

European Industrial Citizenship –EU Social Policy at Work

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Abstract:

Trade Unions need to promote the benefits of EU Social Policy to UK workers in order to inform them of their rights to consultation, information and even participation in economic decision-making at the workplace.

The EU Social Policy rulings on Information and Consultation at the workplace, European Works Councils in multinational companies and the directive on the European Company are little known and hardly implemented in the UK. This paper argues that UK and European trade unions should work harder to spread information about these policies. This would greatly improve not only workplace rights for UK employees, but also lead to a better and more positive understanding of European social policy. Research done by the author on European Works Councils demonstrated how British employees learned to appreciate these regulations and the benefits they gained from working together with their European colleagues. Their attitude to Europe often changed after learning more about how Industrial Citizenship works in other European Countries, and they were far more willing to identify with their European colleagues than before.

European Industrial Citizenship

"Europe is a slippery and contested abstraction, heavy with historical and ideological baggage" (Hyman 2003).

'Industrial Citizenship' refers to the way people understand how relationships at the workplace are organised. A workplace relationship is different from other social and economic relationships. For example, at work, some people are allowed to 'give orders' to other people. If subordinates disobey, they may lose their job. However, in situations of conflict (for example, management threatens to close down a factory) workers may join together, usually under the umbrella of a trade union and even refuse to work at all. Despite this extremely disruptive behaviour, striking workers cannot be sacked and even enjoy legal protection. However, the rules of conflict behaviour vary greatly from one country to another. Most countries have a complex web of rules, regulations and traditions, based on legal provisions, historical events, educational standards, customs and traditions. Industrial Citizenship is a part of our cultural identity, and is usually something we are almost completely unaware of. Like other cultural differences, it often only becomes apparent when we compare 'the way we do things' to how other cultures do the same things (i.e. differently). Industrial citizenship would be an item found deep inside Hofstede's (2005) 'cultural onion'.

Streeck (1997) uses the term '*industrial citizenship*' as defined by Marshall (1964) to describe the rights workers have to negotiate collective bargaining agreements, to have information and consultation rights with management, and

to have the right to strike etc. Within Europe, these 'industrial citizenship' rights differ more from one country to another than political, and democratic rights. For example, whilst every citizen in Europe has the right to vote in local, regional and national elections, the right to strike, to be represented at the workplace, or even to be a member of a trade union can vary greatly from one country to another. For example, the right to strike in France is an *individual* right. You do not have to be a member of a trade union in order to go on strike. Even lightning strikes without advance notice are within the realms of the law (Eurofound, 2009). This is definitely not the case in Germany or the UK where only union members are allowed to strike, and even then, strict rules and procedures have to be followed before a legal strike can take place.

However, the right to strike and the right to negotiate collective bargaining agreements are areas which are expressly *not* covered by European Union law, so this paper will concentrate on those areas which are covered by European Social Law; information and consultation rights. Even these rights vary greatly throughout Europe. Nevertheless, European Industrial Citizenship will only ever become possible when at least these few rights are more widely spread and perceived to be beneficial.

Information and consultation at the workplace, usually takes place when management and elected workplace representatives meet together at committees or other meetings to discuss issues of common interest. These topics can range from discussing important strategic and economic decisions such as whether to close down or open up a new site, to more mundane issues such as workers' rights to smoke in the office or parking permits. Other issues may be to discuss gender mainstreaming policies in the company, environmental standards, policies concerning disabled or part-time workers, training and education, health and safety, pension rights etc.

In most European countries, the forum most commonly used to discuss such issues is the Works Council or similar bodies.

"Works councils may be defined as: Permanent elected bodies of workforce representatives (or occasionally joint committees with employers representatives), set up on the basis of law or collective agreements with the overall task of promoting cooperation with the enterprise for the benefit of the enterprise itself and employees by creating and maintaining good and stable employment conditions, increasing welfare and security of employees and their understanding of enterprise operations, finance and competitiveness" (Carley et al. 2005).

Bicknell (2005) gives an overview of the different types of workplace participation structures prevalent in the EU. However, it must be pointed out that workplace representation across Europe encompasses more than only works councils and can be examined from several angles. Her overview examined the legal situation of works councils or similar representation structures, the role played by various forms of trade union involvement at the workplace and other, HRM-directed structures of workplace involvement. Within Europe, she groups workplace representation structures into different national clusters.

In German and Austria, works councils are widespread and legally protected. The German industrial relations 'model' is based on dual representation. Freely elected works councillors in all companies may represent workers at the workplace with more than five full time employees, and for collective bargaining issues by the recognised unitary trade union representatives. In Austria, although works councils do not have quite as many rights as German works councils, their importance to the trade union movement is greater, because all trade union posts, and the distribution of political factions and representation of different union bodies at the Austrian Trades Union Congress (ÖGB) are distributed according to the results of the works council elections.

France, Spain, Italy and Portugal all have interesting traditions of workplace representation systems, which have evolved almost as co-operative alternatives to pluralist, confrontational national union structures. At the same time, union influence has been retained and remains important at the workplace level, due to a large majority of employee representatives being union activists (Bicknell, 2005).

Belgium, the Netherlands and Luxembourg, are all highly corporatist, encouraging trade unions to play a responsible role as industrial relations actors, as well as having a dual system of employee representation. In Luxembourg, workplace representation is legally obligatory for all firms with 15 or more employees. In both Belgium and the Netherlands, works councils are well-established industrial relations institutions. The first works council law was introduced in 1948 in Belgium and in 1950 in the Netherlands (Niederhoff 1995). Since then, they have been modified and extended several times. They apply to all enterprises with over 35 employees in the Netherlands, and with over 50 employees in Belgium. In the Netherlands, workplace consultation and information regulations apply even to companies of less than 35 workers. As of three employees, staff must be consulted on issues concerning working hours and between ten and thirty four employees, management must organise two information and consultation meetings per year.

In the three 'Nordic' countries, of Sweden, Denmark and Finland, works councils are understood as an institution based on legal conventions, where union members are expected to play an active role in proceedings (Bicknell 2005). Union representatives have largely dominated workplace representation in Sweden, and more recently large Swedish multinationals have had experience of international works councils (Kjellberg 1998). In Denmark, co-operation committees may be established in enterprises with over 35 employees. The Finnish tradition is also a neo-corporatist one, with trade unions playing an important role in workplace representation.

In the United Kingdom and Ireland, and to a lesser extent, Greece, works councils have not played any meaningful role within their industrial relations traditions and have really only entered the field in connection with European legislative developments. All previous arrangements in the UK and Ireland had been voluntary and usually only consultative in nature (Siebert 1997, 232). Workplace participation took place via other channels, in particular shop stewards or joint consultative committees, or other forms of worker representation were organised by management as part of a Human Resource strategy, such as Quality Circles or financial participation (Gill & Krieger 2000).

The industrial relations situation in the 10 new member states, which joined the EU in May 2004, is characterised by low levels of trade union membership, low collective bargaining coverage, and a lack of works councils (Carley 2002b). Works council-type structures only existed in the Czech Republic, Hungary, Poland, Slovakia and Slovenia, and are only really comparable to works councils in continental western Europe in Hungary and Slovenia, with works councils being elected and statutory bodies co-existing with trade unions for collective bargaining purposes.

Recent research on workplace representation in Europe shows that, overall, coverage is fairly low in terms of the numbers of enterprises, but higher in terms of the numbers of employees. This is because large employers are more likely to have works council structures than small or medium-sized enterprises (SMEs). The percentage of employees, which are represented by works councils, depends partly on the legal thresholds that exist in each country (they presently range from three to fifty employees) as well as on the business structure of the country. Thus in the Netherlands, 71% of all enterprises which could set up works councils do in fact have them, but due to the fairly high threshold of 30 employees, about 60% of employees are not covered by national works council regulations at all (Carley et al. 2005). Overall, in the Netherlands, nearly 42% of all employees are covered by works council legislation. On the other hand, in Germany, where the threshold is 5 employees, only 11% of all enterprises which could have works councils do in fact have them. Yet works councils represent 48% of all employees in Germany. This is because there are many large employers in Germany (ibid). Figure 1 shows the total numbers of works councils that exist in selected European countries. The predominance of Germany in total numbers of works councils is quite striking.

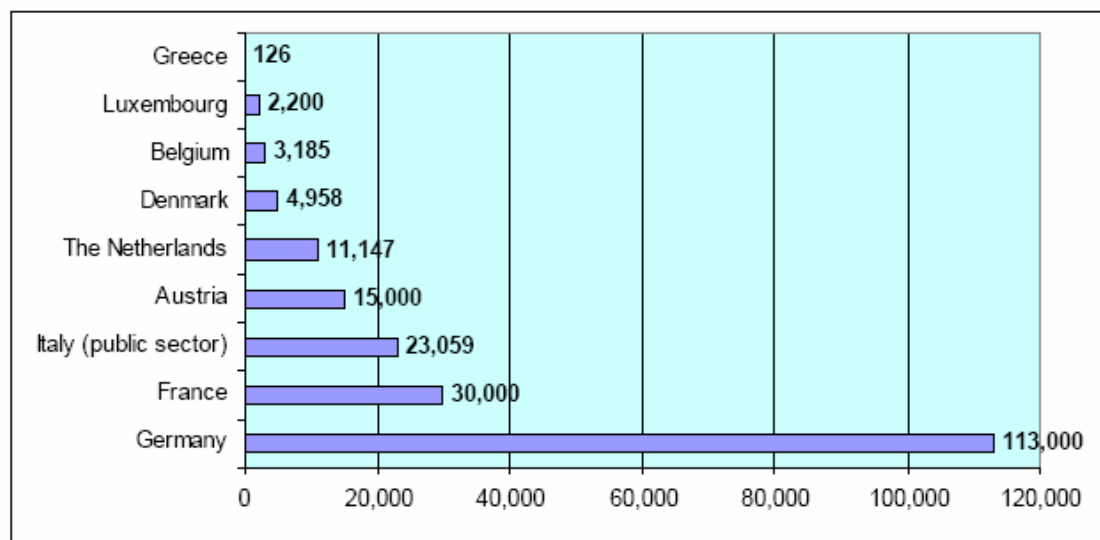


Figure 1 Total no. of works councils in selected European countries

(source: Carley et al. 2005)

As already mentioned, workplace representation in Europe can take place solely through trade union representatives (as in Sweden), can be (theoretically) independent of trade unions (as in Germany) or dependent on trade unions to nominate candidates (as in France). In the UK, most workplace representation is

carried out by trade unionists or is very shallow in its scope (Gill and Krieger 2000).

European Social Policy at work: three directives

In 1957 when the Treaty of Rome was signed, the question of whether social policy was to be an area of concern for the signatory countries was left open to interpretation. References to social policy areas were very general and were given no specific treaty basis. Article 117 assumes that Treaty procedures improving the functioning of the common market would support the general goal of improving and harmonising workers' living and working conditions. The Commission was only given the broad mandate of 'promoting close co-operation' in social policy areas under Article 118 (Hall, M. 1994, 288).

In Germany, Willy Brandt's social democratic leadership pushed for 'an effective social policy' in Europe and such impulses finally led to an agreement in 1974 stating that Article 100 could be used as the legal basis for labour law directives. Between 1975 and 1980 directives were adopted on collective redundancies, equal pay, business transfers and business insolvencies. These were the industrial relations precursors of the EWCD in the 1970s. Lecher et al. (1999a, 29) regard the Directive on Collective Redundancies as being the primary forerunner to the EWCD.

Jacques Delors, former French socialist government minister and President of the European Commission from 1985 to 1995 was the next influential socialist to move European social policy forward. His quest was to give the European Community a social 'face' or to use the French term establish '*l'espace social européen*'. His ideas were later formulated as the Social Policy Protocol and added to the Maastricht agreement in 1992.

The adoption of the Maastricht agreement and the implementation of the Single European Act in 1992 added more legal bases to allow social policy issues to be introduced, not only on the basis of unanimity, but also on the basis of so-called Qualified Majority Voting (QMV) procedures. Articles 100A and 118A allowed QMV to be used for social policy issues concerning health and safety, working conditions, information and consultation, and equal opportunities. Unanimity was still required for issues concerning social security, termination of employment, collective representation of employees and co-determination, whilst issues such as pay, the right of association, and the right to strike or impose lock-outs were expressly excluded from EU legislation (Hall, M. 1994, 301).

The legal base provided for in the Agreement on Social Policy Appendix to the Maastricht Treaty, finally made it possible for the European Works Council Directive (EWCD) to be implemented. The official title of the EWCD is: 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 L254 of 30.9.94). The title reflects the fact that some companies already had voluntary agreements in place which were seen to comply with the aims of the Directive, and that the Directive gave companies two more years (from 1994 to 22nd September 1996) in order to reach voluntary agreements before the Directive was fully implemented. The EWCD is applicable to all undertakings operating within the EU, regardless of their home base, which

employ at least 1000 employees, and have 150 employees or more in at least two member states. The directive covers all non-EU/EEA companies who nevertheless employ the above constellation of workers in Europe. The nations most affected by this are the USA, Switzerland and Japan.

The EWCD although important in its own right, had, however another default function. This was to provide an institution which could be used in order to reach agreement on workplace representation in the planned legal entity, now known as the European Company or SE. Before Maastricht, all the blueprints for a European Company Statute failed due to the inability of the social partners to agree on an acceptable structure for workplace representation at the European level.

The importance of the EWCD is that the regulations for worker representation in a European Company, or *Societas Europaea* (SE), are very similar to those which have now been installed under the EWCD. Under the European Company Statute (ECS), employee participation is mandatory and the rules for negotiating a 'Representative Body' (RB) are regulated in a similar way to EWCs, i.e. using a Special Negotiating Body (SNB). However, companies that operate in countries with more inclusive representation arrangements, including worker representation at board level will not usually be able to weaken national representation rights by forming an SE. A further improvement on the EWCD is that the negotiation time frame has been shortened to six months for voluntary negotiations to establish a RB, and then standard rules apply. The ECS involvement directive is slightly more inclusive than the EWC directive, due to the above-mentioned examples of board level representation and negotiation guidelines, as well as providing a more precise definition of what exactly is to be understood by information and consultation. Furthermore, management must initiate talks and allow external trade union officials to act as SNB members and experts. The statutory RBs have stronger information and consultation rights than EWCs.

The first companies to announce their decisions to become an SE was Elcoteq Network Corporation, based in Finland, and a Swedish company, the Nordea Group¹. Works councils, and in particular EWCs, have an important role to play as watch-dogs and consultation partners in the process towards an SE. In fact, the first SE which was incorporated, the Austrian construction company Bauholding Strabag, was taken to court by their representatives because management did not inform and negotiate with the EWC beforehand (Gohde 2005). The Allianz AG is the first German company to announce its intention to form an SE, but it will retain its existing two-tier management board system, with half of the seats for workplace representatives on the supervisory board.

The introduction of the SE means it is even more important for an EWC to be installed in every transnational company, and for them to be well aware of their national and European rights.

The Directive 2002/14/EC which covers information and consultation rights at the national level for all enterprises with at least 50 employees, is perhaps one of the most interesting of all the three directives with respect to the impact it could, theoretically have on the industrial relations landscape in the UK. However, it is

¹ For more information on companies setting up an SE, see www.seeurope-network.org
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perhaps the one which has been least reported on – perhaps for very good reasons, taken from the perspective of some of the most important industrial relations actors in the UK – i.e. the unions and the employers. This directive provides legal protection for employees to be represented at any workplace, defined as undertakings with at least 150 employees or establishments with at least 100 employees (Carley & Hall, 2009).

Carley and Hall (2009) explain how the Directive has been introduced throughout Europe. In some countries (such as Germany and Austria) no new laws had to be introduced, because national laws already covered the requirements of the directive. However, this was not the case for the UK. This is how they describe the new laws and processes introduced in the UK after transposing the directive into UK law.

"In undertakings with 50 or more employees, from April 2008, 10% of the workforce – subject to a minimum of 15 employees and a maximum of 2,500 – may request negotiations with the employer over an agreement on information and consultation arrangements. Employers may also initiate the negotiation process. Where there is a pre-existing information and consultation agreement and a request for negotiations is made by less than 40% of the workforce, the employer may ballot the workforce on its support for the request for new negotiations. Only if the request is endorsed by at least 40% of the workforce, and a majority of those who vote in the ballot, must the negotiations proceed. Negotiations take place between the employer and elected or appointed employee representatives, and the resulting agreement must meet certain requirements. Agreements may provide for information and consultation through employee representatives or directly. If the employer refuses to negotiate or no agreement can be reached within set time limits, statutory standard provisions apply. These require the employer to provide information and consultation, based on the directive's provisions, to elected employee 'information and consultation representatives'; there should be one representative for every 50 employees or part thereof, but a minimum of two representatives and a maximum of 25 employees."

Like EWCs, national works councils are not an automatic obligation for a company, but must be 'triggered' – or initiated by employees. This means before they exist, the employees must be aware of their rights and legal protection. Unfortunately, industrial relations is usually not covered in school curricula, nor taught in many vocational training or higher education institutions. The main conduits for passing on information about such rights are trade unions. On the TUCs workSMART information site there is one link which discusses works councils, and this can only be easily found by using the search engine. So, it is not surprising that UK workers have very little idea of why it could be important to set up a works council, or a European Works Council. Without either of these options, it would be very difficult to imagine how to set up an effective EWC in a European Company. My research has shown time and again, that the most important factor for setting up an effective workplace representation forum, whether at the national, or even more importantly, at the international level was good advice and information on drawing up the first contracts.

European Works Councils in action – creating new identities

Bicknell's research in EWCs between 2003 and 2005 contacted a total of 128 representatives from 63 large multinational companies operating in Europe. Research methods were case study analysis using questionnaires and in-depth interviews. Despite the fact that the EWCD was not transposed into UK law until two years after the other EU members, this had little effect, because even before 1994, 15 UK companies had signed Article 13 (so-called, 'voluntary') agreements, and another 7 had signed Article 6 agreements by mid 1998. Before September 1996 (when the EWCD became statutory EU law), UK workforces had been included in 69% of all agreements signed, even though at that time, they could have been excluded! Therefore, there was no lack of reported experiences both by British EWC representatives and reports about the challenges and pleasures of working with British representatives by other EU representatives.

Concerning countries of origin, the four most relevant countries of origin, which have EWCs are Germany (16%), the USA (15%), the UK (13%) and France (11%) (Kerckhofs & Pas 2004). The UK was at that time (before the introduction of the Directive 2002/14/EC on Information and Consultation rights) the only country which did not have legally binding works council representation at the national level. This meant that there was (and presumably often still is) a strong problem concerning the legitimacy of UK representatives on EWCs.

Bicknell (2005) reported that the German representatives had the greatest problems with those representatives from countries with very different or no works council structures. Thus, German Travel established its EWC in 2002, after having taken over a UK concern. This presented the German EWC chairperson with the following complicated situation:

"We first of all had to set up the voting procedures, because there is no standard procedure in England. And because we didn't want management to set it up by themselves. That was quite difficult and caused problems. To make sure that what was set down in the agreement, actually happened in practice. That wasn't the case. We had to structure the company, based on personnel strengths – to organise it for an EWC. This meant, for example, that most of our colleagues there work in travel agencies. So we said we needed 6 English delegates, based on the total number of employees, and then we need 3 from the travel agencies – orientating ourselves according to the number of employees. Two from the carrier side – the airline and one from the tour operator. So that was six. But the management didn't really keep to this, and tried to push in an extra delegate for an area which wasn't even meant to have a representative – not elected, but chosen by management. And so there were a few things, which were quite tricky, and we refused to recognise the delegate" (Interview with German EWC representative of a German Travel Company).

This problem was reiterated when talking to the UK representative of Zurich Financial Services. When setting up their EWC they first had the problem to accept that on an EWC, the 'democratic deficit' problem has to be solved. Smaller countries are guaranteed one seat, and if the UK has 13,000 workers, and

Belgium just 50, this somehow has to be organised on the EWC, taking into consideration that the total size of the EWC might be 18-30 members. Then, there was the problem in the UK, that in the general insurance side of the company, there is trade union recognition, but not in the life-insurance side of the company, which has a history of being an aggressively anti-union company. That side of the company had have an employee consultative committee set up, funded and supported entirely by management. Therefore, because there is no national representative structure and no 'natural' institution which could be utilised for the purposes of the EWC, there were a lot of difficulties in establishing who could be a representative, and who were they actually representing in the UK.

However, once the problem of legitimacy has been sorted out, the UK representatives do have one advantage: that of being able to speak the most useful language!

"The development of mutual understanding through effective communication is central to the successful development of an EWC. This is particularly so if it is to create a separate and solidaristic identity that is still representative of its constituent parts" (Stirling and Tully 2004).

Stirling and Tully (2004) emphasise that culture and language affect not only communication but also power relationships which can reinforce inclusiveness or exclusiveness. It is the individual and collective relationships between EWC participants which determine the developmental process and effective practice of the EWC.

The most common languages in active use in EWCs are English, German, French and Spanish (Bicknell, 2005). Whilst the EWCD states that management must provide translation and interpretation facilities for the EWC meetings, as required, the reality of EWCs in action showed the predominance of English as a common language. This is because the members must communicate together not only at meetings, but also before. Also in many international companies, the language of management is English, and therefore most of the official documentation is in English.

The complexity of the subject, language and communication channels, was an important topic of the interviews. Half of the German interviewees (12 out of 24) said that the language problem was one of the greatest challenges facing their EWC. On a personal level, most of the interviewees were able to speak conversational English at least, whilst some of them even used English as their working language. The general opinion was that whilst English was necessary and important, particularly for communication between and outside of the main meetings, this did not and could not replace the need for interpreters and translators. *"There was a two-week intensive course in Belgium. But I must say... it certainly didn't turn me into an interpreter. And I can't give up the interpretation facilities"* (Int. 4).

However, representatives also had to beware of trading off language courses against interpretation and translation facilities. *"Of course the capital side then*

says: Ok, if we offer language training, then we must agree on a timetable as to when we can stop using interpreters” (Int. 14).

Given the high turnover of EWC representatives, this seems a very unrealistic demand.

Those EWCs which had had group language course training, usually combined with intercultural aspects, too, were full of praise for the way such courses had improved the team spirit and cohesion of the team. *“so, it was not only the language we learned... we got to know each other better than before... so there was really...a teambuilding effect” (Int. 20).*

“Once a year, we have a language course which everyone attends. And we use that too, as a chance to exchange political experiences of course. We practice ‘learning by doing’.. ” (Int. 12).

“Then in June we shall be attending a week’s language training course in England. Especially for these six committee members” (Int. 19).

Despite all the obvious challenges of coping with many languages in a group consisting of representatives who are not necessarily appointed due to their language skills, it was recognized that language was the first step towards finding a ‘common voice’ for the whole group.

“I think basically, the main challenge will be for us to find a common tongue – not just English – but in one voice with respect to our stance opposite the employer” (Int. 9).

“But the common language is so important for the future. ... We shall be discussing the programme next week at the Committee meeting, with the trainers, and will carry it out this autumn in Paris” (Int. 19). EWC representatives view ‘improving communications as one of the most important tasks facing EWCs, as the research data revealed.

Nevertheless, despite the above problems of legitimacy and communication, the overwhelming response of all the participants which responded to my survey was that at a personal level, they found working on an EWC an enriching experience, which widened their horizons and gave them a better understanding of Europe and their European colleagues. They identified further training as a major requirement to make EWCs work better and felt that they should play an important role in industrial relations, to enhance (not replace) national industrial relations structures.

Conclusion: Promoting European industrial citizenship at the national and the European level

Bicknell’s research clearly demonstrated that British and other workplace representatives all recognized that participation in an EWC changed their attitude towards fellow workers in other European countries, and their attitude towards the EU as an institution. By actively participating on an EWC, representatives appreciated the value of the EU, which had provided the legal provisions for this

institution and felt that they personally benefited from the exchange of information with their European colleagues. British representatives were often astounded at the level of professionalism and expertise of German work councillors, who were usually fully seconded representatives and who were used to negotiating with management, organising, participating and speaking at high level managerial meetings, or who were even members of supervisory boards.

Although UK trade unions have produced quite a lot of material on EWCs, there seems to have been far less emphasis on setting up national level works councils. However, these are important in order to establish structures at a national level, which could then be implemented to set up European structures, for example after a merger or acquisition. In order for this to happen, a great deal more information needs to be disseminated to UK employees on this subject.

A recent google search for UK + "works councils" (minus European) gave approx 7,100 hits. By putting in the German work for 'works council' (Betriebsrat) – 1,090,000 hits are instantly generated. UK workers need to find out more about how workplace representation works in other countries, and UK trade unions must realise that when employees participate in works councils, this is far more likely to benefit than harm the unions. Managers also need to realise that encouraging an active information and consultation policy with their employees is more likely to result in a positive decision-making process which will be supported by all, even in difficult times, or periods of change. As a Dutch European Works Council chairman said: 'Management have realised that we (the EWC) are the cheapest and best consultants which they have!'

Finally, working on an EWC certainly increases awareness about Europe and the European Union amongst both employees and management. The following quote from our favourite airline (experiencing a strike even during today's conference) certainly highlights this aspect:

'The most important thing is that we try and get (the company) to understand that England belongs to Europe' (Gm rep, UK Airline) (Bicknell, 2007).

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