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**Background Paper**<sup>1</sup>

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The Council of Ministers of the European Union (EU) approved Directive 94/45/EC (hereafter the EWCs Directive) on 22 September 1994.<sup>2</sup> This requires the establishment of a European Works Council (EWC) or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. The Directive was the first measure to be approved under the Protocol and Agreement on Social Policy of the Treaty on European Union.<sup>3</sup> The Directive did not apply to the UK, which had opted out of

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<sup>1</sup> © Brian Bercusson.

<sup>2</sup> Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. OJ L 254/64 of 30.9.94.

<sup>3</sup> As the first Directive to be approved under the Protocol and Agreement on Social Policy of the Maastricht Treaty on European Union, it followed the procedure laid down in the Agreement annexed to the Protocol - consultation of management (UNICE and CEEP) and labour (ETUC) at EU level. The negotiations between these "social partners" came close to producing the first EU collective agreement, but were fatally undermined by the British CBI's last-minute rejection of the compromise agreed by UNICE. Following the breakdown of negotiations, the issue reverted to the Agreement's legislative procedure, which culminated in the Directive.

these provisions.<sup>4</sup> When the opt-out was abandoned in June 1997, the Directive was extended to the UK.<sup>5</sup>

The Directive is characterised by the delegation to the social partners, management and labour, of the competence to negotiate the relevant European labour law standards. The outcome of such negotiations depends, as always, first on the balance of forces between the social partners. However, there is much scope for tactical manoeuvring within the often ambiguous framework laid down by the Directive. Strategies of litigation and negotiation may be exploited by the parties, aided and abetted by labour lawyers.

The importance of the Directive lies simply in the fact that, by applying to large multinational undertakings and groups of undertakings, it is of immense economic significance, and not least to the trade union and labour movement.

### *Agreements negotiated to date*

The common experience of negotiators under the Directive was that a first phase had occurred even before the directive came into effect. Some companies were contacted, or themselves made contact with workers' representatives expressing willingness to create a new communication channel. With this willingness, reasonable agreements were achieved. There was mutual trust that both sides wanted to achieve something

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<sup>4</sup> The eleven Member States at the time it was approved, plus the three new Member States (Austria, Finland, Sweden) as of 1 January 1995. It also applied in the three EEA countries, Iceland, Leichtenstein and Norway.

<sup>5</sup> Council Directive 97/84/EC of 15 December 1997 extending to the United Kingdom of Great Britain and Northern Ireland, Directive 95/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. OJ L 10/22 of 16.1.98.

A second phase was related to the provision in Article 13 of the Directive. This provided that the obligations arising from the Directive did not apply to multinational enterprises where, before the coming into effect of the Directive on 22 September 1996:<sup>6</sup>

"there is already an agreement, covering the entire workforce, providing for transnational information and consultation of employees".

Not surprisingly, many multinational enterprises took a pragmatic view that, since they had to do it anyway, they preferred to negotiate voluntary arrangements to avoid the EWCs Directive in the future. These could be difficult to negotiate, but many of the agreements were better, in that there were detailed written provisions. On the other hand, some were less good, as there was not really a positive approach by the company, which was driven more by the necessity of agreeing before the Directive came into force.

However, a certain number of companies tried to control the whole exercise; for example, by designating the negotiators on the employee side. In the case of agreements resulting from these efforts, it was impossible to expect more than minimal requirements. It is not clear whether these agreements would survive close legal scrutiny.

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<sup>6</sup> Article 13.

The speed of events was indicated in a comprehensive analysis of some 386 agreements concluded under Article 13.<sup>7</sup> In September 1994, there were only 40 voluntary EWCs; two years later one third of companies estimated to be covered by the Directive had EWC agreements establishing EWCs. The rush to conclude agreements is indicated by the fact that more than three-quarters of agreements were concluded in the 12 months up to September 1996, and one in three were signed in September 1996 itself!<sup>8</sup>

The analysis of the 386 EWC agreements concluded under Article 13 highlighted a number of features. Companies in four countries account for almost two-thirds of all agreements: Germany (23%), UK (15%), USA (15%) and France (11%); a total of 64% of all agreements. The relative success rate of a country in signing Article 13 agreements varied considerably. The highest rates were in Belgium (80% of companies covered by the Directive signed an Article 13 agreements) and Ireland (60%), followed by Finland, Japan, Norway, Sweden and the UK (all over 40%). The lowest rates (20% or less) were in Denmark, the Netherlands and Spain.<sup>9</sup>

In terms of sector coverage of Article 13 agreements, manufacturing and production account for 85% of agreements, with the most prominent

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<sup>7</sup> "EWC agreements under Article 13 reviewed", *European Works Councils Bulletin* No. 15, May/June 1998, pp.8-12.

<sup>8</sup> The relevance of this experience is highlighted by the fact that extension of the EWCs Directive to the UK meant that it was also necessary to amend the date of 22 September 1996 to allow the possibility of voluntary agreements reached in advance of the UK transposition to be recognized. This meant that another 300 companies had until 15 December 1999 to negotiate voluntary agreements. However, such a facility was only available to those companies which fall into the Directive's definition "solely by virtue of [its extension to the UK]".

<sup>9</sup> "European Works Councils update", *European Industrial Relations Review* No. 294, July 1998, p. 34 at p. 36.

being metalworking (35%), chemicals, rubber and plastics (17%) and food, drink and tobacco (12%).<sup>10</sup>

Although there is not explicit provision for trade union representation, Article 13 agreements manifest substantial trade union involvement, particularly in larger enterprises. Of 364 agreements for which information was available, trade unions, national and/or international had signed 45% of agreements. National works councils or pre-existing Euro-level Works Councils were signatories of 34% of agreements, and where central works councils (in Austria and Germany) are signatories, trade unions were powerful influences in up to two-thirds of cases.

Finally, one surprising feature of the 386 Article 13 agreements analysed was that, although the Annex to the Directive refers to an employee-side only EWC, in practice, only a minority of agreements follow this model. Two out of every three establish a joint management-employee body. This has implications for the functioning of the body, including joint procedures for calling extraordinary meetings, setting the agenda, drawing up the minutes and disseminating the content and outcome of EWC meetings.

As noted earlier, the Directive is characterised by a strategy of delegation to the social partners, management and labour, of the competence to negotiate the relevant European labour law standards. Central management and the representatives of the workforce are to negotiate the EWC agreement. The range of issues to be negotiated is impressive. A list derived from a review of agreements negotiated under Article 6 of the

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<sup>10</sup> This pattern is reflected also among EWC agreements negotiated after 22 September 1996. See below.

Directive one year after it came into force would include: the national law applicable, the signatory parties, coverage, EWC composition, numbers and seat allocation, the term of office, functions and procedure, venue, frequency and duration of meetings, financial and material resources, duration of the agreement and the procedure for its renegotiation, issues for information and consultation, experts, confidentiality, the select committee, employee-side meetings prior to full EWC meetings, rules on deputies to employees representatives, languages policy and interpretation provided, procedure for agreeing the agenda, and joint procedures for drawing up minutes or other record.<sup>11</sup>

However, in contrast with the surge of Article 13 agreements concluded with the aim of avoiding the Directive's provisions, in contrast, by June 1998, some 21 months after the date when Member States had to implement the Directive (22 September 1996) and Special Negotiating Bodies could be set up to negotiate EWCs, the number of EWC agreements appeared to be no more than 50 (though there were problems in identifying such agreements).<sup>12</sup> An analysis indicated that the USA and Germany were prominent in some 45 agreements negotiated since 22 September 1996: Germany (11%), the USA (20%), but also Sweden (18%), Netherlands (16%) and France (7%).<sup>13</sup>

Another analysis stated that some 450 EWCs were set up during the Article 13 phase. Up to the beginning of 2000, approximately 170 further EWCs had been negotiated and established in accordance with the procedures in Article 6 of the Directive, and it was estimated at that time

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<sup>11</sup> *European Works Councils Bulletin* No. 11, September/October 1997, pp.12-17.

<sup>12</sup> *European Works Councils Bulletin* No. 16, July/August 1998, p.11.

<sup>13</sup> "European Works Councils update", *European Industrial Relations Review* No. 294, July 1998, p. 34 at p. 36.

that negotiations to establish an EWC were under way in another 120-150 multinational undertakings.<sup>14</sup> By the end of 2002, of the 1,865 companies or groups covered by the Directive, employing a total of 17 million people, 639 had an EWC, accounting for 11 million employees.<sup>15</sup> According to an Opinion of the European Economic and Social Committee, more than 10,000 workers' representatives are "directly involved in the work of EWCs... This is one of the most striking and significant features of social Europe".<sup>16</sup>

The accession of ten new Member States in May 2004 once again expanded the number of countries considered to be "Member States" for the purposes of the EWCs Directive to 28: the new ten, the old fifteen and the three countries of the EEA. The inclusion of the workforces in the new Member States will bring new multinationals within the scope of the Directive if their workforce exceeds the 1,000-employee threshold plus at least 150 workers in two more Member States; however, it was not known how many of multinationals might be affected.<sup>17</sup> It was calculated that of the total of 1,865 multinationals considered to fall within the scope of the Directive in October 2002, 29% (547) had operations in the new Member States. Those based in Germany, the USA and the UK had the most subsidiaries in absolute terms. Of the 232 UK-based firms covered

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<sup>14</sup> Hans-Wolfgang Platzer, Stefan Rus, Klaus-Peter Weiner, "European Works Councils – Article 6 agreements: quantitative and qualitative developments", (2001) 7 *Transfer: European Review of Labour and Research* (No. 1), pp. 90-113, at pp. 90-91.

<sup>15</sup> According to research by the European Trade Union Institute, *European Works Councils facts and figures*, Brussels, 2002. See summary in "Latest EWC figures", *European Works Councils Bulletin* No. 43, January/February 2003, pp. 14-16. German and US multinationals are most represented, each accounting for around 16% of the total, with the UK accounting for 15%. Among countries with 40 or more multinationals, the proportion of multinationals based there which have EWCs is, in Belgium, 49%, Finland, Japan and Sweden (each 43%), the UK (40%), the Netherlands and Switzerland (both 39%), Denmark (36%), France, Italy and the USA (each 35%), and Germany (25%).

<sup>16</sup> EESC "Exploratory Opinion" adopted 24 September 2003, quoted in *European Works Councils Bulletin* No. 48, November/December 2003, p. 15.

<sup>17</sup> What is thought to be the first EWC established in a multinational company based in one of the new Member States is the result of an agreement signed in June 200 at Hungarian Oil and Gas (MOL). *European Works Councils Bulletin* No. 54, November/December 2004, p. 2.

by the Directive, 53 (23%) had operations in the new Member States. But of the 547 with operations in the new Member States, 59% (323) had already set up an EWC, and in about a quarter of these (84), the EWCs in these multinationals already included a full member or an “observer” from the new countries, agreed voluntarily between the parties to the EWC agreement .<sup>18</sup>

However, perhaps the most startling statistic to emerge from the experience to date is that two-thirds of all companies covered by the Directive as at October 2002 had not established an EWC, including over 40% of the multinationals covered by the Directive with operations in the new Member States. When the most comprehensive database compiled by the European Trade Union Institute in Brussels was updated in December 2004, it contained data on 2,169 multinational companies falling within the scope of the Directive, but only 737 of these had actually established EWCs – approximately one-third of the total.<sup>19</sup> In other words, over 1,400 multinational companies covered by the Directive have yet to establish EWCs.<sup>20</sup>

The companies covered by the Directive were subject to the cut-off date of 22 September 1996 (or, for those caught by the extension to the UK, 15 December 1999). If they had not made a voluntary agreement under Article 13, the prospect before them was the creation of a European Works Council governed by the provisions of the Directive. The first

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<sup>18</sup> “EU enlargement and EWCs”, *European Works Councils Bulletin* No. 51, May/June 2004, p. 5 at p. 6. One use to which EWCs have been put in Poland, direct access to company headquarters in the west, is described by Guglielmo Meardi, “Short circuits in multinational companies: the extension of European Works Councils to Poland”, (2004) 10 *European Journal of Industrial Relations* pp. 161-178.

<sup>19</sup> *European Works Councils Database 2004*, compiled and edited by Peter Kerckhofs and Irmgard Pas, ETUI, Brussels.

<sup>20</sup> “EWCs absent in 1,400 companies”, *European Works Councils Bulletin* No. 55, January/February 2005, p. 3.

stage involves the establishment of a Special Negotiating Body, which is to negotiate the creation of the EWC with the multinational enterprise's central management. Trade unions and workers' representatives were likely to be engaged in the first steps towards the establishment of EWCs. The negotiation of a successful EWC would greatly depend on whether these first steps are taken, who seizes the initiative and the tactics adopted by management and by the workers' representatives.

It appears, however, that initiatives to establish an EWC have not been taken in the large majority of multinational companies subject to the Directive. One conclusion in early 2000 was that: "the establishment of EWCs seems never to have gained momentum and their growth rate appears to have stabilised at a relatively low level".<sup>21</sup> Most agreements were made by favourably disposed managements who acted even before the Directive was adopted, and others who acted to beat the 22 September 1996 deadline, The residue is not so favourably inclined. It is not only management resistance which explains the decline, though, as one analysis comments:<sup>22</sup>

"the employer side may erect hurdles to hamper the establishment of an EWC. There are instance of particularly unco-operative companies where management takes early action to block or delay an EWC initiative, for example, by refusing employee representatives the requisite information on the company's international structure or by threatening to impose sanctions".

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<sup>21</sup> Hans-Wolfgang Platzer, Stefan Rus, Klaus-Peter Weiner, "European Works Councils – Article 6 agreements: quantitative and qualitative developments", (2001) 7 *Transfer: European Review of Labour and Research* (No. 1), pp. 90-113, at p. 91.

<sup>22</sup> *Ibid.*, p. 97.

The authors argue that "existing structures and cultures of industrial relations at national level are a key determining factor and may have a conducive or inhibitory effect". Considerable initiative, indeed, competence and even courage is called for on the part of individual employees and representatives; hence, lack of protection for those taking the initiative is not to be underestimated. Again, there are the possible negative effects on existing industrial relations, which may be sensitive when there are national as opposed to transnational priorities.

Of the 1,432 multinational companies covered by the Directive which have yet to establish EWCs, the largest national totals are those headquartered in Germany (317), the US (228), the UK (162) and France (129).<sup>23</sup> As with the analyses described earlier, research on EWCs in France and Germany has argued that the influence of national industrial relations traditions in these countries, with established systems of worker representation and information and consultation rights, is an important factor in shaping the role and operation of EWCs in MNEs based in those countries.<sup>24</sup>

It is too early to draw definitive conclusions about the long-term effectiveness of EWCs as mechanisms for labour's influence on multinational capital. A 1999 survey of 71 agreements reached under Article 6 of the Directive showed that:<sup>25</sup>

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<sup>23</sup> "EWCs absent in 1,400 companies", *European Works Councils Bulletin* No. 55, January/February 2005, p. 3.

<sup>24</sup> One acerbic comment in a review was that "European works councils will be international extensions of national systems of workplace representation, instead of European institutions in a strict sense". Wolfgang Streeck, "Neither European nor Works Councils: A Reply to Paul Knutsen", (1997) 18 *Economic and Industrial Democracy*, No. 2, p. 325 at p. 331.

<sup>25</sup> Mark Carley and Paul Marginson, *Negotiating EWCs under the Directive: A Comparative Analysis of Article 6 and Article 13 Agreements*. Report prepared for the European Foundation for the Improvement of Living and Working Conditions, Dublin, 1999. Cited in Hans-Wolfgang Platzer, Stefan Rus, Klaus-Peter Weiner, "European Works Councils – Article 6 agreements: quantitative and

“virtually all Article 6 agreements explicitly define the EWC as an information and consultation body, yet most of them understand consultation merely to mean a ‘dialogue’ or an ‘exchange of views’ between the EWC and central management. Only 11% of Article 6 agreements describe the EWC consultative function in more detail or actually empower it to negotiate. Indeed, 10% of agreements explicitly rule out a negotiating role”.<sup>26</sup>

However, empirical investigation of the operation of these agreements indicated that:<sup>27</sup>

“as far as participatory rights are concerned the employee side considers the crucial part of the agreement to be not so much the terms and definitions but the rule on convening extraordinary meetings...the possibility of convening extraordinary meetings has become standard in Article 6 agreements – contained in 97% of them”.

Select committees of the EWC play more of a role, whereas frequency of meetings of the EWC as a whole is often disputed, with employers turning down requests for more than one meeting per year. However, 17% of the 71 Article 6 agreements analysed did extend to more than one

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qualitative developments”, (2001) 7 *Transfer: European Review of Labour and Research* (No. 1), p. 90, at p. 104.

<sup>26</sup> However, for an account of the as yet extremely rare practice of negotiating in EWCs, see the 26 examples of joint texts concluded by management and either an EWC or some other representatives in the context of an EWC, engaging 12 multinational companies, in Mark Carley, “European-level bargaining in action? Joint texts negotiated by European Works Councils”, ”, (2002) 8 *Transfer: European Review of Labour and Research* (No. 4), pp. 646-653.

<sup>27</sup> Platzer *et al.*, *op.cit.*, p. 104.

annual meeting. EWC preparatory meetings have become standard and more than 50% of all agreements provide for debriefing meetings.<sup>28</sup>

The question is whether the operation of these agreements can satisfy expectations. Reasons for the lack of enthusiasm on the part of workers and their representatives to establish EWCs may be found in a report based on 41 case studies of the practical operation of EWCs in companies based in five countries (France, Germany, Italy, Sweden and the UK).<sup>29</sup> Experience was extremely diverse, so that, for example, information provided could be the “bare minimum”, though in most cases employee representatives judged positively the information. But as regards consultation, most employee representatives confirmed their involvement was at the point at which or after decisions had been taken by management, and in the minority of cases where they did exercise influence, it was only over implementation, not the content of the decision.

Employee representatives’ view was that the EWCs were weak and their expectations were low regarding potential influence. Expectations reflected national background and the research reported that in some cases works councils representatives opposed EWCs through “fear that the EWC could make inroads into their national power base“. The attitudes of employee representatives from the parent company were crucial. In some cases, for example, common strategies could be developed despite conflicting national interests among employee representatives and this could be influential with management. However although the overall view expressed by case studies’ interviewees was that “the advantages and benefits of EWCs far outweigh the disadvantages”, the report concluded that “the main

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<sup>28</sup> *Ibid.*, at pp.105-106.

<sup>29</sup> “New study of EWC practice”, *European Works Councils Bulletin*, No. 55, January/February 2005, p. 18.

objective of providing workers with a view in transnational corporate decision-making processes has been achieved only ‘in a minority of cases researched’”.<sup>30</sup>

### *Outstanding questions*

The Directive provides that “the Commission shall, in consultation with the Member States and with management and labour at European level, review its operation and, in particular examine whether the workforce size thresholds are appropriate with a view to proposing suitable amendments to the Council, where necessary, by 22 September 1999” (Article 15). In a report published in April 2000, the Commission did not propose any immediate revision of the directive. However, it stated that it would continue the review process and “will at the given moment decide on the possible revision of the Directive”.

In a conference in Aarhus, Denmark involving more than 400 representatives from EWCs on 25-26 November 2002, the representative of the Commission said that they would be consulting the EU-level social partners in the autumn of 2003 about revising the EWCs Directive. At its 10<sup>th</sup> statutory Congress in May 2003, the ETUC stated that it would call for revision of the Directive by the end of 2003 and in December 2003 the ETUC Executive Committee adopted a resolution setting out its objectives in respect of the revision.<sup>31</sup>

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<sup>30</sup> *Ibid.*, p. 20.

<sup>31</sup> “ETUC targets key amendments to EWCs Directive”, *European Works Councils Bulletin* No. 9, January/February 2004, p. 3.

In April 2004, the Commission launched a first phase of consultation on revising the European works councils directive.<sup>32</sup> The responses of the social partners were characterised as “very divergent”.<sup>33</sup> On 31 March 2005, the Commission adopted a Communication on “Restructuring and employment - Anticipating and accompanying restructuring in order to develop employment: the role of the European Union”.<sup>34</sup> This Communication was stated to constitute the second phase of the consultation on corporate restructuring and European works councils under Article 138(3) of the Treaty.

There remain a great number of issues to be resolved. What is the status of the EWC agreement under the national law transposing the Directive? Is it the same under the law of the Member State where the central management is based and where the plant being closed is located? What is the precise legal status of the EWC agreement in national law and in EU law: is it a collective agreement and/or a binding legal contract? Who can enforce the agreement: trade unions, the EWC itself, individual members of the EWC and/or other workers’ representatives? Can the EWC agreement be enforced in more than one Member State? What precise steps must management follow to comply with its obligations to inform (timing: regular, exceptional; quantity and quality of information) and to consult (again, timing, meaning of “dialogue”, nature of management responses: with a view to reaching an agreement)? What is the legal procedure to enforce the agreement; which courts, speed of procedures, possibility of interim orders/injunctions? What remedies/sanctions are available if the agreement is violated: if court

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<sup>32</sup> “EU social partners respond to Commission on EWCs”, *European Works Councils Bulletin* No. 52 (July/August 2004), pp. 11-13.

<sup>33</sup> “New EU social affairs commissioner hints at revision of EWCs Directive”, *European Works Councils Bulletin* No. 54, November/December 2004, p. 2.

<sup>34</sup> COM(2005) 120 final

orders: the status of the contested decision; the implications for management prerogatives; if compensation: to whom and how much? If the agreement is an Article 13 agreement, but is said not to satisfy the minimal criteria of Article 13, is it valid; can it be amended to be consistent with the Directive; can it be ignored and the procedures under the Directive be applied to require negotiation of another EWC agreement?

Some of these issues may be resolved by the agreements themselves. For example, a review of 40 agreements found the most common form of dispute resolution, found in 60% of relevant agreements, was to refer the issue to the courts, followed by attempts to resolve the dispute internally within the EWC (around 55); referring the dispute to third parties (38%); referring the dispute to a “mixed” body made up of both internal and external representatives (13%). There was more than one mechanism in the majority of agreements (60%).<sup>35</sup>

Nonetheless, the unpredictability of the enforcement issue is illustrated by a case from France. Panasonic was the subject of a complaint before a French tribunal in Bobigny, northern France.<sup>36</sup> The complaint concerned plans for layoffs at Panasonic’s local factory. The tribunal ordered the company to hold new discussions at the level of Panasonic’s European workers council. It is commented that the legal issue concerned France alone, and Panasonic’s voluntary European works council agreement had nominated its management in Ireland as its representative agent, and stipulated that Irish law was to apply to the agreement. This did not

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<sup>35</sup> “Resolving disputes in EWCs”, *European Works Councils Bulletin* No. 41, September/October 2002, pp. 13-17.

<sup>36</sup> “Talk to your Euro-council, courts orders Panasonic”, *Industrial Relations Europe*, vol. XXVI, No. 305, May 1998, p. 1. Watson Wyatt Data Services, UK.

prevent the French court ordering the involvement of the European Works Council. In contrast, in the UK, the implementation measure, the Transnational Information and Consultation Regulations refer to the EWC as a “relevant applicant” as regards a complaint to the Employment Appeal tribunal. The problem arises where the EWC includes representatives of management. Do the employee representatives have the legal standing to complain? There was an abortive attempt by employee members of the P&O EWC to complain of failure of the company to inform and consult the EWC over restructuring.<sup>37</sup>

But the most outstanding question is: where are the missing EWCs?

The Directive was to be implemented by the Member States no later than 22 September 1996.<sup>38</sup> Its impact would be felt in three phases. The initial phase would involve the *establishment* of the Special Negotiating Bodies (SNBs) which negotiate the creation of the EWCs. This is the most immediate and practical issue. In the medium-term, once the SNB is established, the next phase is the *negotiation* of an agreement creating a EWC and defining its composition, functions, and so on. In the longer-term, once the EWC is established, its functioning needs careful attention. The account so far has focused in the this third phase: the experience of those EWCs which have been established to date, over 60% (some 450 of 737) of them under Article 13 of the Directive and hence not subject to the provisions of the Directive.

The critical fact remains that two thirds of MNEs covered by the Directive have not yet established EWCs. There is a huge gap of missing

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<sup>37</sup> *European Works Councils Bulletin* No. 43, January/February 2003, p. 6.

<sup>38</sup> Article 14(1).

EWCs. Given the role of MNEs in globalisation, it is essential that this gap be filled and the operation of EWCs be improved. The reasons for the failure to establish EWCs may be extra-legal, but it is important to acknowledge the legal obstacles that lie in the path of their establishment.