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# The EWC landscape on the eve of the transposition deadline of the recast directive 2009/38/EC

Evidence from the ETUI database of  
European Works Councils

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Romuald Jagodzinski  
in cooperation with Irmgard Pas

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Pre-selected data from *Mapping European Works Councils*  
(forthcoming ETUI publication)

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**european trade union institute**

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## **In a nutshell**

The initially rapid pace of EWC establishment (e.g. 397 new EWCs in 1996, approximately 70 EWCs per year in 1997-2001) has, over the past decade, gradually slackened to approximately 30 per year in 2002 – 2009, and to between 15 and 20 in 2010. Accordingly, a high share of voluntary (pre-directive) EWCs (438 EWCs or 44.9%) are still in operation today. Admittedly, an implication of this proportion is a high number of experienced EWCs with a record of more than 10 years of uninterrupted operation (65.8% of all currently active EWCs). At the same time, however, evidence suggests that only a small share of EWC agreements have been renegotiated, even though the conditions of their operation have changed a lot since their establishment. This results in a large proportion of EWCs (66.5%) operating on the basis of agreements that may not be best adapted to current circumstances.

Our investigation reveals also that the 978 currently active EWCs in fact account for approximately 18 million employees across Europe, represented by roughly 18,000 delegates. At the same time, however, the distribution of EWCs continues to vary significantly across countries, sectors and companies depending on the latter's degree of internationalisation. Consequently, workers in companies from NMS-12, companies employing 5000 to 10000 staff and with operations in a smaller number of countries tend to suffer considerably impeded access to transnational information and consultation.

## Introduction

Fifteen years after adoption of a legal framework institutionalising the emergence of European Works Councils (EWCs), these bodies have become one of the most important distinguishing features of the Europeanisation of industrial relations. In total, between the 1980s (establishment of the first pioneering EWCs) and 2011 more than 1080 EWCs (including those no longer active) have been set up in more than 1050 multinational enterprises, and the number grows each year. Reportedly, they have been involved in a vast array of activities ranging from information and consultation, influencing the offsetting of adverse effects of company restructuring, to negotiation of transnational company agreements. Their practice and role have developed in accordance with economic circumstances, with restructuring as one of the most dominant challenges.

As a result of changing conditions and unforeseen challenges, as well as partially vague and incomplete provisions, the original directive 94/45/EC soon revealed its shortcomings (Jagodzinski *et al.* 2008). Recast directive 2009/38/EC adopted in May 2009 aimed to address the deficiencies identified and to adapt the existing legal framework for European Works Councils to new circumstances (Jagodzinski 2009, Waddington 2010). The goals pursued by the recast directive include both an improvement in terms of the quality of operation of EWCs as well as an increase in their number.

The present brochure aims at presenting basic up-to-date information on the EWC landscape in the immediate run-up to entry into force of national transpositions of the recast directive 2009/38/EC (5 June 2011). The overview contains selected statistics on EWCs and their operation that are relevant in view of the amended legal framework. They comprise a statistical snapshot of the number of EWCs, their distribution (national, sectoral), EWC agreements, employees represented in EWCs and multinational companies covered by the directive. The statistics are presented in the form of graphs accompanied by brief explanations.

The preamble of directive 94/45/EC states that *'appropriate provisions must be adopted to ensure that the employees of Community-scale undertakings are properly informed and consulted when decisions which affect them are taken in a Member State other than that in which they are employed'* (Recital 11). In order *'to improve the right to information and to consultation of employees'* (Article 1), the former EWC directive finds *'it is necessary to set up European Works Councils (...)'* (Recital 12). This article points in the

direction of two main actors: the employees as direct beneficiaries of the right to information and consultation (Cooke 2003: 324) and their representative bodies, i.e. EWCs. The present brochure aims at delivering basic information concerning the operation of EWCs and the workers they represent. Such a statistical overview on the eve of the recast directive's 2009/38/EC transposition deadline seems necessary as it will allow evaluation of the new legislation's impact on EWCs. Since the recast directive stipulates that one of its goals is to increase *'the proportion of European Works Councils established while enabling the continuous functioning of existing agreements'* (Recital 7), we focus on statistics concerning EWCs, their establishment and distribution.

We believe that the statistical overview provided by this brochure will offer a point of reference for measuring the attainment of some of the goals set by the recast directive and that it will be of particular relevance in relation to the goal of increasing the number of EWCs ('proportion', Recital 7 of 2009/38/EC). Not only will the existence of such a point of reference be of use to practitioners and trade unions supporting EWCs and dealing with transnational information and consultation at large, but it should, in addition, provide the research community with a foundation on which to construct future analysis.

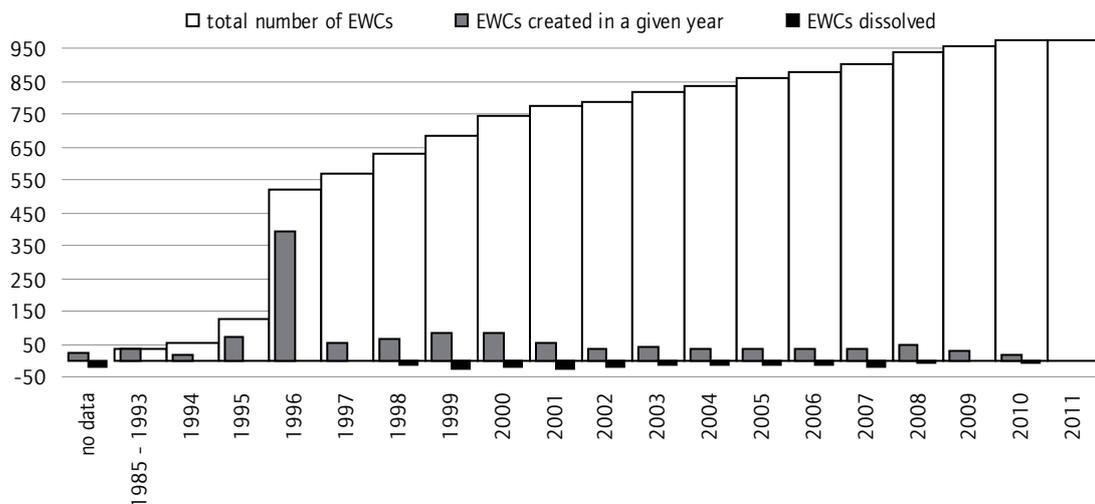
## 1. Establishment of EWCs over the years

After fifteen years of operation of directive 94/45/EC, the total number of EWCs ever created reached 1190 (ETUI database of EWCs, April 2011). Of these, 978 are still in operation. Figure 1 depicts a differentiated pace of growth of the number of EWCs. The pace of creation of EWCs fluctuated from around 70 EWCs annually in 1997-2001 to about 30 to 40 new councils a year in the period 2001-2008, dropping to 19 in 2009 and 2010.

At the moment of adoption of directive 94/45/EC in 1994, 52 EWCs were already in place. These had been established on a variety of bases as voluntary agreements, by means of exchange of letters, or as an informal practice between national works councils. The EWC directive adopted on 22 September 1994 recognised the existence of those pioneering EWCs and, by means of exemption of voluntary agreements granted under article 13, gave a powerful stimulus to creation of new EWCs. 1996 saw an unprecedented rise in the number of newly established EWCs (397 new bodies in this year alone and at least 469 EWCs in total in 1994-96).

In 1998-2000 another steep rise in the number of EWCs took place due to the opt-in of UK companies brought about by the transposition of the directive into British law. The inclusion of UK companies increased the number of MNCs covered by the EWC directive by 12% (264 of 2204 enterprises; Kerckhofs 2006: 31). No similar effect was observed, however, in the wake of the 2004 and 2007 EU enlargement rounds to bring in twelve New Member States (NMS) from Central-Eastern Europe (CEE).

Figure 1 Development of EWCs over the years



Source: European Trade Union Institute, EWC database ([www.ewcdb.eu](http://www.ewcdb.eu)), April 2011.

In quantitative terms the 2004 Eastern and the 2007 South-eastern EU enlargement rounds had virtually no effect on the creation of new EWCs, neither directly in terms of establishing new bodies in the ten new EU member states, nor by, in an indirect manner, noticeably stimulating the setting-up of those bodies in the 'old' EU15. At the moment of accession it was estimated that the total number of companies falling within the scope of the EWC directive and headquartered in the NMS (EU 2004 and 2007) could amount to around 30 multinationals (Kerckhofs 2006: 29), which represented some 1.36% of the MNCs regarded as covered in 2004. The same applies to Romania and Bulgaria which joined the EU in 2007.

For the next nine years (2001 to 2009) a consistent pace of increase set in with the creation of approximately 30 new EWCs per year. Finally, it should be mentioned that in 2010 the pace of establishment of new EWCs dropped significantly to 15, approximately 50% below the average of recent years. This slowdown can be explained by, on the one hand, lack of certainty concerning the applicability and legal consequences of Article 14<sup>1</sup> to existing agreements, and a limited willingness to sign agreements that could be exempted from the regime of the recast directive.

## 2. EWCs currently active

Out of the total of 1190 EWCs ever created, 176 have, for various reasons, ceased to operate. At the same time, negotiations for at least 49 new EWCs have been launched and are still ongoing as of April 2011. Consequently, there are 978 EWCs<sup>2</sup> still in operation (April 2011, ETUI database of EWCs), functioning in 917 multinational companies (MNCs). On the basis of available data (ETUI database of EWCs, [www.ewcdb.eu](http://www.ewcdb.eu)), it is estimated that approximately 2,400 MNCs fulfil the requirements of the EWC directive for creation of an EWC. Consequently, the overall rate of compliance is 38%. With the slow annual rate of establishment of new EWCs, it will probably take several decades to establish transnational information and consultation in all eligible MNCs<sup>3</sup>

The discrepancy between the number of EWCs and the number of companies in which they are established is caused by the fact that in several multinational companies more than one EWC has been set up (this is the case of 74 multinational enterprises in which 103 EWCs have been established). Such multiple EWCs are often designated to deal with branch-specific topics and can be an effective solution in cases where multinational companies pursue wide-ranging activities in unrelated sectors of industry. By narrowing down the scope to a single branch, such an EWC tackles only the directly relevant

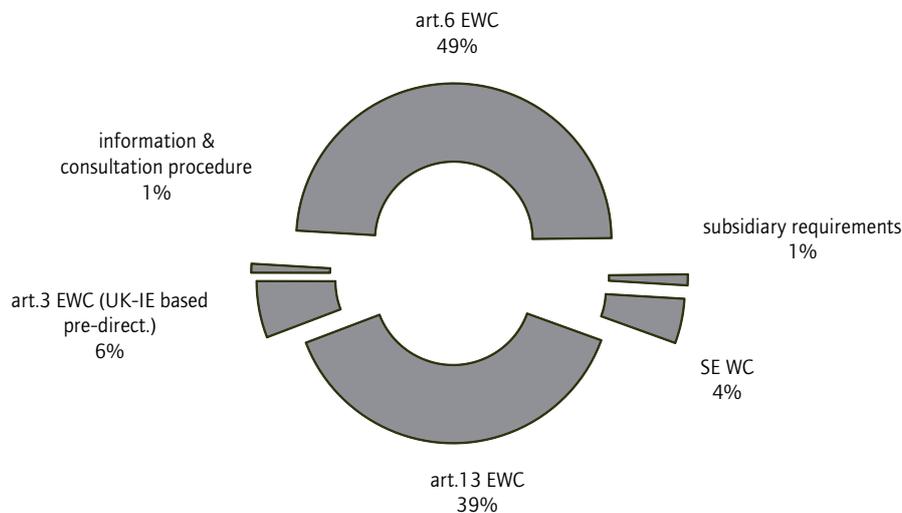
1. Art. 14 of the recast directive stipulates that the provisions of the directive do not apply to agreements negotiated prior to 22/09/1996 (Art. 13 agreements) or agreements signed or renegotiated in the period between 5 June 2009 and 5 June 2011 (transposition period of directive 2009/38/EC).
2. The ETUI database considers various types of EWC: regular EWCs, World Works Councils (WWCs), EWCs based on subsidiary requirements, SE Works Councils.
3. In 2004 Kerckhofs (2006: 28) reported 2204 companies covered by directive 94/45/EC.

issues affecting subsidiaries in its specific scope without being distracted by excessively general issues affecting the entire group.

### 3. Types of currently active EWCs

Out of the total number of currently active bodies (975), 374 EWCs and 3 WWCs (World Works Councils; i.e. 39,9%)<sup>4</sup> are based on Article 13 of the EWC directive (Figure 2). The provision of Article 13 was designed as an incentive to establish voluntary (pre-directive) EWCs during the period before transposition of the directive into national law of the Member States (by 22.09.1996). Such agreements were automatically exempted from the regime of directive 94/45/EC. The same rule applied in the case of agreements signed before 15/12/1999 in companies based in the United Kingdom and Northern Ireland (represented on Figure 2 by category ‘Art. 3 EWC’ and ‘Art. 3 WWC’). Currently, such active EWCs (and WWCs) based on the so-called ‘pre-directive’ (or voluntary) agreements amount to 438, i.e. 46% of the total number of active EWCs. What is important is the fact that these agreements remain by default exempt from the obligations of the recast directive 2009/38/EC (Art. 14).

Figure 2 Currently active EWCs by type



Source: European Trade Union Institute, EWC database ([www.ewcdb.eu](http://www.ewcdb.eu)), April 2011.

On the other hand, there are currently 477 bodies (i.e. 48.9% of all active councils; 463 EWCs and 14 WWCs) operating on the basis of Article 6 of directive 94/45/EC. These agreements have been signed since 22.09.1996 (or after 15/12/1999 in the UK and Northern Ireland), and thus are required to respect the full scope of the EWC directive and its national transpositions in

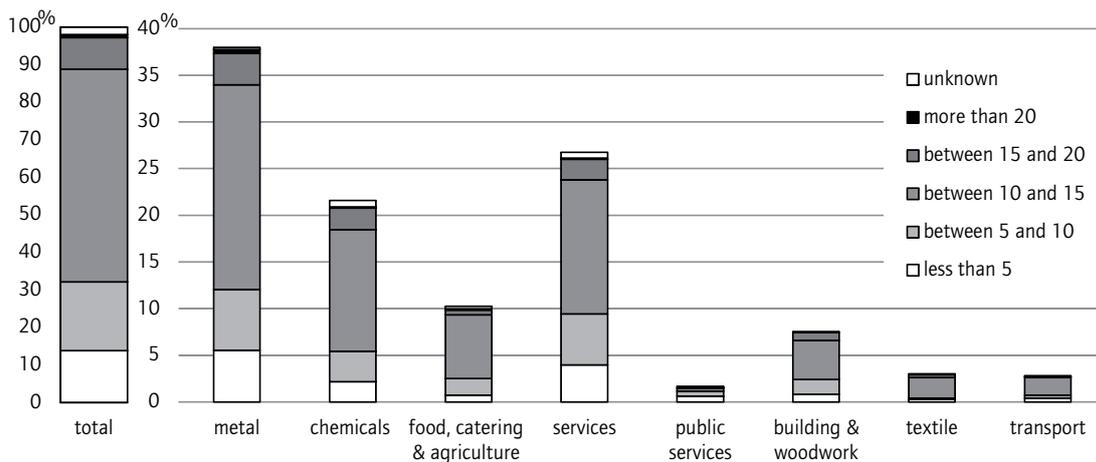
4. We consider World Works Councils only if they explicitly adopt this name in their agreement. Otherwise, the inclusion of representatives from outside the EU does not result in a body being classified as a WWC.

the Member State where an EWC is established. Unless renegotiated in the 2-year period between May 2009 and June 2011 (a new window of opportunity to negotiate agreements exempted from the recast directive), these EWCs will benefit from new rights granted by the recast directive. In other words, the new recast directive will, as from 6 June 2011, apply automatically to all Article 6 agreements and all subsidiary requirements agreements without the need to renegotiate them (for details see Picard 2010: 30 ff.).

#### 4. Age (length of existence) of currently active EWCs

EWCs have collected a considerable degree of experience in dealing with transnational information and consultation. A vast majority of at least 65.8% (627) of the currently active EWCs have been in operation for ten years or more (Figure 3) processing information from the management and formulating opinions on behalf of the European workforce.

Figure 3 Age (length of existence) of currently active EWCs in years, by sector of activity



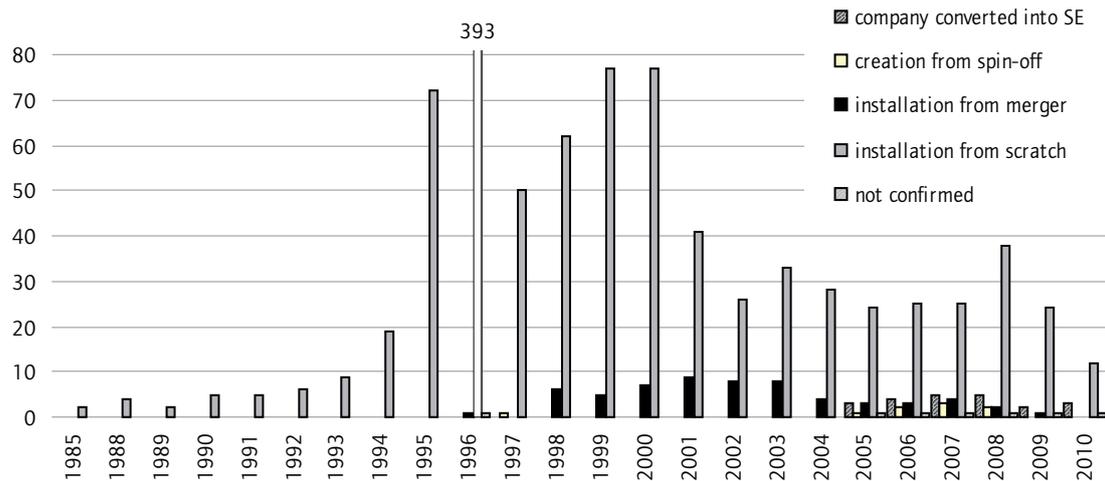
Source: European Trade Union Institute, EWC database ([www.ewcdb.eu](http://www.ewcdb.eu)), April 2011.

Due to the different sizes of individual economic sectors, the number of companies operating in specific branches varies, and, consequently, so does number of EWCs active in each of them. Despite the fact that the number of EWCs in each sector differs, sometimes quite significantly, it is interesting that the share of EWCs having a record of operation longer than ten years is, in almost in all the branches, well above 65% (a significant exception being Public Services where it is only 25%). This proves that there is in fact no significant sector-specific bias in terms of experience of EWCs (measured by length of operation).

## 5. Creation and dissolution of EWCs

The number of EWCs depends not only on the new bodies created each year, but also on the number of those dissolved. Figure 4 shows the year-by-year establishment of EWCs broken down by reason for creation. By far the most common reason for setting up an EWC is first establishment without any previous history of EWC activity, which accounts for over 91% of all establishments. The second most common reason for setting up an EWC is the merger of companies resulting in Community-scale undertakings eligible for an EWC (5%). A relatively new phenomenon is SE works councils (regarded in the database as EWCs) established in wake of creation of European Companies based on directive 2001/86/EC (20 cases). The last reason for establishment of EWCs recorded by ETUI are those set up as a result of a company spin-off creating a new Community-scale undertaking eligible for an EWC (8 cases).

Figure 4 Establishment of EWCs by reason for creation per year

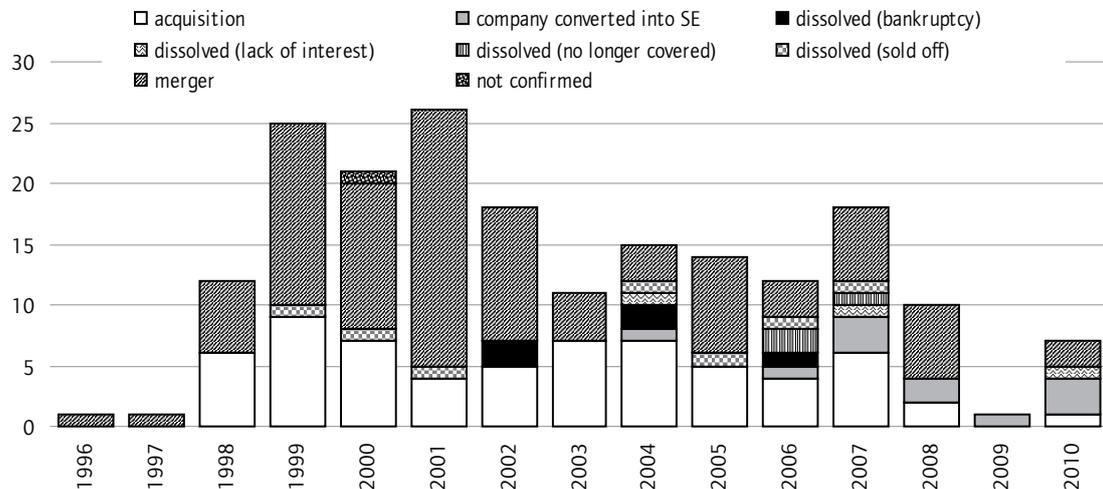


Source: European Trade Union Institute, EWC database ([www.ewcdb.eu](http://www.ewcdb.eu)), April 2011.

\* For 7 cases data on establishment is lacking

With regard to termination of EWCs, Figure 5 presents figures broken down by reason of dissolution per year. The most common reason for termination of EWCs is a merger between companies, which accounts for 98 (55%) out of 177 cases. Second come acquisitions, accounting for 62 (35%) dissolutions. Together with dissolution of EWCs as a consequence of companies' (or their parts) being sold off (7 cases or 3.9%) or going bankrupt (5 cases or 2.8%), these various forms of restructuring account for the vast majority of dissolutions (96.7 % of all cases).

Figure 5 Dissolution of EWCs, by year and reason



Source: European Trade Union Institute, EWC database ([www.ewcdb.eu](http://www.ewcdb.eu)), April 2011.

Employees' right to transnational information and consultation stops at the moment of decision about such dissolution, even though the consequences of such events persist and continue to affect the workforce. It should be noted that, in some cases, following such restructuring employees become covered by an existing EWC agreement in the new company (merger, acquisition), but this is not necessarily always the case. On the other hand, only a small number of companies (9 cases) terminated their EWC due to conversion of company legal status into an SE and a consequent agreement on employee participation according to directive 2001/86. In the case of these EWCs it is, however, not appropriate to speak of dissolution for it is a case rather of a transformation or upgrading of rights to information and consultation as the provisions of directive 2001/86/EC are superior to those of directive 94/45/EC on EWCs and grant more extensive and better defined prerogatives. Finally, it should be regarded as evidence of success that in only two cases have EWCs terminated their operation due to lack of interest.

## 6. Agreements establishing EWCs and their renegotiation<sup>5</sup>

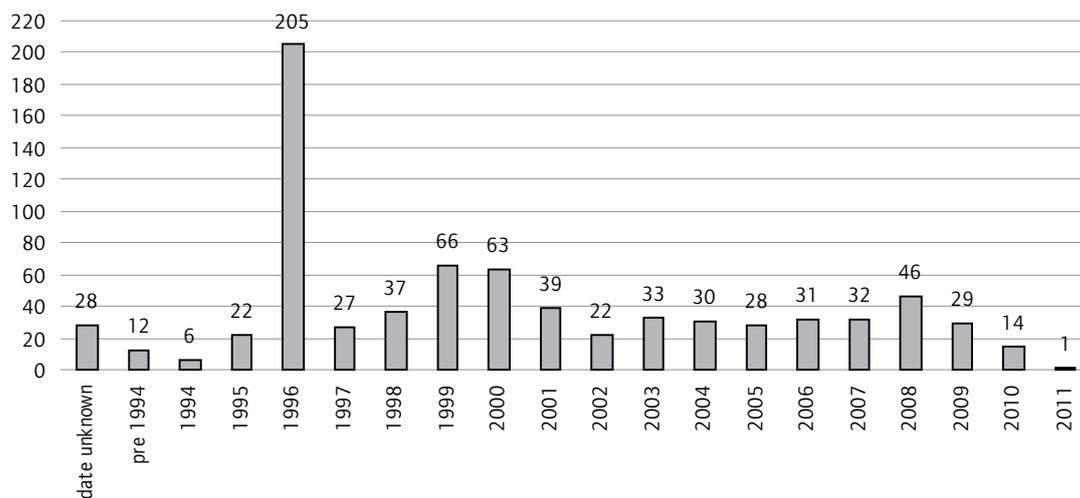
There are currently in total 1622 agreements underpinning the operation of 1190 EWCs (ETUI database of EWCs, April 2011). This figure includes agreements currently valid and those that are no longer in force (having been replaced, not

5. The ETUI database of EWCs considers the agreements to be one of the three main levels of data processing and storage (alongside multinational companies and EWC bodies) that enable accommodation of the complexity of the EWC institutional setting. This is necessary to allow proper presentation of the interdependencies between the various levels, since one multinational company (MNC) may have established several EWCs within its structure (divisional EWCs), of which each is based on more than one EWC agreement. Additionally, various types of agreement are often linked with a single EWC (e.g. installation agreements, renegotiated agreements, IFAs, internal rules of procedure, etc.).

prolonged or terminated due to EWC dissolution). Figure 6 shows that there are currently 1118 EWC agreements in force (installation, renegotiated, renewed or post-merger agreements) which account for 69% of all EWC agreements ever signed. These 1118 valid agreements regulate the operation of 975 active EWCs. The data shows that only one third of EWCs have renegotiated their agreements. Such a low proportion of renegotiated EWC agreements is surprising given that directive 94/45/EC requires (Art. 6.2 f) that Article 6 agreements contain an indication of their duration and of the procedure for renegotiation. The one-in-three ratio suggests that renegotiation of EWC agreements poses a problem as a considerable number of EWCs (approximately 64%) have been operating for years on the unchanged basis of an original installation agreement dating back to the mid-1990s (Figure 6).

The number of currently active EWCs that have not renegotiated their establishing agreement is 771 (79% of currently active EWCs). Even after deduction of EWCs created within the past four years (i.e. since 2007, 122 EWCs), the share of unrenegotiated EWCs remains significant (66.5%). The high number of EWCs without renegotiation of agreement becomes even more striking when it is borne in mind that almost 627 (i.e. 64.3%) currently active EWCs have existed for at least ten years or more (Figure 3). Indeed, at least 445 EWCs (46.7% of all active EWCs) without renegotiated agreement have been operating for ten years or more. It might reasonably be expected that the group of longest existing bodies would be the one most keen on renegotiations aimed at adaptation to new conditions and challenges.

Figure 6 EWCs for which agreements have never been renegotiated by year of creation of EWC

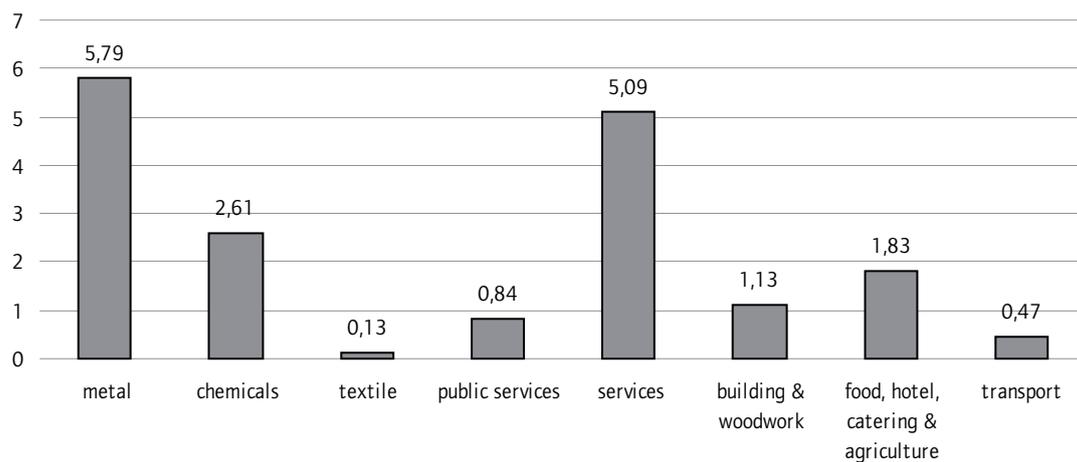


Source: European Trade Union Institute, EWC database ([www.ewcdb.eu](http://www.ewcdb.eu)), April 2011.

## 7. Employees represented in EWCs

Figure 7 illustrates the distribution of workforce represented in EWCs in companies per sector of activity<sup>6</sup>. In total at least<sup>7</sup> 17.89 million workers have access, via representatives, to information and consultation with the central management of the companies where they are employed. At least a part of this workforce will be affected by the amendments to the EWC agreements in consequence of their renegotiation after June 2011 (entry into force of directive 2009/38/EC). At the same time, it should not be forgotten that the potential beneficiaries of the recently adopted recast will also be employees of companies in which EWCs are yet to be established. Thus the recent reform of the directive can be perceived as a twofold improvement: directly towards (a part of)<sup>8</sup> the employees represented in 977 EWCs by the rough number of 19,500 EWC members<sup>9</sup>, as well as, indirectly, for employees of affected MNCs and their delegates intending to commence establishment of EWCs.

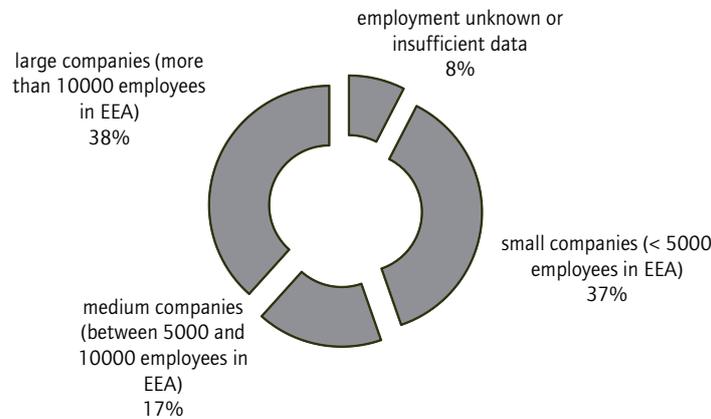
Figure 7 Employees represented in EWCs per sector of activity of multinational companies (in millions)



Source: European Trade Union Institute, EWC database ([www.ewcdb.eu](http://www.ewcdb.eu)), April 2011.

6. In fact Figure 11 does not reflect the problem with those companies in which an EWC was established to cover the workforce employed only in a specific branch or division of a company (see also Whittall *et al.* 2008). Consequently, the number of employees claimed to be represented in EWCs might in actual fact be somewhat lower than indicated in Figure 11. Globally, however, EWCs covering only selected parts or operations of companies are not commonplace. If within one company such divisional EWCs do not cover the entire workforce, they may even run counter to the spirit of directive 94/45/EC which stipulates in Article 1.4 that “Unless a wider scope is provided for in the agreements[...], the powers and competence of European Works Councils and the scope of information and consultation procedures [...] shall [...] cover all the establishments located within the Member States [...]”.
7. We are indicating this figure as a minimum since for companies with an EWC and in which no up-to-date information on employees was available the minimum of 1000 employees in EEA (as set by the directive 94/45/EC) was the figure assumed.
8. Art. 14 of directive 2009/38/EC contains provision exempting the existing EWC agreements from an obligation to automatically renegotiate them after June 2011 (for further details on renegotiation of existing agreements in specific circumstances see art.13 and 14 of 2009/38/EC).
9. An average of 20 employee representatives per EWC was calculated.

Figure 8 EWCs currently active by category of employment in EEA



Source: European Trade Union Institute, EWC database ([www.ewcdb.eu](http://www.ewcdb.eu)), April 2011.

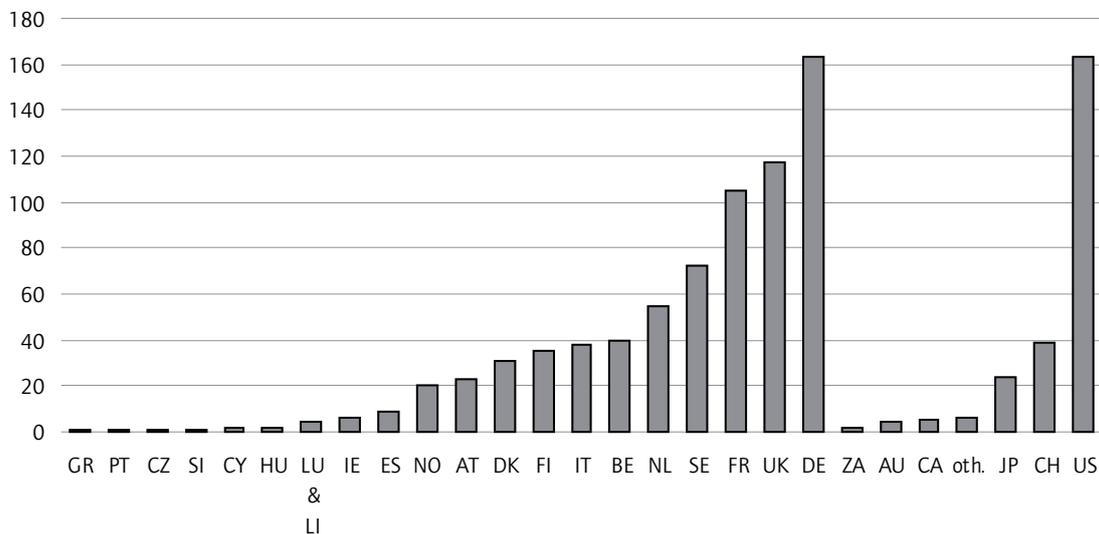
Last, but not least, it should also be noted that the number of workers employed in a multinational company is one of the most significant factors facilitating establishment of EWCs. Figure 8 shows that the more workers a company has, the more probable it is that an EWC will be established there.

## 8. Distribution of EWCs

Apart from a strong impact of the number of workers employed in an MNC (see above), three other factors influence the distribution of EWCs across countries, sectors and companies.

Firstly, EWCs are not distributed equally across the EU Member States. We observe significant differences in EWC density in MNCs headquartered in different countries (Figure 9). Not surprisingly, the biggest economies in Europe (Germany, the UK, France, the Netherlands, Sweden and Belgium) take the lead in this ranking, having collectively 552 active EWCs (56.6% of the total number of EWCs). Interestingly, the founding members of the European Communities ('the inner six') cover 405 of the currently existing EWCs ( 41.5 %). The 'inner six' countries together with the three Member States that subsequently joined the European Communities in 1972 (the UK, Denmark and the Republic of Ireland) altogether account for 57.3% (559) of active EWCs. Interestingly, on the other end of the scale, there are only two Hungarian companies and one Czech company, as well as two Cypriot companies, that have EWCs. These five multinational enterprises with an EWC represent the entire share of EWCs established in companies from the 12 new Member States (NMS) that have joined the EU since 2004, which accounts for 0.56% of currently active EWCs.

Figure 9 EWCs currently active by country of headquarters

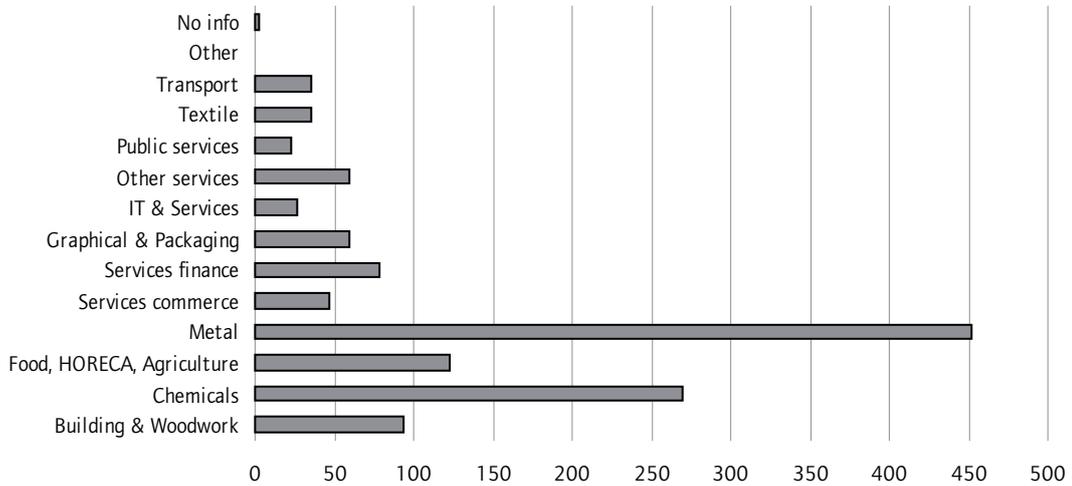


Source: European Trade Union Institute, EWC database ([www.ewcdb.eu](http://www.ewcdb.eu)), April 2011.

Secondly, EWC occurrence differs across sectors of activity of MNCs. The highest number of EWCs operates in the metal sector (452). This sector has traditionally been the frontrunner in terms of EWC operation: one of the first pioneering EWCs was established in a French metal sector company Thomson (1985), followed by one of the first formal (written) agreements on EWCs signed in this company on 18/12/1989. With 20 EWCs established by 1995, the metal sector was second biggest (after Chemicals with 21 EWCs), and from the moment of adoption of directive 94/45/EC was considered to have the highest number of MNCs covered by the EWC directive (Rivest 1996: 240). Among the early EWCs the next biggest sectors were the Food and Construction industries (*ibidem*). Consequently, these sectors now have the highest number of EWCs that have been in existence for ten or more years (see Figure 3). As can be seen from Figure 9, the metal, chemicals and food sectors remain still today the three leading sectors also in terms of number of employees represented in EWCs (respectively: 5.79 million, 2.61 million; and 1.83 million workers).

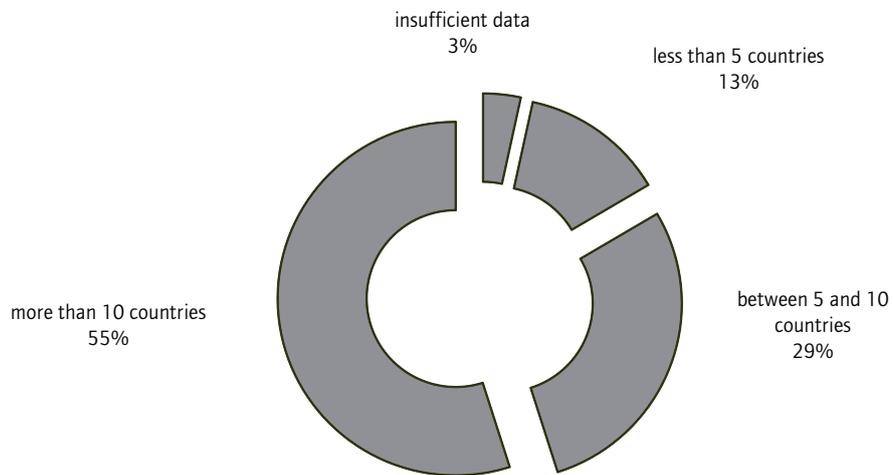
Thirdly, EWC distribution depends on rate of internationalisation. The degree of internationalisation of an enterprise is measured by the number of countries where a company operates (Figure 11). EWCs are twice as common in big multinational companies operating in more than ten countries (59%) as in firms active in 5 to 10 countries (28%). On the one hand, this trend seems to confirm that multinational undertakings active in many countries perceive EWCs as an appropriate means to accommodate cultural differences and diversity of industrial relation systems (Hall and Marginson 2005; Lamers 1998: 179-183; Blockland 2002; ORC 2003) and to build up a European corporate culture (Blanpain 2006: 754; Lecher *et al.* 1998: 214; Gold 2003: 66). This explanation is supported by Marginson (Marginson 2004) who found a positive link between the degree of internationalisation of companies and the efficacy of EWC operations.

Figure 10 EWCs currently active by sector of activity



Source: European Trade Union Institute, EWC database (www.ewcdb.eu), April 2011.

Figure 11 EWC bodies currently active, by category of internationalisation  
(number of EEA countries in which the companies have operations)



Source: European Trade Union Institute, EWC database (www.ewcdb.eu), April 2011.

## Conclusions

Fifteen years after the entry into force of the first EWC directive 94/45/EC, European Works Councils have become the most common form of transnational information and consultation on company level in Europe. Despite the significant number of EWCs representing a considerable number of European workers, there are, however, reasons for concern.

Firstly, the annual rate of establishment of new EWCs has been gradually decreasing and reached a new low in 2010. This most recent drop may perhaps be attributable to the uncertainty concerning the legal regime applicable to agreements signed in the transposition period between May 2009 and June 2011, but it may just as well be one more testimony to the array of difficulties faced by workers and trade unions in setting up EWCs. The recast directive stipulates in Recital 7 that one of the goals of the new legislation is to increase the number of EWCs. For this reason, in expectation of a repeat of the success of Article 13 of directive 94/45/EC, a new window of opportunity was introduced between May 2009 and June 2011 to stimulate the creation of EWCs insofar as they would benefit from exemption from the obligations of the recast directive (Art. 14). As has been shown, contrary to the experience with directive 94/45/EC and to the Commission's expectation, no similar effect that would have resulted in a significant increase of newly established EWCs since 2009 has actually occurred. This initial failure of the recast directive 2009/38/EC in this regard invites cautious monitoring of progress in terms of accomplishing the directive's goal of increasing the number of EWCs.

Secondly, given the various types of legal basis on which EWCs were created (Article 13 and Article Art. 6 agreements), it may be concluded that, due to the exemption offered by Article 14 of the recast directive, a high number of Article 13 EWCs currently in operation will not (immediately) benefit from the improved framework.

Thirdly, one of the most striking conclusions to be drawn from the statistical analyses of EWCs by the ETUI (see earlier Kerckhofs 2002, 2004 and 2006) is that the original dynamics that developed in the mid-1990s have not fundamentally changed over the years. Countries and sectors with most EWCs have retained their leading positions in this regard, and degree of internationalisation and company size in terms of workforce remain the driving factors affecting the establishment of EWCs (with the restriction of some internal dynamic in the latter's case). The two EU enlargement rounds in 2004 and 2006 seem to have had a virtually zero impact on EWC statistics. We conclude, therefore, that trade unions are challenged not only with regard to increasing the number of EWCs, but also in terms of the qualitative aspects of EWC operation. Such aspects include an underrepresentation of EWCs from the NMS12 countries or from certain sectors, as well as the failure of renegotiation of EWC agreements which, in the case of the longest existing EWCs, threatens to make (at least some of) them anachronistic.

Fourthly, we observe, in a number of respects, significant variation in terms of the distribution of EWCs. In general, EWCs are much less common in companies from the NMS12. Furthermore, the rate of compliance with the directive continues to differ markedly between individual sectors and companies due to their degree of internationalisation. Interestingly, however, compared to previous analyses, we have observed over the past five years considerable progress in terms of EWC saturation among companies with less than 5000 workers, which is now higher than for the medium-sized enterprises.

Finally, we identify a number of EWCs that are dissolved each year as a result of company restructuring (mergers, takeovers, bankruptcies). So far, under the regime of directive 94/45/EC, there are no measures foreseen for EWCs to continue their existence and ensure information and consultation of workers in such particularly turbulent circumstances. Given this fact, it is to be expected that, in this respect, the new recast directive 2009/38/EC which guarantees the continuing existence of EWCs in cases of restructuring (Art. 13) will represent major progress.

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