influence elsewhere but that is all it will do. We can only deal with Ireland and that is what we will do.

On legal expertise, etc., Mr. Hayes is correct. The Deputy will know, having been in Brussels, everything is legalistic, it is about courts and things like that, whereas the Irish model is very different. What we are trying to say here today is that while there would be a discrepancy between what the worker representatives could afford because the company was paying for it and what the company might go out and get for itself. That would be difficult and that is why both sides want to go under the industrial relations mechanisms so you hear directly from the workers what the issues are. You do not hear legal arguments from barristers and solicitors. That is the same from the employers side. This is something new to them that they like. They have got used to EWCs and having dialogue. Rather than going to the courts, they just want to have dialogue to tease out the problems.

**Deputy Paul Murphy:** I thank Mr. Sheridan. Returning to Mr. Hayes, he is at pains to emphasise that the kinds of companies he works with are okay with EWCs, they want them to

work and so on.

**Mr. Tom Hayes:** Yes.

**Deputy Paul Murphy:** Is it not the case that Mr. Hayes is opposed to the Radtke report which was just mentioned -----

**Mr. Tom Hayes:** Oh yes.

**Deputy Paul Murphy:** ----- because it would strengthen the position of employees in the process.

**Mr. Tom Hayes:** Yes, I think some of the Radtke proposals are for the birds. I will give an example. He wants to see fines for breach of information and consultation obligations of 4% of global turnover. We should remember that, ultimately, all an EWC can do is offer an opinion. A fine of 4% of global turnover for a company such as Amazon would be €18 billion for an alleged breach of an information and consultation procedure where, for example a breach of the GDPR would come nowhere near that.

**Deputy Paul Murphy:** It might mean that they would pass over all the information and not withhold it though, which is can be an issue at EWCs.

**Mr. Tom Hayes:** Am I opposed to some of the things in the Radtke report? Of course I am, but that is labour relations. SIPTU and I agree on many things, and there are many things that we do not agree on. If we did not have disagreements we would not have labour relations.

**Acting Chairman (Deputy Louise O'Reilly):** By way of comment, if $18 billion is 4% that is a heck of a lot of turnover. We will start the rota again. As there is no Sinn Féin speaker, the next slot is Fine Gael's if Deputies Bruton or Stanton wish to come in. I am conscious that they have already been in. However, they may like a second opportunity.

**Deputy Richard Bruton:** No, I am okay.

**Deputy David Stanton:** I am also fine. We got a comprehensive briefing there. I thank the witnesses for that.

**Acting Chairman (Deputy Louise O'Reilly):** I thank the Deputies. We did indeed. Fianna Fáil is next on my list.

**Deputy James O'Connor:** I welcome the witnesses. This has been a very informative discussion. The ERC represent a really interesting opportunity for the State to bring in additional visitors to the country which is positive for our hospitality industry in general. What level of preparation and costs would these events entail? How many delegates would attend generally? We are dealing with major international firms being part of these EWCs. I would like to have a better understanding of that. I would appreciate if either of the witnesses could give insight on that.

**Mr. Tom Hayes:** The size of European work councils can vary. There are 27 European member states, with Norway making a 28th state. We rarely see anybody from either Liechtenstein or Iceland. There could be up to 28 countries represented, with 25 delegates attending on average. The management side could involve a team of four or five. In round numbers, there might be 30 participants in European work councils. On top of that, we have interpretation. Many languages are spoken and European work council members are entitled to have

the proceedings translated instantaneously into their own languages. For every language, two interpreters are needed. Another 15 or 16 people could be involved in interpretation. European work council meetings bring people in from all over Europe, so they have to be held either in an office building with an adjoining hotel or in a hotel. People fly in to spend two or three nights in a hotel, so that involves hotel stays, dinners, lunches, and a social event is often built in too. For example, if people come to Dublin, the Guinness Storehouse is popular, for some reason. When everything is considered, a European work council meeting might involve 30 people, with 20 interpreters, and a couple of technical support people, so there could easily be 60 people. Looking at the spending, a meeting could cost €100,000 or so. If there are 100 or 150 European work councils based in Ireland and each had one meeting here, that would represent a useful addition to the economy.

**Deputy James O'Connor:** That is very interesting.

**Acting Chairman (Deputy Louise O'Reilly):** Does Deputy O'Connor want to give Mr. Sheridan a chance to respond on behalf of SIPTU?

**Deputy James O'Connor:** I would appreciate that.

**Mr. Denis Sheridan:** I will take it further to give the Deputy an understanding. A meeting may last for between three and five days. On the first day, there would be a plenary meeting of European work council representatives and central management. There could be a training day in the locality. The main crux of the meeting might run over two days. The last day might have a separate meeting for each body to see what is happening. As Mr. Hayes said, there could be 60 people here for between three and five days, who would all need the requisite services for their stay. There would be much financial benefit for the local area. A company based in Cavan, which is rural, might take in 60 people for a week-long meeting. Those people would use the local hotels, pubs, restaurants and so on. It can generate a good income for that area.

**Deputy James O'Connor:** That is fascinating. I think that because of Brexit, there has been a change of circumstances in the UK. A significant number of these are based in the UK, under the legal remits that were formerly in place when it was a member of the EU. There is now an opportunity to bring those from the UK and into Ireland. As the witnesses pointed out, spreading these around the country could benefit the Irish economy, workers and businesses. Has SIPTU been preparing for this increase? What can the Government do to push this further and make Ireland the undisputed hub, post Brexit, of what was going on in the UK? We could have an opportunity to host these in Ireland. That is exciting, positive work that the committee could assist the witnesses with if they have recommendations.

**Mr. Denis Sheridan:** One stumbling block for companies coming to Ireland for these purposes, which has been referred to widely through the news and so on, is hotel prices. If people are being quoted €400 per night for a room, they will look at bringing the meetings to cheaper locations elsewhere. That is one problem we face. They will look outside Dublin, so that may be a benefit. I know all of Europe has been affected by the increase in hotel and fuel prices. Before this, multinationals that used Ireland as their base were not inclined to use Dublin because of the prices. I know of instances where we ended up in places like Hungary for the meetings because of the prices in Ireland. That is a major factor. If we can promote the rural areas which have plants and so on, companies are willing to use them. We need to promote local businesses in those areas.

**Deputy James O'Connor:** Looking at the existing legal framework in Ireland, would the

witnesses say that we do not really have the strongest dispute resolution mechanisms? The former Labour Court chair, Kevin Duffy, devised a simple model that can be used within the existing WRC framework. It is based more on mediation than arbitration. Is there any legislation that we as politicians and legislators need to tease out? We cannot deal with the hotel prices and market, unfortunately. Is there anything to be said about improving our system, including strengthening legislation and working with Departments to ensure that Ireland can get this business? It might be different to how European work council disputes are addressed in Germany, the Netherlands or Belgium. I do not have the strongest knowledge on the topic but it has been brought to my attention. Getting involved in it post Brexit is a fabulous idea for Ireland. Do the witnesses have any position on that issue?

**Mr. Denis Sheridan:** The biggest issue is redress. We need to tackle how disputes are resolved. We are all in agreement that industrial relations mechanisms should be the main focus of legislation. That would make Ireland more attractive because, first and foremost, involved parties would go into conciliation and mediation, rather than going straight into the courts, as in other parts of Europe, and being faced with a legal battle. They actually get assistance which is provided by the WRC. It is a cheap method, which is another point that people like. Deputy Paul Murphy referred to expenses and so on. The process would be assisted because expenses would be lower in the WRC, since workers could go in with an expert to express their fears and issues. Management would not need barristers to simply sit in a room to discuss issues. That is why this model is so attractive to other European countries and multinationals. They would only go to court after that. We need to look at redress.

While I am not insinuating that all companies are rogue, there have been incidents where no redress has been provided. We had an incident where we tried to take an Irish multinational company through legal proceedings and nearly five years have elapsed with no resolution. Ireland is an attractive choice for companies that do not want to put in place workers' rights. Mr. Hayes has clearly stated that this is not the intention of the good companies that he deals with but aspects of this process must be examined. SIPTU has spent nearly five years trying to get an Irish multinational company through the statutory process in Ireland and the matter still has not been resolved. This issue needs to be addressed to make Ireland more attractive. People would be more willing to come to Ireland if the industrial relations mechanism was in place because it would be an easy and cost-efficient way to deal with disputes.

**Mr. Tom Hayes:** I do not disagree with anything that Mr. Sheridan has said. One thing we would need to do is ensure the presence of people in the Workplace Relations Commission and the Labour Court who understood these matters. The folks who work in both bodies understand Irish industrial relations and its processes, which is why they are employed. As the European works councils would bring a new dimension, we would need to ensure that at least two or three people in the WRC were specialists in this area and that a couple of people who work in the Labour Court also understood this stuff. We, as a group of companies, would be more than willing to make available our accumulated expertise and would happily do so in conjunction with SIPTU. It is not that we want people to think like we do. It is just that we have years of accumulated experience of dealing with these matters as does SIPTU and some of its European colleagues. We would be happy to make our expertise available by way of training programmes, discussions, conferences or whatever, which would act as a starting point for getting the expertise that we need to properly deal with these matters. I wish to emphasise that I do not want to be in court and neither do the companies with whom I work. We want a dialogue with the people with whom we work.

Earlier Deputy Bruton asked about the apprehension in the 1990s and I believe that a lot of that is gone. We want to build on the progress that we have made, we do not want to be in court and we want to resolve problems when they arise. We do not want problems in the first place but when we have them, we want to resolve them and want to be able to do so in the way Mr. Sheridan has described in accordance with the Irish industrial relations procedures of mediation and dialogue.

**Mr. Gerry McCormack:** I thank everybody for having us here today. Deputy Paul Murphy made his point very well. At present, we have issues with legal people coming into the Labour Court and creating all sorts of havoc with joint labour committees in particular and we certainly do not want that to happen. We are very comfortable in the Labour Court. We are very comfortable with the Workplace Relations Commission and know it very well; much better than the legal people. Legislation that is strong and solid is needed as it would ensure there are no problems no matter who is on the other side of the fence because we would be more than capable of dealing with it.

The committee needs to understand that this directive does not just concern national legislation. It affects tens of thousands of European workers because once enacted in Ireland, the directive affects those people who work in all of the companies across Europe. Ireland, because it has defective legislation is also taking the rights of workers from a swathe of European workers. Please bear in mind that this directive is not just a domestic issue.

Simply, we need to correct defective legislation. Therefore, we need legislation that will allow the WRC and the Labour Court to issue a recommendation, and a binding determination if there is no resolution. Once we have that, then we will have a good mechanism. It is not about a model for Europe as to be honest, I am not interested in creating a model for any other country. Our only interest is to make sure that workers' rights are fully respected. This legislation is very useful to workers but all it does is give information and consultation. As it omits collective bargaining, there should be no fear from anybody and no fear from the Government. The Government has let us down badly as it had an opportunity to fix this matter. We have tried to improve things for a number of years and now the Government needs to sort out this matter as quickly as possible.

**Acting Chairman (Deputy Louise O'Reilly):** Mr. Sheridan has said in his submission that the Transnational Information and Consultation of Employees Act 1996 was recast in the legislation in 2011. At what stage in 2011 was the legislation brought through? What happened in the interim to bring us to where we are? We started in the wrong place with the legislation in 2011. Why was this matter not addressed and debated at the time, when the legislation would have been current?

**Mr. Denis Sheridan:** The EU directive is from 1994 and it was transposed in 1996. SIPTU raised this issue with politicians and so on a number of times. The Government at that time went to great lengths to attract multinational companies to Ireland for the purpose of bringing Ireland out of a recession and emphasised that the legislation did not cover collective bargaining, so it fell on deaf ears. Subsequently, in 1994, it was agreed to review the European directive and it was recast in 2009. Changes were made to definitions of what is meant by the terms "consultations" and "transnational". The recast legislation was transposed into Irish law in 2011 and, again, a timeframe was put in place whereby another review would take place within Europe but for a number of reasons a review was not done within Europe.

**Acting Chairman (Deputy Louise O'Reilly):** Did SIPTU lobby in 2011 for the requisite

changes to be made?

**Mr. Denis Sheridan:** SIPTU has been lobbying since 1994 to get the relevant changes. The reason it probably was not seen is because there were only three Irish multinationals and a review was not done because the issue was deemed not big enough. Since 2011, SIPTU has worked with the European Trade Union Confederation, ETUC, and the Irish Congress of Trade Unions, ICTU, and this issue has been on our agenda.

One part of the report by Mr. Dennis Radtke to the current European Parliament recommends a recast and states changes must be made and that is contained in the Irish situation. Mr. McCormack hit the nail on the head when he stated the directive affects many people in Europe. We have been contacted by political parties located around Europe because they are watching developments as constituent members are being affected due to their legal bases being in Ireland. We have had this matter on the agenda since 1994 but, unfortunately, it has waned and died. However, when Brexit came into view, we considered this matter with Brexit in mind and we saw the issues. It was at that time that we decided that neither we nor the Government could continue to put this matter on the long finger but were obliged to act. Unfortunately, the Government did not act and SIPTU has lobbied the Government about this matter for over four years.

In 2019, the ETUC held a training conference in Dublin and members of the Government were invited to attend the training conference to learn what European works councils were about as they clearly believed that there were only three multinationals in Ireland and, therefore, only three companies were affected. Last year, the ETUC specifically came to Ireland to hold a conference because the Government was not paying attention to what was going on. The ETUC held its conference here and we worked hand in hand with it. Certain members of political parties were invited, some of whom turned up. Senator Sherlock was invited and turned up. Senator Gavan was also invited. Representatives of Fianna Fáil and Fine Gael were contacted but did not turn up. It has been on the agenda but it has been floating under the radar.

**Senator Marie Sherlock:** Mr. McCormack summed up the real need to make right the defective legislation as it currently stands. Mr. Kevin Duffy's paper and our guests' contributions were clear that the reliance on the model of private arbitration simply does not work. The penalties are too few. I wish to understand a bit about employer interest in, and resistance to EWCs and the context in that regard. It is important that we have an employer here today. I wish to ask Ms McKeon about Oracle's experience and frustrations with the existing legislation. I understand that there is still no EWC but it is in the works at the moment.

**Ms Lisa McKeon:** We have an EWC at the moment; we just do not have an agreement.

**Senator Marie Sherlock:** Indeed.

**Ms Lisa McKeon:** In 2018, we brought it from UK law into Irish law. It could be deemed that we take advantage of the fact there is no dispute resolution in Ireland but that is not the case. Like anything, everyone wants to sing from the same hymn sheet. If everyone knows how they can go about their dispute, there is less ambiguity between us. In 2018, Oracle had a case brought to arbitration under UK law. We have overcome it. The outcomes came together and both sides took learnings. We still have to work with the EWC. We have to do consultations and have open dialogues and annual meetings. The relationship was bruised because we had to go straight to court. As the years have gone on, we have, thankfully, a great relationship. However, going straight to court naturally puts everyone's backs up. Oracle is in favour of this

legislation and the insertion of that provision in order to allow dialogue to happen at the WRC and mediation. The whole point of the EWC and central management is to have dialogue on a day-to-day basis. We see the benefits involved.

**Senator Marie Sherlock:** It is important to have that experience. It is important for that message to be sent to the Department. I am sure the committee will be inviting Department officials to discuss this particular legislation in the coming weeks.

I wish to ask Mr. McCormack and Mr. Sheridan about the resistance among some employers. Mr. Sheridan has spoken about the lengths to which he has gone to try to establish an EWC in Kingspan. I note that in his presentation Mr. Hayes talked about up to 1,000 companies across Europe that would be eligible for an EWC but have not established one. With particular regard to Ireland, what are the circumstances or conditions that are preventing the establishment of EWCs? Does the lack of a right to be recognised for collective bargaining purposes have any impact on creating resistance among employers?

**Mr. Denis Sheridan:** There are approximately 100 EWCs with a legal base in Ireland. As I previously stated, not all relationships are good. There are companies out there that are moving their bases. They are seeing the legislation in Ireland as a mechanism not to implement. One of the major factors, as Mr. Hayes said, is that it could cost up to €100,000 a year for a meeting to take place. Companies come to Ireland and put in the subsidiary requirements. That means the minimum becomes the maximum whereas previously there were agreements and so on. They can frustrate the process. As I said, negotiations with another multinational have been ongoing for five years. That company has not had to pay out expenses for an EWC for five years. It has not had to pay for hotels and things like that for five years. If we follow Mr. Hayes's analogy, that company has saved €500,000 straight off the bat by refusing to enforce workers' rights. Those companies see it as a benefit that they can do that.

As I said earlier, there was a situation whereby a company, on the first day of Brexit, automatically changed its legal base from the UK to Ireland, implemented the subsidiary requirements and refused to engage with the workers because that was all it had to do. The company stated that the workers could take it to court in Ireland if they had a problem with that situation and it would see them in five years. That was the harsh reality. That affected every worker within that company throughout Europe. Companies are willing to take that risk. That is not true of all companies. We have seen some great results and we have great relationships with some companies. However, that is one of the things that companies look at when considering whether to come to Ireland.

Collective bargaining is another aspect of the matter. Companies also know there are no collective bargaining rights in Ireland. They know they do not have to engage with the workers. They are solely coming for the purposes of EWC business, which they can frustrate. They are not covered by collective bargaining laws in Ireland and so on because we do not have any. Some of the bigger countries, including France, Germany and Spain, have stringent collective bargaining with works councils and all of that. Those companies would face opposition elsewhere but they do not in Ireland because there are no collective bargaining rights.

**Senator Marie Sherlock:** The ETUC was mentioned earlier. I would be interested to hear about any discussions that Mr. Sheridan and Mr. McCormack have had with the ETUC about its perspective on Ireland's legislation and the rapporteur report of Mr. Dennis Radtke to the European Parliament. Mr. Duffy's paper refers to Ireland's penalties being in line with most other EU member states with the exceptions of the UK and Spain. There needs to be a complete

overhaul of the penalties. Our guests might enlighten us as to what the ETUC has been saying in this space.

**Mr. Denis Sheridan:** The ETUC has been very supportive. It has seen at first hand the issues we have been having in Ireland. Through its work with the Irish Congress of Trade Unions, it is fully updated. It has been able to get us meetings with MEPs such as Gabriele Bischoff and Dennis Radtke. It has supported us. It has campaigned in Europe for the changes Ireland needs. It has been of great assistance and a great support. The ETUC has done a campaign based on the fact that Ireland took a complaint to the EU. It has been utilising that, which was referred to in Mr. Radtke's report. It has been pushing that. One of the examples it gives is that of Finland, where the directive also needs to be changed. The system in Finland requires people to walk into the local police station and make an official complaint to the police that the EWC has been breached. Finland also has issues.

We are probably one of the first countries to make an official complaint, as we have, regarding the directive and how it is transposed. The ETUC wants to see this across all of Europe. It is supporting Ireland and has been of great assistance. The same is true of the Irish Congress of Trade Unions. The ETUC has been pushing the Tánaiste for the purposes of getting that report through so the form of the directive is recast to remove many of the anomalies within the member states that are deficient. Ireland is probably leading the way with what we have done to date.

**Acting Chairman (Deputy Louise O'Reilly):** Mr. Sheridan made reference to a meeting that some people did not attend. The people who were invited and who did not attend are not here to give their reasons, and they may be very good ones. I am sure it was not Mr. Sheridan's intention to say anything else.

**Deputy Paul Murphy:** To start with Ms McKeon, why does Oracle not have an agreement with its EWC?

**Ms Lisa McKeon:** We are in negotiations at the moment.

**Deputy Paul Murphy:** How long has it been in negotiations?

**Ms Lisa McKeon:** A year.

**Deputy Paul Murphy:** What is preventing agreement?

**Ms Lisa McKeon:** We just have not got around to it. Actually, the EWC is still waiting and is still seeking advice. It delayed the agreement talks.

**Deputy Paul Murphy:** Okay. Let us say an agreement were to be concluded before we deal with this, it is the case it could include provisions for mediation in the agreement. That would be common enough in agreements between EWCs and companies.

**Mr. Tom Hayes:** No.

**Deputy Paul Murphy:** Would they generally not have mediation clauses?

**Mr. Tom Hayes:** The vast majority of EWC agreements would simply say that if a dispute cannot be resolved in direct talks between the parties, they will make use of the processes and procedures provided for in the relevant national law. One exception to that is the recent agreement concluded by Amazon which provides for a three-person tribunal to resolve dis-

putes. Again, that internal tribunal does not resolve disputes. Either party - the management or the employee representatives - will have recourse to whatever are the process of procedures provided for in Irish law. One thing you cannot do in a European works council agreement is deprive people of legal rights that are granted by legislation. While they can be built on, they cannot be undercut.

**Deputy Paul Murphy:** Mr. Hayes mentioned the problems with the Central Arbitration Committee, CAC, process in Britain. Who has the problems with the CAC process?

**Mr. Tom Hayes:** It is both sides. Part of the reason, and I alluded to this in my earlier remarks, is that the CAC simply has no experience or expertise in dealing with European works councils. It was set up primarily to deal with issues of trade union recognition in the UK, not with European works councils. It tends to be staffed - I will be careful the way I phrase this - by academics, whereas the Irish Labour Court, on the other hand, is staffed by people who have practical experience from both the management and the trade union side and would be in a much better position to understand the industrial relations realities, because they have lived those realities, than somebody who has simply studied them from an academic point of view. That is the point Mr. McCormack was making about why the unions are comfortable with the Labour Court.

**Deputy Paul Murphy:** Does SIPTU know if the EWC has said anything about a question of legal means, legal representation and so on? Would SIPTU have a concern with the WRC Labour Court process in that sometimes employers just do not turn up to these things? Is there a danger this would happen with European works councils?

**Mr. Tom Hayes:** Can I say one thing on that before SIPTU does? We have to turn up under the European works council. I understand what the Deputy is saying in terms of normal industrial relations procedures, but the European works council is a legal contract between management and the employee side. It is slightly different from a normal agreement. We have an obligation to turn up. It is just like if we are summoned to court. If we do not turn up, we will lose the case. We have an obligation to turn up. That will not be an issue.

**Mr. Gerry McCormack:** Deputy Murphy raises a good question. Mr. Hayes has answered it to some extent. The employer must turn up. The important point we are looking for in an amendment to the legislation is to include not just an arbitration process, which would be followed by a Labour Court recommendation, but that there would then be a determination that would be legally binding on the parties. That is what is most important. We therefore have a final outcome to it as well, regardless of whether the employer or we like it.

**Mr. Denis Sheridan:** I will take up the Deputy's point regarding expertise, the purposes of expenses and so on. Precedent within Europe has been set that all expenses incurred by the EWC are paid by the central management. There was a case at the CAC two years ago which set in place a precedent whereby the EWC could get legal expertise and central management had to pay for it. We all acknowledge the EWC does not have access to moneys. In the Irish legislation, the Deputy is correct in what he was saying earlier that management has the right to offer basic and there could then be disputes about that. However, we believe that by going through the mechanisms we have, there are enough experts, especially within the trade union movement, to alleviate the expenses. That is one of the benefits there could be to the central management of multinational companies.

**Mr. Tom Hayes:** I prefer to deal with trade union experts than with private consultants who

have a vested interest in making problems worse than they are. Trade unions have a vested interest in solving problems.

**Acting Chairman (Deputy Louise O'Reilly):** I have a couple of questions. Section 4 of SIPTU's submission states it has established that cases currently heard in the District Court carry a maximum fine of €1,500. In that regard, Mr. Hayes mentioned figures of between €15,000 and €50,000. Obviously, I made the observation that he is here not as a representative, as he has said, but in some, way, shape or form representing people who could very easily sustain that figure. In terms of where the penalty should be set, could we agree for the information of the committee that it has to be sufficient to be persuasive and to act as a deterrent? We do not have to put a number on it, although there would have to be a maximum or a minimum number set in law. If we come at it from the point of view of trying to devise that number so that it acts as a deterrent, should that not be the guiding principle, or would the witnesses favour just a flat-out money amount?

**Mr. Denis Sheridan:** I will just clarify in relation to the fines that are currently in place in Ireland. The maximum fine of €12,500 applies only in cases of indictment. The current maximum is €1,500-----

**Acting Chairman (Deputy Louise O'Reilly):** In the District Court.

**Mr. Denis Sheridan:** In the District Court. Therefore, a whole process will have to be gone through before the figure of €12,500 is even got near. There is currently a multinational company whose turnover is €6.3 billion. Even if it were to be got on indictment whereby the figure of €12,500 would be relevant, there is no deterrent there. What could possibly happen is that it would take the fine and still not implement it, because the process would have to start to be gone through again. The whole aspect of penalties has to be looked at.

Fines are one thing, but the way they are dealt with has to be looked at. We talk about fines. Mr. Hayes has discussed how the fines range. Currently, there is another company within the CAC that was fined €45,000. The minute Brexit happened, it came straight to Ireland and refused to put workers' rights in place. That is what we say in regard to fines, and the directive states there has to be a deterrent. We need to start on this. We have our figures for what would be a deterrent, Mr. Hayes would have his, and so on. However, we need to move from the current position.

I do not know if Mr. McCormack has a view.

**Mr. Gerry McCormack:** No.

**Mr. Tom Hayes:** We also need to keep in mind that there are two ways we can have a dispute. We can have a difference of interpretation. We might think that something in an agreement means this, and the other side thinks it means that. We must be careful that genuine differences of interpretation do not carry penalties. That is not helpful to anybody. We have to distinguish, therefore, between genuine differences of opinion about what an agreement means. I do not believe those disagreements of opinion should carry heavy penalties. We should separate that out from wilful refusal to meet obligations. Let us say we are advising a European work council, EWC, on either side of the fence. If, for example, I disagree with Mr. Sheridan because I think it means this, and Mr. Sheridan thinks it means that, I do not believe there should be an enormous financial penalty around something like that. We should get a resolution by way of a recommendation from the Labour Court. If a company says "We know that we

should do something and we are not going to do it", then there should be significant penalties. We need to make that differentiation between disputes about interpretation and disputes around wilful refusal to implement the legislation. I make no defence whatsoever of companies who wilfully refuse to engage with the legislation. Most of the disputes I have been involved with have been around interpretation such as "You say one thing and I say another", but we have not refused to engage. That distinction needs to be made.

**Acting Chairman (Deputy Louise O'Reilly):** I thank Mr. Hayes. With regard to your own organisations and the Brussels European Employee Relations Group, BEERG, what is the position regarding union recognition there? I am aware that you have said you are not a representative as such but you are part of a group when you are here to speak in some capacity as a representative. Do those companies that Mr. Hayes speaks of, with whom he deals and which are part of the organisation, recognise unions?

**Mr. Tom Hayes:** Yes.

**Acting Chairman (Deputy Louise O'Reilly):** Is that all of them, some of them, or most of them? Is it in every jurisdiction or only where-----

**Mr. Tom Hayes:** Yes. All over the place. The view taken by most of the major multinationals I deal with is that they engage with their employees as their employees want them to engage. For instance, companies will have works councils or *betriebsräte*, or call them what you will, across Europe. They will have union representation across Europe and they will engage with unions across Europe. If their employees express an interest in joining a union, and do so in sufficient numbers as provided for in the law in the individual countries, then they will engage with them.

**Acting Chairman (Deputy Louise O'Reilly):** I am sure Mr. Hayes will accept there is a view that the EWCs are used in some instances as a mechanism by which to bypass trade unions.

**Mr. Tom Hayes:** They are complementary.

**Acting Chairman (Deputy Louise O'Reilly):** They are not always. That is an issue. This is not the case with your own organisation, which works with companies that recognise unions.

**Mr. Tom Hayes:** We engage with trade unions all day and every day of the week across Europe in all sorts of jurisdictions, depending on what the legal framework is and depending on what the collective bargaining arrangements are. That is life.

**Acting Chairman (Deputy Louise O'Reilly):** With regard to the EWCs that are currently here, is it Mr. Hayes's position that they may leave if we do not change the law? Reference was made to the fact that Ireland is English-speaking and that this would be attractive to those companies who are leaving Britain because of Brexit. What if we do not change the law and we simply come out at the end of this process and see there is no appetite, which clearly there has not been since 2011, to do it right or subsequently to fix it? If the law is not changed does Mr. Hayes anticipate EWCs that have come here will leave or that it would act as a deterrent to other EWCs to move here?

**Mr. Tom Hayes:** I think the latter. I do not see any appetite to leave among the companies that have come here. As I said earlier, the very fact that I am here making these comments is an indication that they want to stay here but they want the law improved so we have a proper,

level playing field for both sides. I will use an analogy: I play for Manchester United and Mr. Sheridan plays for Liverpool, but we both want to play within a framework of proper rules. When we are on the pitch we try as best we can to win the game but we want to play within a framework of proper rules. They will not leave and I would certainly not advise them to leave. With a little bit of goodwill, I am not interested in blaming anyone for why we are here. We are where we are. I want to see it fixed and I want a solution going forward.

**Acting Chairman (Deputy Louise O'Reilly):** My question related to whether or not they would leave if it was not fixed.

**Mr. Tom Hayes:** I want to see Ireland benefiting from this. I do not believe they will leave. I certainly would not advise them to leave.

**Mr. Gerry McCormack:** The Acting Chairman asked about collective bargaining. As my colleague Mr. Sheridan has said, the truth of it is that there is no provision for collective bargaining in this State. It is a complete and utter disaster for workers because nobody can vindicate their right to collectively bargain with their employer. There are processes taking place at the moment between the Government, the trade unions and employers, and we would hope that would come to some conclusion, but in reality we have a deficiency in Ireland in this regard, which Mr. Hayes well knows. This makes a big difference when one comes to talk about European works councils. Many of the companies that Mr. Hayes has outlined do not have collective bargaining with us here in Ireland. They may very well have processes in other European countries but they do not have them here in Ireland. It is certainly a huge deficiency, as the Acting Chairman will quite well know.

**Acting Chairman (Deputy Louise O'Reilly):** I do indeed. I thank Mr. McCormack. If there are no further questions from members for our witnesses, that concludes the committee's consideration on the matter today.

I thank the representatives for coming into the committee. I thank them for giving us their time, their insight, and their expertise. It has been very informative. The committee will be coming back as soon as possible to consider this matter further.

**Mr. Tom Hayes:** I thank the Acting Chairman. I appreciate the opportunity to be here.

The joint committee went into private session at 11.26 a.m. and adjourned at 11.47 a.m. until 9.30 a.m on Wednesday, 29 June 2022.