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Why aren't there more European Works Councils? A Belgian perspective

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Key points

- About one in three Belgian multinational companies lacking a European Works Council is currently engaged in establishing one or have developed 'functionally equivalent' structures.
- The remaining companies are confronted with serious obstacles to establishing a European Works Council, principally: (i) a lack of knowledge about them, (ii) weak and time-consuming national-level information and consultation processes, and (iii) a low perceived added value of transnational information and consultation.
- The local level of employee representation needs to be strengthened to increase the number of EWCs, and trade unions need to inform employee representatives more about the importance of the European level.

In March 2018, the 32,000 employees of the largest cheese production company in the world, Lactalis, finally received a green light on establishing a European Works Council (EWC) in their company. Up to that point their requests had been continuously ignored by the management. However, an impending court case made the management compromise and now, at least, a special negotiating body has been composed which should lead to a fully-fledged EWC in two years at most (EWC Academy 2018).

Obviously, setting up an EWC is not always an easy process. As shown by the stories of EWCs established in such companies as Unilever, it takes time, energy and perseverance to get one up and running (Eurofound 2015; Girndt 1999; Kotthoff and Whittall 2014; Whittall *et al.* 2007). In a situation where management is unwilling to cooperate, it may even take a court case.

The creation of more EWCs was, however, one of the main aims of the Recast of the EU Directive on European Works Councils (see Recital 7). For some time now, there has been a declining trend in the number of created EWCs and, unfortunately, the Recast Directive hasn't been able to reverse this trend. Furthermore, there are still many companies estimated to not have an EWC despite employing a sufficient number of employees. According to the latest estimations, still less than half of all eligible companies have an EWC (De Spiegelaere 2016). In another study, it was found that one in three companies that were involved in transnational restructuring did not have a EWC or a European Company/Societas Europaea Works Council (SEWC) (De Spiegelaere 2017a).

These facts lead to two important questions: why are there not more EWCs and what is keeping those companies who meet the criteria from establishing one?

Literature

Some years ago, a detailed study by Whittall *et al.* (2015) considered these questions by looking at the situation in German companies. It found that there are several necessary preconditions for an EWC to be established. First of all, the actors involved (management, employee representatives and union officers) need to be aware of the existence of European Works Councils. If there is a lack of basic knowledge about EWCs and their functioning, it will be difficult to get the ball rolling to create one.

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Second, the employee representatives and union officers need to have information about the company size. They need to know whether or not their company is eligible for establishing an EWC. In the Whittall (2015) study, it appeared that quite a few employee representatives from companies that could have had an EWC were not aware of that fact. They thought their company was simply not large enough.

However, even if these preconditions are met, EWCs are not necessarily always established. Even with enough awareness and information, employee representatives will weigh the added value of an EWC against the means required to establish one and the existence of other priorities. In some companies the added value of an EWC is limited. Imagine a company where there's almost no transnational governance and all important decisions are taken by the local management. In this case there will be few transnational issues and therefore little need for an EWC.

What is more, setting up an EWC sometimes requires a great deal of resources. The employee representatives need to get in touch with their colleagues abroad, align their positions, send a request, collect information about EWCs, negotiate, meet, discuss, etc. All this takes time and money. Time which the representatives could otherwise invest in their local trade union or works council duties. Where relations with the local or national management are tense, setting up an EWC is often not a priority. Similarly, if contact with national or European trade unions is missing and/or if no one among the workers' representatives speaks a foreign language, chances are low that the initiative will be taken.

One of the interesting and challenging conclusions of the study of Whittall *et al.* (2015) was that some employee representatives saw little added value in an EWC because they had good and close relations with the top management. In other words, they didn't feel that they needed to defend their interests at the transnational level. Moreover, they feared that an EWC could affect their special relationship with the central management. Many also doubted the added value an EWC would offer not because there are no transnational issues, but because an EWC is, according to them, not strong enough to really make a difference: it demands lots of investment for very little return.

Focus on Belgium

In this study we apply the same framework to another population: Belgian companies that do not have an EWC. We consider the Belgian case to be an interesting one as it is a country with a highly internationalised economy and the presence of many multinational companies (MNCs). There is, in other words, great potential for EWCs to flourish. Belgian employee representatives also seem to be well equipped for establishing EWCs. They are used to working in multi-lingual environments, have strong unions which support EWCs, and a large presence of local works councils. At the same time, Belgium is a small country, making them fairly dependent on transnational strategy. We therefore suspect that most Belgian employee representatives will see the importance of the transnational level because they cannot sufficiently defend their interests at the national level

in MNCs. All in all, we argue that Belgium is a primary example of a country where EWCs should be widespread. Taking a closer look at those Belgian companies that do not have EWCs could thus teach us something about 'hard-to-access' (for EWCs) companies more generally.

In short, the central research question is: how can we explain the fact that some companies headquartered in Belgium do not have EWCs when all the right preconditions are in place?

Method

To study this question, the following research design was implemented. To start with, the Capital IQ dataset was used to find all listed companies headquartered in Belgium and (along with other sources) to establish whether those companies had enough employees in a sufficient number of countries to fall under the scope of the EWC Directive. Next, we looked at the EWCdb.eu database to see whether or not these companies already had an established EWC. The EWCdb.eu is the most exhaustive database collecting information about EWCs and EWC agreements (De Spiegelaere 2017b); it is likely to contain errors, but we double-checked the information during the subsequent interviews. From this exercise, the researchers selected 13 companies which employed over 1,000 employees and at least 150 in two different European Economic Area (EEA) countries, and that did not have an EWC.

This methodology only gives us information about the listed companies in Belgium. Next to these 13, we are confident there are many Belgian non-listed companies that do not have an EWC. We are also aware that the Capital IQ database might include some errors. The aim of this study was, however, not to compile a complete list of Belgian companies without EWCs but a sample.

Several local trade unionists and union officers from the two largest Belgian trade unions (the Confederation of Christian Trade Unions, ACV/CSC, and the General Labour Federation of Belgium, ABVV/FGTB) were approached for telephone interviews. In total, this study is based on 16 interviews with representatives and officers from 12 of the 13 identified companies.

The companies are multinationals active in various EU countries. Their sectors range from distribution (1), chemical industry (3), construction (2), finance (1), telecoms (1), high-tech (2) and food and services (2).

The semi-structured telephone interviews were based on a series of questions inspired by the research of Whittall *et al.* (2015). Interviews began by collecting demographic information about the person and the company, which led to an assessment of the person's knowledge regarding EWCs, the coverage of the Recast Directive, the possible added value of an EWC, the related costs, and possible other priorities. The semi-structured nature of the interview left open the possibility for the interviewees to provide their own stories and explanations. The interviews were transcribed, and a thematic analysis was performed based on the framework of Whittall *et al.* (2015), using the NVIVO software (Olijslagers 2018).

Findings

From this analysis, three broad clusters of Belgian MNCs without EWCs emerged: those who are in the process of establishing an EWC, those who have alternative structures, and those who lack knowledge, information and motivation.

EWC loading...

The first group contains two companies that were in the process of establishing an EWC. Obviously, the interviewees in these companies knew about the workings of EWCs and their potential. For the most part, they considered the added value of an EWC to be in obtaining legitimate transnational information, as they couldn't always do so via the national-level institutions of information and consultation. One of the interviewees also referred to the uniting potential of an EWC for the workforces of different countries. At the same time, in both cases it was observed that the national level took priority over the European level which indicated a lack of willingness and enthusiasm of other representatives to invest much in establishing the EWC. To summarise, in this cluster, information and knowledge were not the issue. The added value of an EWC was recognised but the finite resources and the continuing priority of the national level limited the representatives' engagement at the European level. In the study of Whittall *et al.* (2015), no mention is made of companies in the process of establishing an EWC. Nevertheless, the results show that the representatives in these companies were aware of the EWC framework, informed about the company size requirements, and convinced the EWC can be of value. However, national-level representation work took up most resources and not all representatives were equally convinced.

There is an alternative

The second group consists of two companies that had developed what could be described as a 'functional equivalent' of an EWC and therefore saw little value in establishing one. Both companies were active in the construction industry. According to the representatives of one, they had about one or two meetings a year where they met with representatives from the other countries to discuss general issues such as the latest developments in the sector and the company. As well as these employee-only meetings, they also met with the management. A similar arrangement was in place in the other company. Here, the employee representatives had the authority to call a meeting with representatives of other companies, which was then facilitated by the management. The representatives in these companies had quite an extensive knowledge of EWC rules and had already informed themselves about whether or not the company was covered by the Directive. If the current 'functional equivalent' were to become ineffective, the representatives knew they could threaten to take steps towards establishing an EWC. At the same time, the benefits of actually doing so were considered to be low, as the existing structures were regarded as equally effective.

This group is a surprising one. Before the EWC regulation was established, companies did create 'EWC-like' voluntary structures, which then got formalised as Article 13 EWCs. However, the two

structures in these cases were created after the EWC Directive came into effect. In the literature on EWCs, there is little known about such 'functional equivalents'. However, they do show that when the need for transnational dialogue is present, companies and representatives still create structures that fit those needs.

EWCs? Sorry, we're busy for the moment

The third group is the largest (9 of the 13 companies, or 70%) and consists of all companies that did not have an EWC, were not busy establishing one or did not have functional equivalents. The question is therefore: why not?

Focusing first on the overall knowledge about the EWC regulation and rules, we observed that for most of the employee representatives it was very limited, meaning that they knew of the existence of EWCs but not much more beyond that. Interestingly (but not surprisingly), these companies had relatively defunct local representation structures which took a lot of time to coordinate. Those who had some knowledge about EWCs all said they were informed by their trade unions in training courses or through flyers and publications, confirming the important role trade unions have in setting up EWCs.

Turning to the question of knowledge about the size and structure of the company, a more nuanced picture emerges. Most representatives could give a rough estimation of the number of employees working for the company in Belgium and abroad. They therefore also had a general idea of whether or not the company met the EWC thresholds. The information mostly came from the 'Economic and Financial Information' which the works council is obliged to receive annually in Belgium. In only one company was a serious knowledge deficiency observed, with the union officer having little or no clue about how many employees were working for the company abroad. In one other case, the employee representative asked the management once about the possibility of establishing an EWC but didn't get a serious reply.

One of the main issues in this group, however, was the combination of more urgent national priorities and a low perceived added value of having an EWC. Almost all the companies lacking an EWC had a rather weak unionisation rate amongst the workforce and dysfunctional local works councils. The national level was therefore given full attention and no energy remained to develop a transnational form of information and consultation.

In one case, the value of an EWC was identified by the Belgian representatives in the aftermath of a large transnational restructuring in the company. However, as they only received bits and pieces of information, preventing them from having an overview of the situation, and lacked contacts in the other countries, they were not able to act in a unified way.

In another case, the representatives saw an EWC as a threat, with one explaining that he was scared it would lead to a 'harmonisation' of wages in the company, meaning that the Belgians would see their salaries decrease. The fear of management exploiting the situation is thus also a significant factor (Greer and Hauptmeier 2016).

Interestingly, financial resources were never identified as a problem. When asked, all respondents stated that the trade union would cover costs related to the preparatory meetings for filing an official request to set up a special negotiating body.

Taking these findings as a whole, it is interesting to see that the priority of the national level and the perceived lack of added value of an EWC was never connected (by the interviewees) to a lack of transnational management by the company. Not one of the interviewees said that an EWC would not be useful because there were no transnational issues. References were only made to a lack of resources, perceived risks of transnational information and consultation processes, and national-level information and consultation taking up all the reps' energy.

We conclude from this third group that these companies faced various obstacles to the establishment of an EWC, with the most important being: (1) a lack of knowledge regarding the rules, limits and potential of an EWC, (2) a low perceived added value and (3) representation work at the national level being the priority and therefore using up resources. A lack of information about the company size played only a minor role.

The findings from this third group largely confirm the findings of Whittall *et al.* (2015) but differ in two important aspects. First, while the German study observed a serious lack of information about the company size amongst representatives, this was not the case for the Belgian sample. This could be explained by two factors: (i) this might just be a sampling issue as this study did not include family-run businesses which may be less transparent; (ii) the Belgian system of yearly 'economic and financial information' gives employees a direct insight into the company structure and this might explain why all were well informed.

Second, while the German study concluded that there was a low perceived added value of EWCs, this was not really confirmed in our Belgian study. Only in one company was the EWC seen as a potential threat. The reason for this difference is a subject for further research. However, one possible explanation is simply the size of the country (and thus the extent of economic internationalisation). Given the small size of Belgium, a Belgian multinational might be more likely to have real transnational management than a German multinational, where the relative importance of the home country is likely to be larger. Linked to this, the fear of losing a special relation with the management was an important variable in Germany but couldn't be found in Belgium.

What does this mean? Think global, act local!

In this policy brief, we have questioned why, in a country where employee representatives have many objectively good reasons for establishing an EWC (such as a small open economy) and should have sufficient resources to do so (strong unions and local works councils), there are still companies who don't have an up-and-running EWC. The findings show that there are three large groups of companies with their own individual explanations.

The first is the group of companies who are in the process of establishing an EWC. In the second group, the companies have developed 'functional equivalents' of EWCs, with EU legislation serving as a back-up plan for when the current solutions cease to be effective. The third (and unfortunately largest) group is composed of all the other cases. In line with previous research, the identified obstacles in this group are a lack of knowledge, a low perceived added value of having an EWC, and time-intensive local employee representation structures.

If the European Union wants to develop a policy to boost the creation of EWCs, it therefore needs to think about strengthening local trade unions, works councils and other structures of employee representation. This could increase resources at the local level, which are essential for European transnational social dialogue.

Second, the added value of an EWC needs to be promoted. Strengthening workers' and representatives' rights to timely and detailed information, increasing involvement in restructuring processes, and making these rights enforceable are all important steps in this direction. Trade unions can also help by doing more to inform employee representatives about the value of European-level information and consultation. If many employee representatives don't know about EWCs or have the wrong idea about what they can contribute, they will be unlikely to invest in establishing one.

Next, information regarding the establishment procedures needs to be disseminated more widely. In this study (and previous ones) the trade union role was found to be essential in this. Strengthening the role of trade unions in EWCs would therefore be advisable.

Lastly, other known barriers to EWC creation, not treated in this study, also need to be attended to, two key examples being better enforcement in companies that do not cooperate and the establishment of a transnational company database listing all eligible companies.

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