

Preface

Adopted on 22 September 1994, Council Directive 94/45/EC on the establishment of a European Works Council (EWC) or a procedure in Community-scale undertakings or Community-scale groups of undertakings for the purposes of informing and consulting employees (hereinafter ‘the Directive’) was the first piece of legislation of transnational scope designed to promote employee participation in multinational companies (MNCs). Subsequently, more than 1,250 EWCs have been established, constituting the development of a new industrial relations institution (EWCdb).

An initial survey of EWC representatives was commissioned by the European Trade Union Institute (ETUI) in 2005. This survey found that the quality of information and consultation procedures within EWCs met neither the standards required by the Directive nor those specified in EU Charters and Treaties, such as Article 27 of the Charter of Fundamental Rights of the European Union (Waddington, 2011). The survey also demonstrated that efforts by trade union organisations to address the adverse effects of the inadequate legislation at best mitigated these effects but were unable to overcome the shortfalls in the legislation. In this regard, the survey examined the impact of trade union involvement in the operation of EWCs, of articulation between EWCs and other institutions of labour representations within the MNC, and of training provisions made available to EWC representatives. In the light of this survey evidence and a vast array of case study material, representatives of European institutions recognised some of the limitations of the Directive and adopted the Recast Directive (2009/38/EC) in May 2009 (hereinafter, the ‘Recast’) as a means of addressing these limitations. It was also expected that the passing of time would lead to the accumulation of learning effects among EWC participants that may promote improved performance of the institution. To establish whether the impact of the Recast and learning effects has led to the ‘maturing’ of EWCs as industrial relations institutions, the ETUI commissioned a second survey of EWC representatives in 2017. This book reports the results of this second survey and, in so doing, traces the development of EWCs between 2007 and 2018.

At the core of the analysis presented in this volume is the observation that EWCs are contested institutions. This contestation arises from the contrasting positions of the social partners, the European Commission and European institutions. BusinessEurope initially preferred a voluntary rather than a legislative approach to transnational employee representation and, when this position became politically untenable, campaigned for restricted minimum standards and coverage. In contrast, the European Trade Union Confederation (ETUC) and the European Trade Union Federations (ETUFs) view EWCs as adding a social dimension to the European single market and, accordingly, argue for more specific standards and the enforcement of the minimum

standards specified in the legislation. To compound these fundamental differences in approach, managers responsible for EWCs within MNCs use EWCs as vehicles for the promotion of ever more sophisticated human resource management strategies, thereby ensuring corporate added value from the institution (Pulignano and Turk, 2016).

As illustrated by the content of both the Directive and the Recast, the European Commission has tended to opt for the minimalist approach advocated by BusinessEurope. The Directive, for example, included a raft of voluntary provisions, far from exacting minimum standards, and failed to define key terms. Similarly, the much-delayed Recast comprised tentative steps forward where the ETUC and ETUFs, survey data and case study material indicated that significant strides needed to be made in addressing the shortcomings of the Directive. The European Parliament and the European Economic and Social Committee (EESC) recommended more wide-ranging revisions to the Directive than were contemplated by the European Commission, while managers responsible for EWCs within MNCs viewed the Recast as merely bringing the legislation into line with EWC practice (Pulignano and Turk, 2016). The analytical core of this publication focuses on the competing positions of the social partners and how European institutions have responded to the differing interpretations of the purpose and development of EWCs.

Against this background, the central argument advanced here is that the Recast and any accompanying learning effects have failed to result in EWC practices attaining the standards required by European legislation and policy-makers for the vast majority of EWC representatives. The quality of information and consultation procedures within EWCs is generally poor, with the consequence that, at best, most EWCs function as purely information rather than information and consultation institutions. Although trade union organisations continue to strive for greater involvement in EWCs, articulation between EWCs and other institutions of labour representation, and more wide-ranging training provisions for EWC representatives, standards of information and consultation remain persistently low, suggesting that the underpinning legislation is insufficient to allow EWC practices to reach an appropriate standard. In short, while trade union involvement in EWCs plays a key role in their functioning and development, such involvement is insufficient to overcome the shortfalls in the legislation.

The response of the social partners and European institutions to this situation is examined in this book. In particular, it shows that BusinessEurope is willing to enter into negotiations on EWCs only when it is politically impossible to resist demands to do so, and, when forced to the negotiation table, opts for as wide a range of voluntary measures and restricted minimum standards. Effective lobbying supports these positions. The more exacting standards for transnational information and consultation sought by trade union organisations were accompanied by institution building as a means of developing EWCs. The legislation on EWCs, for example, promoted the reform of European trade union practice insofar as the ETUFs were formally allocated industrial responsibility within the European trade union movement, have developed and implemented policies to assist and regulate EWC practices, and have become more articulated with affiliated trade unions. All this serves merely to illustrate that the Directive triggered a process involving the establishment of EWCs and an infrastructure within which EWCs may

operate. Together with the quality of information and consultation procedures, the Recast and any learning effects, these developments show that the evolution of EWCs is still in process, and that a great deal remains to be done before EWCs can achieve the standards initially expected of them.

This book has been a long time in the making. We would like to take this opportunity to thank all those who have contributed to the research on which the book is based. The ETUI, based in Brussels, generously funded the research and was thus essential to its completion. Our involvement with the ETUI afforded unparalleled access to committees, conferences and workshops on EWC development and debates on EWC legislation. At these events, exchanges with policy-makers and EWC representatives contributed significantly to the arguments developed in the book. Countless discussions with EWC representatives at EWC meetings and on training programmes supplemented and enriched the questionnaire data, which were collected specifically for the research. We would like to thank those within the ETUFs and national trade unions for their support, as well as the EWC coordinators and chairpersons who facilitated the distribution of the questionnaire. We are also grateful to all the EWC representatives who completed the questionnaire, without whose involvement the survey would not have been completed. Arijana Amina Ramic and Viviane Bertel from the ICON Institute organised the collection of the electronic data and the inputting of the questionnaire responses. We are most grateful to them for their outstanding contribution. Our colleagues at the ETUI, as well as associated contributors also made substantial contributions to the final publication. Irmgard Pas provided invaluable assistance in extracting data from the database maintained by the ETUI, Fabienne Depas of the ETUI Documentation Centre checked the references, The Peer Group and Bethany Staunton were responsible for language editing, and James Patterson and Birgit Buggel-Asmus for the layout and for the publication process. Without their diligent efforts with respect to these key elements of the publication process, this book would never have seen the light of day. Friends and colleagues have also read and commented extensively on various drafts of the book. We would especially like to thank Miguel Martínez Lucio, Valeria Pulignano and Philippe Pochet for their detailed comments on the text. We are extremely grateful for all the constructive and helpful comments, which have contributed significantly and positively to the final version of the manuscript. Finally, we would like to point out that the survey was conducted in 2018 before the Covid 19 pandemic hit. As a result, no reference is made to the impact of the pandemic on EWC practice.

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