Start and Go!

Social partners towards effective processes of establishing and managing EWCs

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The establishment of European Works Councils is one of the greatest achievements of EU social policy. It has been a decisive step towards the construction of a European industrial relations area. The culmination of this process has been made possible, fundamentally, by the persistent pressure that European trade union organisations have been exerting, since the early 1970s, on the governments of the Member States of the European Union and the Community institutions, after observing the serious difficulties in regulating the practices of multinational companies.

Traditionally, European trade unions have followed local negotiating strategies with multinational companies, trying to preserve the interests of workers in the country where the parent company was located, through agreements that ensured the continuity of local production and employment volumes, often to the detriment of workers in other sites of the same multinational located in other countries, as well as workers in other companies who also worked for the former in their own country and abroad.

However, from the 1990s onwards, this local orientation was challenged by the new challenges and problems posed by the more aggressive production and employment policies of multinationals. Not all European trade unions were able to adapt and react in the same way.

According to the institutionalist current, while some trade unions were able or knew how to respond to these problems with more proactive strategies, reformulating their structures and objectives, because they had contexts that were more favourable to their interests, both cultural (tradition of pacts and social concertation, employers' culture favourable or not very adverse to social consensus, previous experience in collective bargaining with multinationals, etc.) and institutional (trade union participation in macroeconomic policies, favourable legal frameworks for labour relations, etc.), others, on the other hand, had more favourable contexts for their interests, such as in Germany, Denmark or Italy.) and

institutional (trade union participation in macroeconomic policies, favourable legal frameworks in labour relations, etc.), as has been the case with German, Danish or Italian trade unionism; others, on the other hand - such as Spanish or British trade unions - have either not had the same backing or, although they have had it, other specific "local" factors (low membership, trade union division, high density of small and medium-sized enterprises, etc.) have prevented them, in practice, from facing these challenges and problems with a certain degree of success.

Functionalism, on the other hand, has been arguing that the functional imperatives arising from the process of economic and institutional integration, driven in turn by the implementation of the single market and the subsequent single currency and, in particular, by the expansion of multinational labour management practices, have meant that European trade unions have had to readapt their local strategies of action to a new, inevitably convergent, international pattern in order to respond to similar conflicts and problems with an international dimension, have meant that European trade unions have had to readapt their local strategies of action to a new, inevitably convergent, international pattern in order to respond to similar conflicts and problems with an international dimension, over and above the restrictions that the cultural and institutional factors of each country may have exerted on this convergence.

In any case, both the latter and the previous theses do not seem to have proved conclusive to be able to affirm that the strategies followed by European trade unions in recent years can be explained, fundamentally, by the effect of economic factors or, on the contrary, by the influence of institutional and cultural factors, so that there is not sufficient basis, at least for the moment, to ensure that the divergence from which trade union strategies started in the past will gradually disappear or, on the contrary, that the trend will be towards their maintenance.

Other perspectives have tried to explain how trade union booms and busts can have opposite directions in the predisposition of unions and workers themselves towards a less local and more global vision of trade union action.

To observe these effects, Ebbinghaus and Visser propose three different approaches:

- a business cycle,
- a structural,
- an institutional.

The first argues that since during economic booms there is more activity and employment and, consequently, more potential membership, while during downturns the opposite is true, it can be deduced that it is during upturns that trade unions are more likely to be able to orient their action beyond national borders, since they have the right conditions (economic growth and increased membership) that legitimise them, to a greater extent than in downturns, to formulate changes in that direction in the strategies they have followed until then.

The "structural" approach, on the other hand, would confirm, in the negative, part of what the previous "business cycle" approach argues.

According to this approach, the decline in trade union membership and action, caused by the neo-liberal reorientation of government policies and changes in production methods and labour management in recent decades, has led to a steady increase in the relative and absolute weight of those employed in the service sector, to the detriment of industry and public enterprises - traditionally trade union fiefdoms - which has not only reduced the average size of companies, but also the potential for companies with the minimum requirements of multinational size to be able to set up trade union representation bodies, but has also led to a reduction in the average size of companies - and therefore the potential for companies with the minimum requirements of multinational size to be able to form trade union representation bodies, This has not only reduced the average size of companies - and, consequently, the potential for companies to meet the minimum requirements of multinational size to be able to set up supranational representative bodies, such as the European Works Councils - but has also placed the unions in a situation of clear weakness in collective bargaining vis-à-vis employers.

Therefore, in such a context, trade unions could have reacted by forging a more local and protectionist vision in the targeting of their strategies.

Finally, **the institutional approach** states that in countries where trade unions are involved as social partners in the formal institutions of the industrial relations system, and where social dialogue (bipartite or tripartite) is highly consolidated as a mechanism for political and labour bargaining, it is usually where trade unions are also more likely to advocate collective action at the sectoral and territorial levels at the international level, rather than those that lack such dialogue and institutional involvement, and thus generally focus their strategies at the more local level (both sectorally and territorially) or simply at the level of the enterprise.

From the specific point of view of European trade unionism, the particular historical dynamics of the economic and occupational structure in this country over the last decades cannot be ignored.

Since the political transition, important changes in public regulation of the labour market have been taking place.

The recessionary economic cycles and the subsequent periods of expansion implied profound changes in the occupational structure.

The processes of job destruction and job creation during these cycles did not involve mere quantitative adjustments, but rather structural changes in the composition of employment, as a result of the total or partial closure of numerous companies, the profound reorganisation of those that managed to survive, as well as the appearance of new ones, often in fields and activities that were different from the previous ones.

Changes in employment directly related to the meteoric rise in temporary employment in our country, which have led many experts to use the type of contract, permanent or temporary, as the main factor explaining the segmentation of the labour market, even within companies themselves, with the creation of internal markets or pseudo-markets, in which different working conditions are offered depending on the added value provided and the degree of dispensability that each worker has for the company.

This has led to the emergence of a great diversity of work situations and interests, not always coinciding, among different groups of workers, which has hindered collective action by trade unions.

It is clear that collective bargaining becomes a brake on the unilateralism of company decisions and that strong bargaining, backed by the majority of workers, limits such unilateralism.

Moreover, collective bargaining takes decisions away from the local level of the company to higher hierarchical levels. It encourages a greater balance of power between the two sides, which is necessary for bargaining.

This is why employers often question the dynamics of collective bargaining in order, as far as possible, to transfer it to the private sphere of the company, in the certainty that it will often result in disguised unilateralism.

Of course, this reality contrasts sharply with all the literature that, for years now, has been alluding to the so-called new paradigms of the company of the future: motivating, integrating, participative, where the human factor is the undisputed key to the future of the company.

However, this reality shows that, in many large companies, a bureaucratic culture still prevails, with rigid pyramidal structures, extensive systems of regulations and rules, a high degree of impersonal control, thus maintaining a high level of mistrust towards the worker and a working environment that is not very conducive to trade union action in the company.

This bureaucratic culture is still widespread among a large number of large and multinational companies and small and medium-sized companies, which makes trade union action even weaker in the business fabric as a whole, given the high relative weight of the latter concerning the business fabric as a whole.

With such a corporate culture and structure, possible trade union strategies with an international vision of the problems presented by today's global environment are inevitably restricted to those trade union leaders whose ideologies place these orientations ahead of local ones when planning collective action and bargaining.

This tradition is still not very widespread in the trade union world, the absence of which has only reinforced the reluctance of management and employers when the trade unions themselves ask them to establish agreements or create bodies - such as the European Works Councils - that go beyond the national level.

Moreover, the international outlook of the few large indigenous companies and multinationals managers is significantly influenced by the kind of learning and experience they have acquired as a result of their recent entry into non-EU markets, particularly in Latin America.

Information related to EWCs is relatively scarce in the Member States compared to other socio-occupational issues.

Since Directive 94/45 came into force and the process of transposing it into the national laws of the respective Member States began, the potential number of multinational companies and groups of companies that could form the EWC has continued to grow in the EU-25 area, as a result, among other things, of the constant increase in the number of companies and groups of multinational companies that could form the EWC, the constant increase in the occupational dimension of these companies - both due to the increase in the volume of their activities and as a result of processes of absorption or mergers with other companies - but also due to the location in the European territory of new companies with this potential, both from new European countries and from non-EU countries.

As a result, the number of companies that could set up an EWC has increased from around 1,200 in 1998 to more than 7,200 by mid-2018.

However, after the adoption of the Directive in 1994 and until September 1996, there was a substantial net increase in such incorporations (378 new EWCs), especially during the last months of that period. Finally, after September 1996 and up to the latest available data of June 2016, the rate of incorporations has slowed down, as during this last phase, only 733 new EWCs have been signed, despite the aforementioned increase of companies that, during the same period, could have been covered by this representative body.

The situation of the European Works Councils set up until June 2018, concerning the potential number of multinationals that were affected by Directive 94/45 on that same date (5,204 companies), both those that had their headquarters in one of the countries of the then EU-25 (1,746 companies, including those in Norway and Switzerland) and those that had their headquarters outside the EU-25 but had centres of activity with the necessary Community dimension to establish the EWC: 758 companies in total, of which 444 had their headquarters in the USA, 66 in Canada, 96 in Japan, 23 in Australia, 25 in

South Africa and 128 in other non-EU countries, 66 in Canada, 96 in Japan, 23 in Australia, 25 in South Africa and 128 in other non-EU countries. However, it should be noted that among the ten countries that joined the European Union in 2002.

Only the Czech Republic, Poland and Hungary had multinational companies eligible to form an EWC, although only in Hungary had such an agreement been reached in only one company.

It can be deduced from the above that the coverage rates of companies that an EWC could potentially cover were still relatively low in 2005, more than a decade after the adoption of the EWC Directive: while the coverage rate for multinationals with headquarters in EU countries was 35.4%, the coverage rate for multinationals with headquarters outside EU countries was 32%, so that the overall coverage rate was 34.8%, with a spectrum of country-specific rates ranging from peaks of 63.4% and 54% for Norway and Belgium, respectively, to lows of 11.1%, 14% and 14.6% for Portugal, Ireland and Spain, respectively.

The dynamics of transnational framework agreements (TFAs), signed between the management of a multinational company and one or more workers' representatives (mainly European or international sectoral federations, but also European Works Councils or one or more national trade unions) have become more widespread since 2000.

The vast majority of transnational framework agreements (93%) concern European multinationals based in the home country (mainly German and French, although Spanish companies have taken third place in recent years). In contrast, a small number of agreements concern non-European multinationals from the United States, Canada, Brazil, Russia, South Africa, Malaysia, Indonesia, Australia, New Zealand and Japan.

These are voluntary agreements, concluded outside of binding legal regulation at both European and international level, given the absence of a regulatory framework defining the rules for their conclusion and application, the parties entitled to them, their mandate, form and effectiveness, the instruments for monitoring and controlling their application, and the methods for resolving conflicts.

In the absence of a relevant legal framework and national rules to regulate the internal effects of agreements negotiated at the transnational level, such agreements operate in a regulatory vacuum, endowed with the only legal force given to them by the negotiating parties.

In the field of collective labour relations, this regulatory vacuum does not prevent the social partners from creating their legal system, according to the theory developed on the plurality of legal systems, which was transferred to the labour field in Italy through the notion of "inter-union order" based on the principle of collective autonomy.

With the collective agreement, the social partners create their system of common rules, instruments, procedures, and institutions through which they govern industrial relations, providing for redress mechanisms to violate agreements.

The situation of legal uncertainty in which these agreements find themselves should therefore not be overestimated: they are endowed with the legal effectiveness of the contract, which, both in the common law tradition and in civil law systems, has the force of law between the parties.

The parties themselves define its scope, the reciprocal rights and obligations, the duration and conditions of its renewal, and the forms of supervision and control of its implementation.

These are procedural rules that are usually included in the so-called mandatory part of the collective agreement and aim to establish rules and procedures that the parties will follow during the negotiation and implementation of the transnational agreement.

The EWC Directive has helped to strengthen the right of workers' representatives to be informed and consulted in transnational companies and to act as a driving force for collective bargaining on collective agreements in multinational companies, as well as to encourage the voluntary extension of workers' representation to non-European subsidiaries through the establishment of global works councils.

The existence of EWCs and the regularity of social dialogue and discussion between the management of multinational companies and EWCs have favoured the development of bargaining practices beyond what is imposed by the Directive itself, especially in European multinationals, which are, not by chance, the vast majority of companies that have signed transnational framework agreements.

The obligation imposed by the European Directive to negotiate the creation, composition and competencies of the EWC was the original core of the negotiations in the transnational corporation, which contributed to the structuring of the actors at this level.

However, this origin marking raised the question of who had the right to negotiate and sign the TFAs on behalf of the workers.

This is still an open question, given the different national systems of representation, which give the power to negotiate agreements at the company level to bodies representing workers in the company, such as works councils or trade union representatives.

The transnational projection of the different national systems of representation, highlighted by the different mechanisms for electing or appointing national employee representatives to the EWC, is shown by the prevalence of the TFAs signed by the European (or global) Works Council in multinational companies of German origin, and by the trade unions in French multinationals.

The question is related to the different conception of the enterprise agreement due to a participatory dynamic within the enterprise (e.g. information and consultation rights) or as an instrument of conflict resolution.

In general, the concentration of a significant number of TFAs in European multinational companies is considered to be the result of the positive climate of social dialogue that characterises the parent company, as well as the role that national industrial relations systems and the European institutional framework recognise for social dialogue at company level.

The situation is completely different for multinational companies from outside Europe, where the issue is left entirely to power relations. In an openly anti-union climate, the agreement is often the result of long negotiation processes aimed at putting an end to mobilisation campaigns and judicial strategies aimed at denouncing the violation of fundamental rights by the multinational company within national borders or in third countries.

Secondly, international sources of inspiration for transnational framework agreements include the OECD Guidelines on Multinational Enterprises (1976), which have recently been revised and strengthened concerning the obligations of states to monitor multinational enterprises; the ILO Tripartite Declaration on Multinational Enterprises (1977), updated in 2017 to include among its guiding principles the concept of "due diligence" in contractual relations with third companies and the promotion of the decent work agenda and respect for human rights in global supply chains; the 2000 Global Compact; and the 2011 UN Guiding Principles on Business and Human Rights.

Although they are soft law instruments of a non-binding nature, these sources have encouraged the spread of a culture of social dialogue and the promotion of conventions on fundamental rights in multinational enterprises, including through CSR instruments such as charters and codes of conduct, the development of which seems to be carried out by the new generation of transnational framework agreements.

It should be stressed that the central importance attached in transnational framework agreements to comply with ILO conventions on freedom and representation of trade unions and collective bargaining is an essential prerequisite for the proper functioning of mechanisms for monitoring and supervising the implementation of transnational collective agreements.

Where monitoring and control procedures are properly implemented, this contributes significantly to the growth of unionisation in many areas of the world (see, for example, the rapid growth of union membership in the food and construction sector in Latin America, or in the textile and garment sector in Asia).

In the field of employee representation, the negotiation of transnational framework agreements has received considerable impetus from the evolving dynamics of EWCs: the very mechanism for implementing the EWC Directive, based on negotiations between the central management of the company and a special negotiating body made up of employee representatives from the various production sites, has attributed the creation of the EWC and the definition of its prerogatives in terms of information and consultation of employees to an ad hoc transnational negotiation process.

The subsequent recast of this Directive has strengthened the negotiating role of trade unions in both the setting up of the EWC and the renewal of agreements.

In fact, this rule provides for an obligation to inform European trade unions of the start of negotiations to coordinate and promote good practice and a supporting role for the Special Negotiating Committee.

The explicit mention of trade unions, together with the silence of the Directive on the attribution of negotiating functions to EWCs, which had also been the protagonist of a large number of agreements with transnational companies, not only in situations of crisis and employment restructuring but also on issues such as health protection, equal opportunities, mobility, etc., has led, since the entry into force of the recast Directive, to a reduction in the number of transnational agreements signed by EWCs alone and an increase in the number of agreements signed by sectoral, European or international federations. This reinforced trade union protagonism seems to respond to several types or levels of concern.

On the one hand, the fear of a corporate drift of the EWC and the desire to keep the participatory function (information and consultation rights) separate from the negotiating function, in line with the tradition of the dual-channel countries; on the other hand, the sharing of a trade union strategy towards multinational companies with the relevant international organisations, in order to interact with them at global level so that they can guarantee the respect of fundamental labour rights in each country of establishment and in the global supply chains.

The experience gained by EWCs in European multinational companies, or in European companies that have appointed management responsible for the implementation of the Directive, has shown how the European regional dimension seems to be totally inadequate to understand the major changes affecting multinational companies, which are now projected in a global dimension.

The membership of the EWC has thus been voluntarily extended to include workers' representatives from third countries as observers or full members.

In many cases, the EWC has become a Global Works Council, in which workers from all areas of the world where the company has establishments or major subsidiaries are represented.

The regular reporting on economic, financial and employment developments (now enriched with information on non-financial issues in the social, environmental, human rights and anti-corruption fields, following the Framework Directive on non-financial and diversity reporting, provided by the central management of multinational companies in the application of this Directive, increasingly refers to global scenarios and not only to the European dimension.

There has thus been an exponential growth in these agreements, with a scope not limited to the European dimension as a result of the synergy between this voluntary transformation of European Works Councils into Global Works Councils, as well as the strategy of the sector's trade union federations, which are willing to take advantage of the positive climate created by the implementation of the Directive on information and consultation of workers' representatives to engage in direct dialogue with the management of multinational companies with a view to signing framework agreements on issues of common interest.

The borderline between the rights to information and consultation, on the one hand, and negotiation, on the other, is not sufficiently clear from the notion of consultation adopted by the recast Directive, which defines it as "the establishment of a dialogue and exchange of views between employees' representatives and central management" (Article 2(g) of Directive 2009/38/EC).

It is also unclear at what point, after the initiation of dialogue between the parties, the interlocutor in the company is replaced by the sectoral trade union(s). In practice, there is a certain continuity between the right/obligation to information and consultation, which constitutes the hard-core of EU law. The right to collective bargaining, also recognised as a fundamental right by the Charter of Fundamental Rights of the European Union (Art. 28), but merely promoted by EU law (Art. 152 Treaty on the Functioning of the European Union), not without considerable doubt as to its effective scope and its alleged limits when it conflicts with fundamental economic freedoms.

This continuity between the consultative and negotiating sides is developed based on regular information meetings and the materialisation of a dialogue between the central management and the European Works Council, leading to negotiations for the signing of an agreement.

It should come as no surprise that, outside the European social dialogue procedures at sectoral and interprofessional level, sectoral federations become interlocutors of multinational companies to stipulate European and international framework agreements.

Sectoral production strategies are driven or at least strongly conditioned by multinational companies in the sector, with which European and, above all, international industry federations maintain various forms of dialogue (especially in the framework of the implementation of the ILO Tripartite Declaration on Multinational Enterprises) which, in the presence of optimal conditions, can lead to real agreements.

To this end, guidelines and recommendations have been promoted at the European and international level to ensure a certain formalisation of the common law rules governing the transnational negotiation process.

Among others, the granting of a special mandate to European federations, the written form of the agreement, the provision of a clause on the respect of the minimum standards laid down in national regulations, the binding of the mandated unions to the agreements, the determination of the applicable law in case of possible disputes on the interpretation and application of the transnational agreement, as well as the procedures for the publicity of the agreement.

Within the framework of these ground rules, European legislation has also been proposed to establish a voluntary regulatory framework for negotiating transnational agreements, including procedures for conflict mediation, an initiative advocated by the European Trade Union Confederation, but so far unsuccessful.

Similarly, global union federations have promoted guidelines for the negotiation of international framework agreements, aimed at defining the minimum content of these agreements concerning compliance with ILO core conventions, the determination of the scope of application, extended to global supply chains, the provision of mechanisms for monitoring compliance with the agreements, the right to visit workplaces, as well as the guarantee of neutrality of multinational company managements in campaigns for organising workers in subsidiaries and global subcontracting chains, the right to visit workplaces, as well as the guarantee of neutrality of the management of multinational companies in campaigns to organise workers in subsidiary companies and global subcontracting chains In the strategy of the global union federations, the signing of agreements with multinational companies has the fundamental value of being a vector for the promotion of labour rights on a global scale.

Essential to the success of this strategy is the choice of multinational companies with a good industrial relations climate, the existence of relations with the national trade unions of the parent company and between the trade unions in the countries where the company has workplaces and/or global works councils that ensure the presence of workers' representatives at the global level.

The existence of a pre-existing network of relations between workers' representatives from the different countries in which the multinational operates is relevant because of the experience in transnational dialogue and conflict with central management and in the identification of issues and problems in which there is a common interest to initiate negotiations and conclude agreements.

But above all, it is important to consider the concrete implementation of the negotiation, which requires cascading reporting processes in all multinational companies and third companies, through bottom-up control, with effective procedures in case of non-compliance with agreements.

The signing of a TFA does not exhaust the different actors involved but tends to be considered a starting point.

These will be more effective if the agreement assigns to each party precise obligations in terms of information, training, monitoring, evaluation, reporting, complaints procedure and resolution of infringements.

In this sense, TFAs are defined as procedural agreements aimed at establishing the obligations imposed on the signatory parties and their organisations, local management, subcontracting companies, supply chains, on the one hand, and local trade unions and workers' representatives at the workplace, on the other.

The negotiation of agreements in transnational companies is largely dependent on the hard law discipline adopted by the European Union on information and consultation in European Works Councils, the establishment and functioning of which requires the development of an ad hoc transnational negotiation process.

The legal obligation to establish such European representative bodies in Community-scale companies or groups has encouraged internal practices of social dialogue in transnational companies through regular exchanges of information and consultative processes triggered by significant organisational changes in the transnational company, particularly in the face of corporate restructuring processes.

Under the current Directive, a renegotiation of the composition of the European Works Council is required when the corporate structure of the transnational company is changed through acquisitions or mergers (the so-called adjustment clause).

This project has attached great importance to the involvement of workers, employers and trade union representatives in the participation and consultation of workers, employers and trade union representatives in the European Works Councils.

We carried out surveys of more than 200 people, in person, where the COVID19 pandemic allowed it and keeping each and every one of the virus prevention measures, and more than 900 online surveys to guarantee the quality and heterogeneity of the sampling.

Although it is an efficient and unlimited form of communication, it requires up-to-date and accessible email addresses. In many cases, work inboxes rejected a message sent on how to complete a survey. The survey conducted for council members, trade unionists and workers' representatives contained 18 questions and 13 for company employees and employers.

In both cases, the elaborated questions varied: closed-ended, semi-open-ended (with the possibility of complementing with their comments) and open-ended. At the end of the questionnaire, a metric was placed to approximate the characteristics of the respondents.

We also conducted 50 face-to-face personal interviews and more than 200 online interviews.

At the moment, the general concern is to get out of this precarious and terrible health situation as soon as possible, affecting areas such as employment, society and the economy. This crisis has overwhelmed all forecasts and plans for the future in society, in each and every country in Europe.

Most of those interviewed were very concerned about the frightening crisis ahead and confessed that they have little or no confidence that governments will be effective in tackling the severe social and economic difficulties expected in the coming months. The outlook is uncertain and, in many cases, bleak.

The fear of an unprecedented crisis is on the minds of all those interviewed. Trade unionists stressed that concern is so strong that they have abandoned traditional demands for better jobs, wages or social benefits to ask companies for feasibility studies to avoid, as far as possible, mass redundancies or closures of workplaces.

Some unions have proposed to the management of their companies that the workers they represent are willing to give up economic and employment benefits because the company does not initiate a process of closure or suspension of activity.

Trade unions and employers want governments to facilitate the transition from this crisis in the least traumatic way possible, but this is rather difficult. The pandemic is advancing in Europe, and each country is pursuing its policy. Employers' representatives are unanimously critical of the government, which they consider insensitive, incapable and ineffective in curbing the expected economic tragedy. The trade unions are more or less critical, depending on their ideological colour.

The main objective of the empirical research was to identify the functioning of European Works Councils. The aim was, in particular, to obtain information on:

- the potential for the creation of EWCs in international companies,
- the productivity (enhancing and improving) of the existing European council,
- space to improve and strengthen the council 's activity at all levels,
- the capacity building, training and improvement needs of the council members,
- the role and social partners in supporting the functioning of the council.

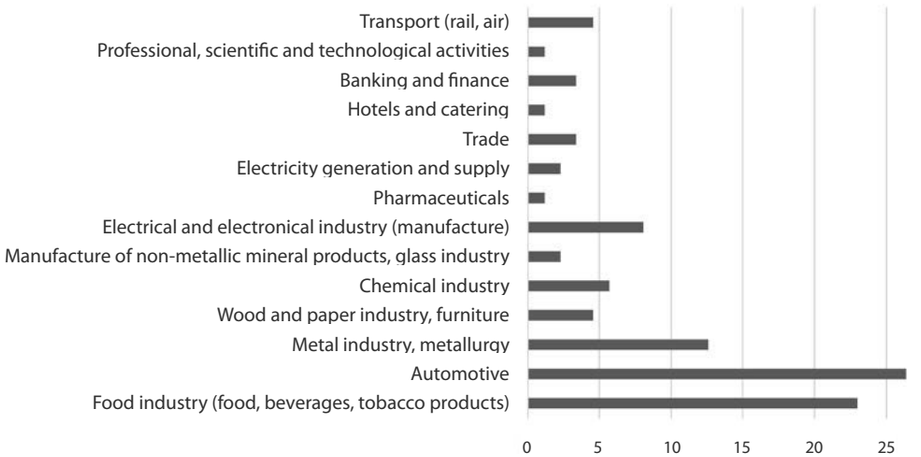
The study aimed to achieve the above objectives, which are closely linked to identifying effective processes for the establishment and management of the council and the involvement of the social partners in transnational information and consultation procedures.

In this respect, a methodological approach has been adopted, taking quantitative and qualitative analysis into account.

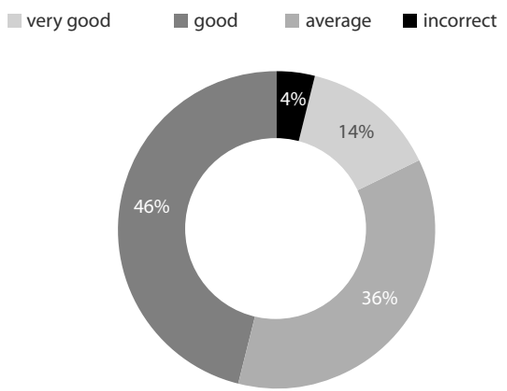
Surveys and interviews were conducted between September and December 2020. The sample selection was purposive and had a national reach in each of the countries. Reaching out to respondents was made possible with the support of union headquarters and sector organisations' support.

DURATION OF THE EUROPEAN WORK COUNCIL		HOW LONG HAVE YOU BEEN PARTICIPATING IN?	
0-5 years	18.4	1998-2003	5,9
5-10 years	13.8	2004-2009	20
10-15 years	31	2010-2015	41.2
15 years or more	36.8	2016-2020	32.9
Total	(S 87) 100.00	Total	(S 85) 100.00

The companies in which the various EWCs operate are mostly in the industrial processing sector, 83.9%. The automotive, chemical, transport, food and metal industries are the most represented.



Respondents and interviewees appreciated the functioning of the EWCs.



The European Works Council has a very broad influence at all working levels, national, European and global, on decisions taken by the group. Moreover, several issues that have not been dealt with at the national level (e.g. staff appraisals, labour regulations, health and safety at work) have been decided by a higher level. Another achievement is a significant increase in labour standards due to the adoption of company standards in Europe. There has been an increase in wages in many instances, a positive impact on the social situation of workers.

The council meet the basic requirements:

- communication about the activities of the group and the individual companies. Representation of the entrepreneur at a meeting at least in the rank of a central board member;
- the amount of information provided is quite reliable;
- the number of meetings per year and the number of members of the
- council are in many cases higher than foreseen,
- agreements with the employer provide for better opportunities and conditions for cooperation and work.

All dialogue is constructive, respecting the parties. Plenary meetings are held regularly. There is an exchange of experiences and good practices, information on changes is communicated and consulted. The company's management is open to dialogue and takes trade unions seriously as an ally in resolving difficult cases, as confirmed by the council 's functioning.

Several countries give us the example that the problems faced by the entrepreneurs of each country are discussed materially during the meetings, then the protocol is sorted out.

Meetings are mostly held twice a year, the first of which is always attended by employer representatives. Problems reported by the Council members are mainly solved. The chairperson of the group participates in the meetings. Transparency, openness and equality are ensured.

Importantly, respondents report that consultation meetings are offered in the event of company restructuring. An example of the important role played by the council in the consultation process is the restructuring carried out in several of the European companies in 2019.

The council have developed their own solutions, alternatives to the employer's proposals, some of which have been accepted and implemented, making it possible to save jobs in Europe.

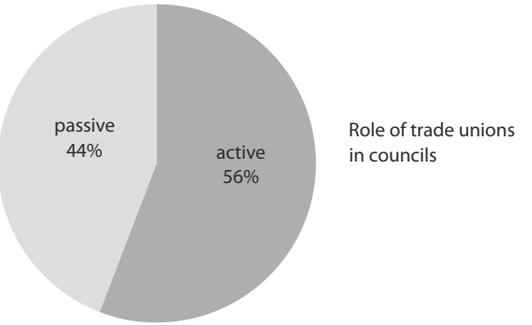
The most negative responses and reflections collected in this publication can be found on the following pages:

- the cessation or limitation in recent years of the number of council meetings and the non-consultation of certain issues in the council;
- little employer and worker involvement across the board;
- poor organisation and planning of the council: They generally meet only once a year, and in some cases only with a small membership(6), which is insufficient makes it very difficult to deal with the issues in-depth and makes it more difficult for them to be extended to all the countries present;
- lack of substantive and responsible (serious) social dialogue, communication and unity, lack of comprehensive information and in many cases, biased information.

Another example is the confidentiality of information, even though it is publicly available. The employer avoids transferring data that is critical to workers, even though it fully affects them.

Since the pandemic, the meetings are online, making the council much more complicated. Many issues are left unaddressed, do not provide precise answers, and do not directly answer the questions and problems raised.

- Sometimes the employer accepts the EWC only because he is obliged to do so. In such a bad way, little can be achieved, little dialogue or negotiation can take place.
- The lack of unity of trade unions and workers' representatives weakens their position and perception by management and workers. The latter sometimes have the feeling that their representatives defend more political interests than the defence of their working conditions.
- It has no real impact on the company's significant problems and day-to-day operations, and the issues raised by members.
- Failure to enforce the employer's provisions and agreements. Framework agreements in force within the framework of the council are not respected. The council's conclusions are often not translated into decisions of the workplace closest to the worker.
- The debates omit wages and working conditions in specific places, which means that the debate is not complete and, therefore, in certain centres, not very valid.
- Lack of real contact with the group's central management, low level of employer representation during meetings. A significant barrier is a limited access to decision-makers. Lack of awareness of the company's objectives and development perspectives (challenges).
- Consultation and effectiveness of meetings are mainly informative, last only a short time (several hours) and do not produce the expected results. An example is the unfinished or protracted negotiations on an agreement.
- Lack of training of representatives and employers in collective bargaining, European and national regulations.



From the responses received in these numerous surveys and interviews for this project, most respondents said that the functioning of the Councils had generally improved, especially after the implementation of Directive 2009/38/EC in the various national laws.

To confirm the achievements, among many others, we can highlight that the following arguments were given:

- a greater commitment to assisting to address major problems (e.g. restructuring, mergers, redundancies, wage increases) in each country. Another example is the creation of a single bonus system for all countries for accident-free work;
- increase the frequency and regularity of meetings;
- partly to adapt internal provisions to the new regulations;
- social dialogue extended to more countries. Other ESA members have arrived;
- respect for the principles of equality, transparency, regardless of the country;
- the important role of councils in transnational social dialogue and industrial relations;
- strengthen existing practices and the good functioning of councils at a high level before the entry into force of Directive 2009/38/EC;
- the previous operating arrangements were more favourable than those of Directive 2009/38/EC;
- acceptance of more information availability;
- better communication of information about the whole corporation, the possibility to know the plans in advance (for the following year);

- ensuring access to data presented during meetings, greater effectiveness of oral arrangements, the possibility of concluding useful framework agreements in trade union activities;
- the creation of good and legitimate contracts. The company mergers carried out on two occasions did not worsen the information and consultation standards developed so far; it is necessary to emphasise financial security, including mother-tongue translations of all documents, agreements, presentations, meetings and training;
- improving communication. After 2010, there has been a marked improvement in cooperation, but this is more the result of members' activity and participation in the council's work;
- a uniform and single standard for annual reports prepared by companies in each country;
- the increased participation of trade union representatives in the council's composition and impose only the correct form of its action;
- transparent division of tasks for the council's individual members: security, implementing new technologies and investments, providing training for employees, expanding knowledge and skills, improving the organisation of the company headquarters in each country, learning working systems, traditions;
- improving social dialogue at the national level.

The rest of the respondents, i.e. 31.9%, did not find any change in the functioning of the ESA, and 16.7% did not know.

When asked whether there were still problems in the council, despite the implementation of Directive 2009/38/EC, revitalise the social dialogue and strengthen transnational worker representation in the information and consultation process.

They exchanged comments mainly on employers who do not comply properly with their obligations. Key issues include:

the lack of a proper approach of the corporation's central management to dialogue and partnership; councils as a forced obligation, as well as tools and a false commitment to employee representation, same time the role of the human resources department involved in the dialogue is limited to soothing sentiment by any means so that existing problems do not constitute an obstacle to external marketing in the various national workplaces.

It is important to know the councils' constituents views as a result of the adoption of Directive 2009/38/EC.

On this issue, respondents did not have a broader discernment. There were 1364 responses in total, of which 48.4% indicated a lack of knowledge, and 18.8% saw no positive changes. The remaining respondents confirmed the positive impact of the recast EU law but attributed a greater role to acquired knowledge, experience, and social partners' goodwill.

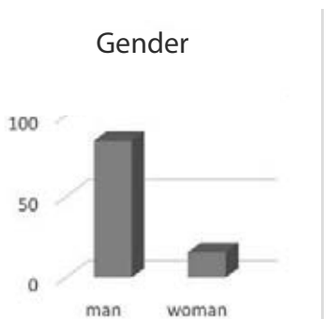
Certainly, a better understanding of the improved rules, particularly the introduction of definitions and the obligation to inform and consult, has contributed to a more effective performance of tasks. The strengthening of the transnational dialogue speaks in favour of a general improvement of its functioning:

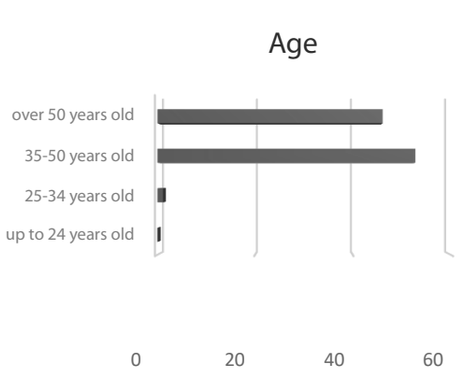
- clarification of the requirements for the conclusion of contracts;
- harmonise the rules for the selection of council members from different countries;
- more frequent and regular organisation of meetings;
- improve information and consultation procedures; create working groups; use expertise; create websites to give visibility to agreements and work carried out;
- provide training and education for council members, with a strong emphasis on English language learning;
- better communication through a simultaneous translation of meetings, preparation of documents in the mother tongue;
- broaden the scope of the information provided;
- improve council members' contacts with national management and employee representatives and increase their impact on the standards adopted;
- building relations with the trade union, taking into account national law and practice in the respective countries.

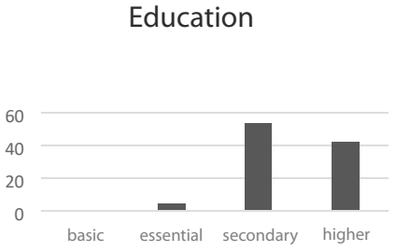
Respondents had no opinion on whether Directive 2009/38/EC affected the process of setting up new councils (almost 65%). The others had prevailing views confirming its positive role. A large group (456 respondents) was also unable to answer whether Directive 2009/38/EC had prompted the renegotiation of existing agreements (40.2%). The remainder was split almost equally between "yes" and "no" votes.

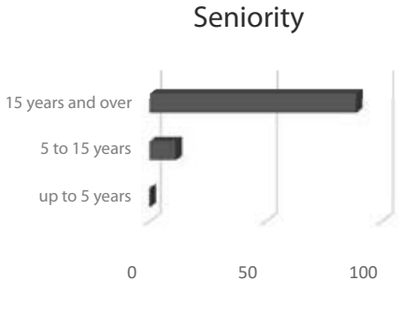
According to the respondents, company restructuring (38.1%) had a greater impact on the renegotiation of agreements. In contrast, 44% thoughtless, and 44% had no opinion. 15% of respondents reported a lack of expertise and conviction in Directive 2009/38/EC; it contains only guidelines and non-compliance has no negative consequences; the important role of national legislation and appropriate sanctions for the employer and elements of pressure, such as the increased propensity of employee representation to go to court. Respondents were most likely to report the attitude of central management (nearly 72%) and national management (nearly 53%) and that their interest in exercising the right to information and consultation. The reasons often cited were insufficient knowledge of the social partners (54.4%) and the fragmentation of companies in certain sectors, and the lack of unionisation (52.2%). A small percentage were additional comments highlighting: employer passivity and reluctance to share knowledge, fears of loss of position and prestige, inadequate regulation of the rules for the separation of representatives.

The respondents can be grouped under the following parameters.









Directive 94/45 on European Works Councils is a historic opportunity for the right of workers' participation, at the level of information and consultation, in decision-making in multinational companies operating in the European Union to be established or, where appropriate, strengthened.

This is only a limited first step, but it could lead to more ambitious achievements in the future. On the one hand, it could be the starting point for further achieving further levels of participation beyond those envisaged by this regulation, in terms of two-way negotiation, co-management, co-determination, etc.

On the other hand, it could also be the starting point for European Works Councils to be extended to other companies that operate transnationally but do not meet the minimum requirements of Directive 94/45. The foundations of a future EU-wide industrial relations system could also be laid.

However, after more than a decade of transposition of Directive 94/45 into the respective legislation of the member states of the European Union, there are still numerous problems, which are largely responsible for the fact that the current rate of coverage of European Works Councils in Europe, concerning the companies that could potentially set them up, is still recurrently low.

Firstly, from a legal perspective, it has been confirmed that both the lack of formal inspection mechanisms to prevent and, if necessary, sanction non-compliance with the rules contained in Directive 94/45 by the multinational companies concerned, and the requirement of a minimum of 1,000 workers to set up a European Works Council, have been confirmed as the main legal problems that explain the scant development of European Works Councils in Europe.

With regard to the latter issue, although for this calculation the legislation provides for the inclusion of all employees working for the company, both at the head office and at the other centres of activity that the company must have in two or more EU countries.

Therefore, it can be stated that the lack of legal inspection, the minimum size required, but also - partly derived from the latter - the extra-EU destination of most of the investments of European multinationals, constitute three problems that would explain, from a legal point of view, why the progress of the European Works Councils in Europe is not as desired.

Secondly, from the political and economic and labour environment, the presence of neoliberal policies in recent years in the governments.

Secondly, from the political and economic-labour environment, the presence of neoliberal policies in recent years in the governments of most European countries and the EU institutions themselves, in a context characterised by the existence of a high percentage of small and medium-sized companies, and a labour market defined by growing labour segmentation and precariousness, largely as a result of the existence of a national and international framework of labour relations clearly biased in favour of the interests of employers, compared to trade unions with little collective bargaining power and practically stagnant membership rates, has also meant that, on the whole, representative bodies with European status such as the European Works Councils have only managed to crystallise in a few isolated cases.

From the ideological-cultural sphere, on the other hand, it has also been observed that when the ideology defended by European employers is characterised by an unusual reluctance towards any agreement that could mean a ceding - even a minimal one - of control of power to the workers, and this is combined with trade unions that do not have a sufficient tradition of transnational negotiation but which, when they do participate in it, neither give it the same priority that they give to negotiation at lower hierarchical levels nor do they have the experience required to debate and negotiate issues with the presence of employers within the same body - such as in the case of the European trade unions, Neither do they give it the same priority as they give to negotiation at lower hierarchical levels, nor do they have the experience required to discuss and negotiate issues with the presence of management within the same body - as is the case in European Works Councils, but not in national Works Councils - it is not surprising then that, from this sphere, the necessary conditions have not emerged for both sides to

have agreed to make the necessary effort to push ahead with the creation of a greater number of European Works Councils than have actually been set up at national level.

From an organisational point of view, it is also worth mentioning the problems that European trade unions specifically have had in terms of internal information management and how these problems have contributed, together with all of the above, to explaining the already slower pace at which European Works Councils have been set up in Europe, as they are very distant. Workers are not very clear about their function.

Despite being the social agent objectively most interested in the expansion of EWCs, when trade unions have participated (and still participate) in the management of some of the few EWCs that have been set up, they have had to face major difficulties in coordinating the various levels of information (local, sectoral, regional, national, international) with the human and expert resources available to them to conduct transnational negotiations with employers effectively.

Negotiations are sometimes not very fluid, if not deadlocked, due to problems that are not only due to the intrinsic content of the issues to be addressed but also to the difficulties that often arise from the communicative interaction between the various languages spoken by trade union representatives from the different countries where the company operates, when they meet at international EWC meetings, and which cannot always be resolved with the help of translation services alone.

Given this scenario, and assuming that all the elements that determine it will not change substantially, at least in the short and medium term, it is not expected that the constitution of European Works Councils will follow significant changes in the path.

Only if there were major changes in the positions held so far by employers, national and European governmental institutions, and by the multinationals themselves could the percentage of agreements agreed so far be increased in the future, either because the balance between the number of renewals and cancellations of agreements in force would increase, or because the multinationals that might appear in the coming years with the potential to set up a European Works Council would decide to open this process in a higher proportion than those that have done so up to now, either because the multinationals that might emerge in the coming years with the potential to form a European Works Council decide to

open up this process in a higher proportion than those that have done so up to now, as a result of the change in the aforementioned positions, or as a result of both of the above-mentioned causes.

However, it is not because the trade unions may appear, as mentioned above, as the actor with the greatest objective interest in the progress of this process. They are exempt from reviewing their positions, at least in two somewhat complementary directions.

On the one hand, they should promote a more useful and positive vision of the possible results derived from collective bargaining at the European level for their members and constituents.

On the other hand, they should be persuaded more strongly of the importance of a substantial increase in the number of EWCs of improving the level of their technical skills in organising and managing information between the different hierarchical levels so that negotiation strategies can be more fluid and effective in the face of adverse inertia from the other spheres involved in the process.

The devastating effects of the prolonged economic crisis and the austerity measures imposed by Europe have widened the gap between the social systems of European countries, widening the wage gap between the countries of Central and Northern Europe and those of Eastern and Southern Europe, and creating a land of conquest for multinationals that find it convenient to relocate within the European Union, where they enjoy the freedom of establishment and services with greatly reduced labour costs in terms of regulations and wages.

This issue addressed by the ILO at the global level, concerning the respect of fundamental rights at work and the adoption of the decent work agenda in global value chains, has a specific manifestation also within the European Union, where European trade unions have to deal with problems of huge wage inequality for the same work performed, the lack of recognition of the right to collective bargaining and equal trade union capacity in the workplace.

Therefore, in the trade union strategy, the definition of an optional legal framework for transnational company agreements, as an instrument for the possible harmonisation of working conditions in the foreign subsidiaries of the multinational company and its supply chains, responds to the need to confer legal status to these agreements, establishing the formal and procedural requirements necessary to attribute their legal effectiveness in the scope of application agreed by the parties to the agreement.

With this in mind, a supportive, albeit voluntary, legal framework for company agreements would be a normative reference point for negotiators, formalising the need to comply with certain essential requirements and recognising regulatory effectiveness in the commitments made by company management in all subsidiaries and/or controlled companies listed in the agreement and, where appropriate, in supply and subcontracting companies.

The legal basis for the initiative could be based on recognising the role of social dialogue under Art. 152 ff. of the Treaty on the Functioning of the European Union, although transnational bargaining practices could benefit from the use of funds for research and promotion of the dissemination of good practice in social dialogue and transnational industrial relations, as already takes place, despite the absence of an ad hoc regulatory framework.

The question is whether, if such a regulatory framework were to be achieved, in the context of the relaunch of the social dialogue advocated by the President of the European Commission and the objectives of the European Social Pillar4 (although the proposal for an optional legal framework does not appear on the Commission's agenda), to what extent this could actually favour the conclusion of transnational business agreements, mainly in the European dimension but also worldwide.

This hypothesis is not easy to envisage: it could be positive if companies see an advantage in the standardization of TFAs in terms of certainty and predictability of negotiation outcomes; negative if they fear excessive restrictions on their freedom of action.

The positive experience with the agreements establishing the European Works Council inclines us towards the first possibility, even if the optional legal framework is unlikely to conclude new transnational agreements. On the other hand, a more secure baseline could be established to motivate the negotiating parties to consolidate ongoing experiences, including the global dimension, and to renew existing agreements.

Another issue to be examined is the enforceability of the procedural obligations contained in the Transnational Framework Agreements. This is the preparation of procedural machinery that must bear witness to the social actors' capacity to self-regulate their interests.

On a global scale and in comparison with the management of multinational companies, the position of the trade union is much weaker than in the traditional, regulated framework of national industrial relations.

In this context, the question of the administration of the collective agreement takes on particular importance, with a special focus on the different national systems in which the agreement is affected.

This is an objective difficulty both for the multinational company and for global (and, to a different degree, European) trade union federations.

The common law legal mechanisms that can be put forward as hypotheses guaranteeing compliance with the framework agreement in the different countries (the assignment of a mandate by national unions, the resumption of negotiations at the local level, the adoption of company guidelines issued by central management at a local level, the duty to influence affiliated unions, etc.) present gaps and difficulties in implementation.

However, no system foresees the legal effects of a transnational company agreement at the national level, although the problem is sometimes addressed in documents on the new horizons of collective bargaining at the company level.

In this context, supporting the effectiveness of transnational agreements with mechanisms that are part of the duty of state supervision, where they are positively regulated, and/or with monitoring procedures provided for in the context of adherence to forms of corporate social responsibility, has the advantage of re-involving the State in the control circuit of the activity of multinational companies, giving a greater degree of effectiveness to the agreement between the parties, both in the country of origin of the multinational company, through the obligation to prepare plans for the supervision of human rights and the reparation of the damage produced, and in the third countries in which it is established.

The debate initiated and the solutions reached in recent years by international organisations bear witness to the search for a concordance between the different tools aimed at promoting the objective of fair globalisation.

For their part, the contribution of the TFAs in this phase is to experiment with autonomous methods of monitoring and implementing agreements on a global scale, through a series of procedural obligations, and the creation of instances of dialogue and exchange of the results obtained and the discussion of the complaints presented.

The lesson learned from the experiences of implementing TFAs is the need to link the global dimension with the local dimension, both concerning subsidiaries and to companies in subcontracting and supply chains.

Effective implementation of transnational collective agreements calls for effective forms of linkage both upstream (to negotiate and sign the agreement) and downstream (communicating the results of the agreement and its management throughout the company's subsidiaries and, where appropriate, supply chains), both on the side of the multinational enterprise and its partners.

The modalities may be different depending on how the company's chain of command is structured and, on the union side, the intra-union relations and, on the company side, the relations between unions and staff representatives.

The implementation phase of the agreement is, in fact, the litmus test for the effective participation of all parties involved in the concrete translation of the commitments set out in the agreement.

Agreements at the summit that do not permeate the daily dimension of business life and its branches or supply chains are destined to have a purely symbolic value. The negotiators of second-generation TFAs, aware of the risk, are more careful to accompany the agreement with an instrumental apparatus designed to ensure its implementation, allowing its organisational articulations to be adapted for use in concrete situations. This instrumental apparatus, more or less rich and articulated (presentation and dissemination of the agreement, translation into different languages, training on its contents, regular site visits, preparatory and post-administration meetings, procedures for dealing with complaints, indicators for monitoring its implementation, etc.) is the most innovative part of the TFA, to whose substantial multilevel verification the development and sustainability of a global industrial relations system in tune with the times is subordinated.

In this project, we can point out that we have worked on very important concepts of European Works Councils and the participation and consultation of workers in them.

Council Directive 94/45/EC of 22 September 94, transposed by Law 10/1997 of 24 April 1997, aims to improve the information and consultation rights of representatives at the level of the Community-scale undertaking or group of undertakings and to ensure that workers' representatives have access to the real decision-making centres.

The employers and employees concerned have the option, after a negotiation phase, to set up a specific representative body (European Works Council) or to establish as an alternative mechanism the exercise of information and consultation rights outside the European Works Council.

Trade unions must generate a message capable of opening up new spaces for democratic coexistence, which will allow them to regain workers' confidence in the possibility of building a future based on justice and equality because effective action will depend on their ability to complement business and national action with activity and pressure in the international political arena.

Its scenario, then, becomes transnational on the way to the pursuit of a common legal space in the European Union.

Furthermore, this Directive is one of the most important achievements of European social policy, as it has managed to come closer to the current reality in terms of participation, content and even in the very meaning of Community action, being part of a participatory model of information and consultation, and seeking a balance between trade union action in terms of demands and collaboration in the field of social policy (economic and social management decisions).

In the end, it is intended to transform employee participation into a sign of identity for European companies and groups.

In order to achieve their objectives, they link the European level with two specific bargaining units: companies and EU-wide groups. In this way, EWCs tend to avoid the dispersion of trade union initiative, which is fragmented at the various company sites, by turning to the "unitary employer" and make it possible to react to foreseeable attempts to confront the interests of the multinational's various subsidiaries at the same time.

After this project, the most important question we asked ourselves was: *Is there anything beyond the right to information and consultation?*

It seems commonplace to lament the lack of EWC competencies in companies with production organised across national borders.

As one EWC member puts it:

"It is easier for them to negotiate plant by plant, blackmailing here and there with production. Somehow, this has to be stopped by the EWC".

The transfer of production is easier in simple production activities, with a low level of mechanisation and worker training. But even production centres that carry out highly complex activities are not impregnable fortresses, especially in companies that, as a competitive strategy, develop new products in a very short time. In many cases, these new products require new investments that quickly make the installed machinery obsolete. The factories to which these new investments are directed ensure their activity in the medium term. Still, the companies' management cannot guarantee their production volumes and, therefore, employment beyond the new product's life.

The persistence of large wage differentials and other cost-reflective working conditions in the same factor market, such as the EU, is a permanent risk for those production centres with better wage and working conditions. As a representative in car manufacturing, EWC acknowledged, wage differences in the same company can be abysmal.

European trade union organisations, influenced by the greater weight of trade unions in the more developed countries, have been opposing the establishment of a bargaining framework at an international company level, without there being an articulation of collective bargaining in Europe, through European sectoral agreements based on which collective company bargaining through the EWC would be possible. Moreover, we must be aware that the barrier between consultation and negotiation can be crossed at any time. If an EWC issues an opinion on a restructuring process in a European multinational and this opinion is accepted, in whole or in part, by the management, then bargaining has taken place.

Therefore, the current pragmatic trend in several European branch federations is to move towards transnational company-level bargaining, but with trade union participation.

But the increase in the EWC's competencies must not be done in a way that violates the provisions of national agreements. Agreements reached in an EWC, which may lead to a change in working conditions or pay, can only be valid in a country's workplaces if these agreements are ratified by the respective national workers' representative bodies.

This, while eliminating the fear that minimum bargaining will reduce the conditions achieved in more developed countries, does not end all problems. A rapid equalisation at the top, without new investments and productive improvements, could lead to the closure of many company sites whose production processes are based on lower labour costs.

We must be aware that greater bargaining power for EWCs, a basic element in the design of a more participatory economy, in which the criterion of short-term corporate profit is not the only vector defining economic activity, also implies greater involvement of workers' representatives in decisions on corporate management, which will generate contradictions to trade union action approached only from national perspectives.

The participation of European trade union organisations in EWCs is a necessary condition for developing their bargaining capacity. Otherwise, excessive national tensions can lead to conflicting bargaining processes that can lead to negotiation deadlocks.

But the participation of European trade union organisations in the more than 600 EWCs already set up and in the more than 1,000 to be set up will not be possible without a major reallocation of funds between national trade unions and the EWCs.

The Directive aims to improve the right to information and consultation of employees of Community-scale undertakings and Community-scale groups of undertakings. The Directive should make it clear that employees' representatives need continuous and comprehensive information. In addition, the Directive should clarify that consultation takes place during the planning phase when the various decision-making prospects are still open.

The ETUC, therefore, calls for the right to information and consultation to be strengthened in the European Works Council Directive. The Directive should specify that comprehensive information will be provided in good time and on an ongoing basis.

The famous confidentiality clause is something that has been discussed a lot in this project and its meetings. The company often uses this clause as a shield to avoid giving details or significant changes in the company, such as staffing thresholds.

Article 15 of the EWC Directive expressly requests the Commission to include staffing thresholds in the review process of the Directive.

The thresholds for the number of employees of a Community-scale undertaking and a Community-scale group of undertakings are defined in Articles 2.1.a and 2.1.c of the Directive. A Community-scale undertaking is defined as "an undertaking with at least 1,000 employees in the Member States and at least 150 employees in at least two Member States".

Before adopting the Directive, the ETUC had proposed a threshold of 500 employees in the Member States, following the Parliament's opinion of 24.6.91. The Economic and Social Committee was not entirely satisfied with a threshold higher than 1,000 employees either, but contented itself with asking the Commission to "find a more flexible solution". The European Commission justified its decision because small companies should not be subjected to an additional burden. However, according to statistics from all Member States, companies employing more than 500 workers are considered large companies. The Directive aims "to improve the right to information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings" (Article 1.1).

Since the completion of the Single Market, transnational companies are not the only ones operating throughout the Community.

The same is true for relatively smaller companies and even for companies employing less than 1,000 workers.

The 1,000-worker threshold is too high and prevents an appreciation of the needs of enterprises. There is an increasing tendency to split up companies and adopt a subcontracting policy, and "smaller" transnational companies are becoming more important. The ETUC, therefore, suggests that the staffing thresholds of the EWC Directive should be lowered from 1,000 to 500 employees.

One of the most important points worked on in this project concerning the right to information and consultation is that it is necessary to refer to the legislation of the country where the central management of the company is located, as this is a determining factor in consideration of central issues such as:

- the definition of the concept of "controlling undertaking". All the transposition laws take up, albeit by altering the order of priority, the criteria laid down in Directive 94/45/EC. However, it should be remembered that these criteria are set out in the Directive by example. Other criteria may be proposed in the agreements establishing the European Works Councils;
- responsibility for setting up EWCs, which in all transposition laws, in line with the provisions of the Directive, lies with the central management. The central management is not located in a Member State (e.g. Japanese or American multinationals). It must appoint a representative in the European Union. If it fails to do so, the company with the largest number of employees will be held responsible, and the law of the State where it is located will apply;
- *the various issues relating to the special negotiating body (procedure for starting negotiations, size of the special negotiating body, etc.), except for appointing employees' representatives*. These matters have been included in the transposing laws in accordance with the provisions laid down in Article 5 of the Directive;
- *the content of the agreement*, which in the various transposition laws has included the different matters that, under the provisions of the Directive, must be included: companies affected by the agreement; composition of the European Works Councils; powers and procedures for information and consultation; place, frequency and duration of meetings; financial and material resources; duration of the agreement and renegotiation procedure;
- *application of the subsidiary provisions of the Directive in the circumstances set out in the Directive*, which are the minimum requirements for a European Works Council in the absence of agreement, a matter which is covered by all transposition laws;
- *confidentiality of information and secret information*. All transposing laws recognise the right of companies to consider certain information as confidential, therefore not transmissible to third parties, and not to communicate certain information that could be detrimental to the company.

However, from this point onwards, several particularities become apparent:

- all transposition laws include national employee representatives as third parties, except for three countries (Germany, Austria and Luxembourg), whose laws give national employee representatives the right to be informed of all matters discussed in the European Works Councils;
- some legislation, such as Dutch and Portuguese law, makes it explicit that the company must justify why information is considered confidential;
- there are national laws that establish as a very serious social offence the abuse by the company of declaring the obligation of confidentiality in the information provided or of considering certain information as secret;
- *enforcement of the Directive*. Enforcement of national transposition laws can be enforced through: labour courts in Austria, Belgium, France, Germany, Luxembourg, Portugal, Spain and France; commercial courts in the Netherlands; criminal courts in France; and unspecified in the case of Greece. There are also arbitration procedures involving the Ministries of Labour in Ireland and Italy; in Norway, there is a special arbitration committee; in Sweden, the same procedure is used for labour disputes; and there is no reference to this issue in Danish law;

We consider the ETUC's review and recommendation on the Directive to be very appropriate and endorse it.

The European Trade Union Confederation (ETUC), in the final resolution of its ninth congress (Helsinki, June-July 1999), stressed the need to speed up the revision of the Directive, proposing - among other aspects - the strengthening of the right to consultation, the introduction of effective sanctions for companies that violate the agreements and the strengthening of the role of trade union experts:

- lowering the company size threshold. The ETUC proposes to reduce the threshold to companies with 500 or more employees, which would significantly extend the coverage of companies;
- strengthen the right to information and consultation, especially to ensure that workers' representatives have the necessary information, in due time and form, on the different measures to be taken by the company's central management. There is also a need to establish a minimum period for analysing the information received to be able to express an opinion before the company's decision-making;
- strengthen the definition of "controlling undertaking". Supplement the current Article 11(2) of the Directive with the following wording: "The Member States shall ensure that employees and their representatives, at their request, receive information and documentation on the structure of the undertaking and the group of undertakings; the shareholding; the power to exercise control";
- strengthen the role of experts to ensure their capacity and right to participate in negotiation meetings with central management;
- explicitly include the right of the members of the special negotiating body to meet with each other before each meeting with the central management, in the process of setting up the EWC, without the presence of the latter, and with the assistance of experts, a right that is currently recognised for the EWC and the select council;
- s*trengthen the protection and rights of workers' representatives*, particularly along the lines of ensuring the right to training, to communicate and hold meetings with each other at least once a year, and allow EWC members access to companies, establishments and workplaces;
- *reduce the negotiation period*, currently set at three years, to a period of one year.

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