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## Welcome to issue no. 2 / 2019 of EWC News

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## 1. Recent developments at European level

### EU Ombudsperson for European works councils demanded



The European Trade Union Confederation (ETUC) founded in 1973, held its 14<sup>th</sup> congress in Vienna from 21 to 24 May 2019. The head organization has currently 90 national affiliated confederations in 38 countries with around 45 million members. The congress adopted an action programme up to 2023, organized in 13 initiatives. The key components are the reinforcement of the European social model through collective bargaining, a binding social dialogue and a reform of EU law with respect to democracy in the workplace. As part of the action plan, for the first time the ETUC is demanding the appointment of an Ombudsperson for cross-border employee involvement, hence for European works councils, for participation in the European Company (SE) and for codetermination on supervisory boards. The Ombudsperson is to act as a voluntary mediator and should not exclude any court action. In the past many European works councils have been prevented from legally enforcing their rights due to legal uncertainty and the lack of funding. Furthermore the ETUC is demanding tougher sanctions for infringement of EWC law. It had already submitted a detailed position paper on the EWC Directive in March 2017 (see [report in EWC News 1/2017](#)).

[The 13 Congress initiatives](#)

[The action program 2019 - 2023](#) (see page 18 and 19)

[Hans Böckler Foundation catalog of demands](#)

The European Commission had identified key issues in the application of the EWC Directive in a study released in May 2018 but has declined to modify the Directive (see [report in EWC News 2/2018](#)). Instead it wishes to promote best practice and established a group of experts composed of employer and union representatives, who met for the first time on 1 April 2019. However no agreement could be reached during this meeting and on 2nd July 2019 the European Commission consequently announced that it was suspending the group's work. In May 2018 the commission had also announced that it would put on the agenda the issue of sanctions against employers who infringe EWC rights. A meeting of representatives from the 28 national Ministries of Labour will be held for this purpose, in October 2019.

## Social affairs committee only established after third attempt

The Slovakian journalist, Lucia Ďuriš Nicholsonová was elected chair of the employment and social affairs committee in the European parliament on 18 July 2019. The liberal politician and former undersecretary of state in the Ministry of Labour succeeds the German left-wing politician Thomas Händel, a former IG Metall trade union officer, who has left the parliament. The committee is considered as the pioneer for numerous initiatives in EU labour legislation (see [report in EWC News 3/2013](#)).



The election for chair had previously failed twice. The Christian democrats were supporting the former Polish Prime Minister, Beata Szydło, from the PiS national conservative party. Prior to this, their 25 MEPs had secured the election of Ursula von der Leyen as president of the European Commission by a very slim majority. During the first vote for the social affairs committee on 10 July 2019, Beata Szydło received 21 votes, 27 against her and two abstentions. During the second vote on 15 July 2019 only 19 voted for her, 34 against and two abstained. The majority of MEPs did not wish to elect populist politicians into important functions. Since the elections in May 2019, when the broad coalition of Christian and Social Democrats lost its majority, the outcome of any voting in the newly composed European Parliament is very difficult to predict. In autumn 2019, the election of the Commissioner for Employment and Social Affairs who is also responsible for European works councils, will be on the agenda.

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## European judges require systematic recording of working hours



The European Court of Justice in Luxembourg ruled on 14 May 2019 on a complaint filed by the service workers union of the Spanish CC.OO. trade union confederation, who were requesting the installation of a system for recording the employees' working hours at Deutsche Bank in Madrid. As in Germany, employers in Spain were only obliged to record overtime.

The national Court of Justice in Spain decided to escalate the issue to Luxembourg, where the ruling was in favor of the trade unions. All EU countries must now oblige employers, to install an objective, reliable and accessible system to record the effective daily working hours on an individual basis. In the opinion of the judges, the number of hours effectively worked and their distribution in time as well as any overtime, cannot be determined reliably without a systematic recording. It is only by these means that compliance to working hours' regulations and safety requirements can be monitored and enforced. It would otherwise be very difficult or even impossible for employees to enforce their rights. There is now a controversial debate within the German Federal Government whether and which modifications to the law are now necessary.

[Court of Justice press release](#)

[Full text of the court ruling](#)

[Commentary on the ruling](#)

## Forthcoming event

This topic will be covered in a workshop during the 12<sup>th</sup> Conference for European and SE works councils in Hamburg on 28 January 2020.

[Program and registration form](#)



TIPP!

## 2. Real codetermination or just sweet talk?

### "Hidden Champions" appointed to supervisory board

The newly elected full-parity supervisory board for the Indus Holding held its first meeting on 14 February 2019 in Bergisch-Gladbach (near Cologne). The six employee board members had previously been elected for the first time on 30 January 2019, by delegates of the 8,000 employees in all German locations. This listed investment group is a long-term shareholder of 45 medium-sized manufacturing companies in metalworking industry in Germany and Switzerland. In Indus Holding's own words, they are



"Hidden Champions" with a strong position in niche markets. The Simongroup in the Black Forest with 800 employees, is the largest subsidiary in Germany and as such was responsible for organizing the election. The deputy works council chairwoman has now become a supervisory board member.

Indus Holding has only 31 employees and no dedicated HR department. According to management, it is solely a financial Holding which is not subject to codetermination laws and therefore does not need a group works council either. A small shareholder had a different opinion and initiated legal "status proceedings" in October 2016, claiming that the Indus Holding was able to exercise power on its portfolio companies. The district court in Cologne ruled in favor of the establishment of a full-parity supervisory board in April 2017 and the judgement was confirmed by the Düsseldorf district appeal court on 4 June 2018. The Indus Holding is consequently not just an asset-management Holding but a real parent company of the group. Keeping employee representatives permanently away from the supervisory board could only have been achieved by its timely conversion into a European Company (SE). Other holding companies such as MBB have long since gone this way but as a result have had to establish SE works councils.

[Full text of court ruling](#)

[Report on background and preparation of the elections](#)

[Report on employee representatives' election](#)

[Info sheet: What are status proceedings?](#)

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### Assessment center instead of codetermination



Capita appointed two employees onto its board of directors for the first time on 14 May 2019. The company with 63,000 employees worldwide is the largest British outsourcing service provider for customer management, business processes and software with many customers in the public sector. Capita originated from a non-profit organization and was listed on the stock exchange in 1991. Due to the acquisition of several call center operators, Germany now represents the second largest country in the group with 5,000 employees. There are further subsidiaries in Ireland,

Poland, Austria, and Switzerland as well as outside Europe. Capita does not yet have a European works council.

The two appointed board members were neither elected nor were any trade unions involved. Any employee with at least two years' seniority in the company was able to apply. An external consulting firm evaluated the 380 applicants on the basis of certain criteria and shortlisted them down to 40. These were then interviewed by board members who then selected two. Both benefit from director's fees of 64,500 £ per year in addition to their wages. The term of office is three years.

The event which received a large press coverage came after a change in management at the top of the company. The new CEO criticized the "British arrogance", whereby companies do not wish to tolerate any board level employee representation on administrative boards and declared that it would be only a question of time, before others follow suit. He explicitly referred to the positive practical experience in Germany and Sweden. A new Corporate Governance code which proposes to include employee representatives on company boards, came into force in the United Kingdom on 1 January 2019 (see [report in EWC News 4/2017](#)). Any reference to a democratic election procedure is however missing, and as such, this cannot be considered as real codetermination.

[Company press release](#)

[Board of directors' members](#)

[Press report on Capita election process](#)

[Survey on application of the new Corporate Governance Code](#)

### 3. New SE participation agreements

#### Dutch aluminum producer becomes European Company (SE)

An SE agreement had already been signed for Constellium in Paris on 11 April 2018, but it only came into force on 28 June 2019 when the SE was registered at the Chamber of Commerce in Amsterdam. Although Constellium has its headquarters in the Netherlands, the SE agreement is



subject to French jurisdiction. The firm supplies aluminum products to the aircraft, automobile and packaging industries and has 13,000 employees in 25 production plants, including 8,200 in Europe. The largest countries are France with 4,200 employees and Germany with 2,500. There are no employees in the Netherlands, but the choice of country for the headquarters was no doubt made on different grounds (see [report in EWC News 4/2013](#)). As a result, any employee participation on the supervisory board has been excluded as in the case of Airbus (see [report in EWC News 1/2015](#)).

The European works council established in January 2012 (see [report in EWC News 2/2012](#)), which was likewise subject to French jurisdiction, has now been replaced by an SE works council. As previously, Switzerland as the third largest country has been included in the scope of the agreement. The contents of the entire SE agreement have been completely tailored around the French labour relations' philosophy. As such, the company CEO chairs the SE works council accompanied by two other managers. The employee side has twelve seats, half of which are allotted to France. The SE works council meets once per year and elects five representatives to a steering committee. It may be assisted by several experts, including a chartered accountant which is standard practice in France and further experts on specific topics, e.g. industrial safety. The time-off work allowance varies from 30 to 200 hours depending on function, on top of time for meetings. The provisions for training also include an individual right to participate in external events, and the SE works council has a right of access to all subsidiaries in Europe.

[Full text of SE conversion plan](#)

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### **Full-parity codetermination for Munich based commercial vehicle manufacturer**



[EWC News 1/2015](#)).

On 16 January 2019, an SE agreement was signed in Munich for MAN Truck & Bus, which has 36,000 employees and is the largest subsidiary of MAN group within the Volkswagen Company. The direct parent company above MAN Truck & Bus, which was registered as an SE on 19 March 2019, is the MAN SE and above this, the Traton Group SE (see [report in EWC News 1/2019](#)), each with their own SE works council. This multitude of SE works councils within the group is similar to Airbus, where there is however no codetermination (see [report in](#)

The meeting of the Special Negotiating Body lasted for just one day. The contracting parties had no doubt been preparing a common draft long beforehand, as was the case for the pharmaceuticals group B. Braun in Melsungen in August 2018 (see [report in EWC News 4/2018](#)). The SE works council has 16 members, including five from Germany, who meet twice per year and elect a three-member steering committee. Unlike Traton, there are no fixed deadlines for the consultation procedure. The delegates have different voting weights depending on the size of the workforce in their country. Video conferences are possible, but cannot be ordered unilaterally by the employer. An arbitration board with one member designated from each side is established to resolve any disputes. In addition there is a chairperson whom both sides must agree to or who is appointed by the courts.

### **No decrease in the size of the SE supervisory board**

The SE supervisory board has the same structure as required by German codetermination law. Ten of the twenty seats are allotted to the employee side. These include three union representatives, a works council member of the parent company Traton as well as five German central works council members and two representatives designated by the SE works council.

[Press release on SE conversion](#)

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### **Biotech Company avoids codetermination on the supervisory board**

An SE agreement was signed for Evotec on 11 March 2019 in Hamburg. The company researches active ingredients for the pharmaceutical industry and is able to keep its supervisory board free from any employee representatives by means of its conversion to an SE. Many of the 2,600 employees are scientists. Evotec has been continuously expanding through the acquisition of smaller research labs. The Special Negotiating Body was composed of twelve members with three each from





Germany, France, Italy and the United Kingdom.

At the beginning, the new SE works council has the same distribution of seats. If other countries are added, they are only attributed a seat starting from 70 employees. The steering committee is made up of four members from four different countries. Two "face-to-face" plenary meetings are held each year. On the other hand the steering committee can only hold ordinary meetings by video conference twice per year and in exceptional circumstances. Physical meetings require the explicit agreement of the employer, who also chairs the SE works council, convenes meetings and fixes the annual budget.

Besides the usual catalog of topics, the SE works council is also to be involved in the introduction of new IT systems, data security, vocational training as well as health and safety. At least 30 employees must be concerned by restructuring in any one country, for this to fall under the scope of the SE works council. Opinions are always to be submitted in English, but there is no imposed time limit. Only an extract translation into other languages will be provided for any documents longer than two pages. Resolutions may be made by circulation using email. In countries with no central works council, local works councils are connected with the SE works council by video conference. It has the right of access to all subsidiaries within the EU and can be assisted by experts of its own choice. A Brexit clause secures British participation in the SE works council on a permanent basis.

[Press release on SE conversion](#)

#### 4. Recent court rulings in EWC matters

##### First EWC appeal court ruling in England's legal history



On 11 March 2019, the Employment Appeal Tribunal in London rejected an appeal from the chairman of the British employee representatives of Manpower. The appeal was filed against a ruling of the Central Arbitration Committee (CAC) from March 2017, which had authorized the incorrect establishment of the European works council for the US HR services provider. The contentious issue is whether a Special Negotiating Body (SNB) can remain in place and continue to negotiate after the legally defined negotiation period of maximum three years has expired or whether subsidiary requirements ("Default EWC") automatically come into force.

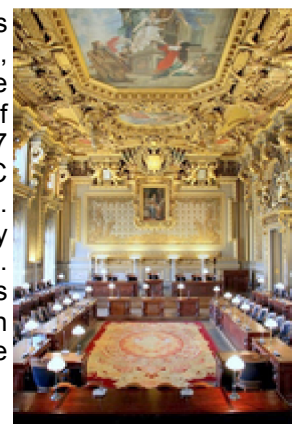
The appeal court held oral hearings on the case on 11 and 15 October 2018 and finally ruled in favor of central management. It concluded that the Manpower SNB, which was still in place nine months after its legal term of office had expired, was in a position to sign a legally binding EWC agreement which falls below the Directive's subsidiary requirements in some aspects (see [report in EWC News 4/2017](#)). The Employment Appeal Tribunal ruling in London is the first ever passed in a second instance court in the United Kingdom on EWC matters. It is contrary to a Berlin labour court ruling from July 2016 in a similar case (see [report in EWC News 4/2016](#)).

[Full text of appeal court ruling](#)

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##### French Court of Cassation confirms term of office in EWC

On 17 April 2019, the social chamber of the Court of Cassation in Paris (photo), which can be compared to the Federal Labour Court in Germany, ruled on the term of office for EWC members. The judges confirmed the decision of the Versailles appeal court, which had rejected the dismissal of two French delegates from the Axa European works council in March 2017 (see [report in EWC News 2/2017](#)). The French insurance company's EWC agreement provides for a term of office of four years for all EWC members. The term of office may be terminated beforehand, if a member completely leaves the employee representation body in his/her country of origin (N.B. this regulation applies only to Axa, not to other companies). The judges have now ruled that the transfer of a representative to another trade union does not lead to the loss of mandate, since a works council is not a trade union organization.



[Full text of court ruling](#)  
[Axa EWC agreement](#)

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## London shifts responsibility to Dublin



On 18 June 2019, the Central Arbitration Committee (CAC) decided that it was not competent to rule on the rights of the Hewlett-Packard Enterprise's (HPE) Special Negotiating Body (SNB) to training. The CAC is the first instance court for EWC law and has its premises in London city center in the same building (photo) as the second instance Employment Appeal Tribunal mentioned above. Following the Brexit referendum, the US based group management of HPE had announced to the SNB that the jurisdiction for negotiations would be shifted from England to Ireland. The CAC was to clarify whether the group's management is authorized to decide this unilaterally and which national jurisdiction should be applicable for the future EWC. The issue of training rights was only raised in order to get the legal proceedings at all started.

Hewlett-Packard had a European works council in place from 1996 to 2014, which was not subject to the EU Directive. As a result of legal proceedings and the subsequent termination of this "voluntary" EWC agreement, the EWC was dissolved and a SNB was established under the provisions of article 14 of the current EWC Directive. Following the spin-off of various business units into a new company, HPE, a completely new negotiation procedure started again from scratch in November 2015 (see [report in EWC News 1/2017](#)). The three year negotiation period ended on 31 October 2018 with no result. A European works council will now consequently be established on the basis of the subsidiary requirements of Irish law.

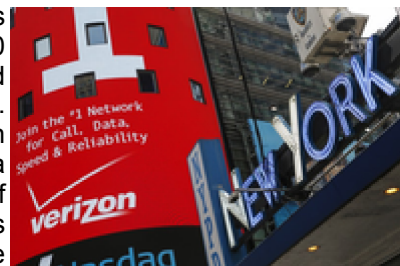
The legal proceedings before the CAC went on for nine months, which was no doubt due to the extensive documents filed; 589 pages from the employer and 115 from the employee side. Reference was made to the ruling of the European Court of Justice in the Polbud case from October 2017 (see [report in EWC News 2/2018](#)). There have already been similar court rulings in Germany and France, whereby central management of a non-European company was authorized to unilaterally decide or change the applicable national legislation. In October 2012, the Ludwigshafen labour court ruled on the Donata Holding SE case (see [report in EWC News 4/2012](#)), in July 2014 the Paris district court in the Manpower case (see [report in EWC News 2/2014](#)) and in June 2018 the Wiesbaden labour court in the DXC Technology case (see [report in EWC News 2/2018](#)).

[Full text of the CAC ruling](#)  
[The CAC annual report](#)

## 5. New EWC legal proceedings

### US telecommunications group taken to court in England

The European works council of Verizon filed legal proceedings before the Central Arbitration Committee (CAC) in London on 20 June 2019, against what it considers to be a long-lasting and continual infringement of its information and consultation rights. The EWC, which was established in March 2009 under British jurisdiction (see [report in EWC News 2/2009](#)), currently has a chairman from France, a country where the consultation rights of the works councils is taken very seriously. The court filing shows some similarities with the Emerson Electric case and will also be handled by the same lawyer (see [report in EWC News 1/2016](#)).

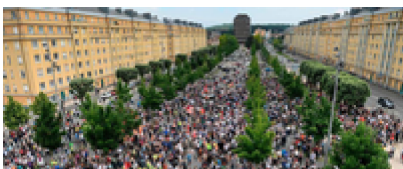


The exact details of the filing are not yet known, since central management has requested a written non-disclosure agreement from the employee side. Verizon comes under a lot of criticism in the USA due to its trade union-hostile behavior. In view of the small number of EWC legal proceedings across Europe it is noticeable that an above average number of US companies come into conflict with EWC legislation.

[Press report on Verizon in the USA](#)

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### Legal proceedings against US conglomerate in France



On 2 July 2019, the district court of Belfort, which is the first instance court for collective labour law, rejected an injunction order against a job protection plan ("plan de sauvegarde de l'emploi" - PSE) for the local gas turbine plant of the US group, General Electric. Under the plan, 800 out of the 1,760 employees

are to lose their jobs in the industrial city near the Swiss border and Alsace. On 22 June 2019, thousands of people in the city center of Belfort protested against the mass redundancies (photo).

The judges referred the trade unions to the Administrative Court, which is responsible for complaints concerning the correct execution of redundancy schemes. However the applicants wanted to escalate the case to the next instance for labour law, so that the social plan could not come into force. During the consultation procedure with the works councils, management was not willing to examine any alternatives to mass redundancies. The trade unions had prevented two information and consultation meetings from taking place at the end of June 2019. Legal deadlines for consultation procedures have been put in place in France since January 2014, since legally compliant dismissals can only be implemented once the works council has rendered its opinion (see [report in EWC News 1/2014](#)). Previously, French works councils were able to delay plant closures for many years, by not rendering their opinion, such as e.g. in a Goodyear tire factory (see [report in EWC News 4/2009](#)).

The gas turbine plant in Belfort was sold by the French Alstom group to General Electric in November 2015. At the time, the government paid 50 million € to the US group, since it committed to create 1,000 new jobs in France. On 19 July 2019, the unions turned to the French minister of economic affairs. He should request that the company put a halt to the information and consultation procedure on restructuring and to the social plan until the promise given at the time, has been kept. The sale of Alstom's Energy division was highly controversial and had nearly led to legal proceedings with the European works council. In the last minute the US group agreed to give a declaration of commitment to the EWC, for which they must now also be accountable (see [report in EWC News 4/2014](#)).

[Press report on job losses in Belfort](#)  
[Press report on job losses in Switzerland](#)  
[Press report on court ruling](#)  
[Report on appeal to Minister of Economics](#)

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## Two German labour courts rule on foreign travel expenses

On 18 July 2019 a legal complaint was filed with the Treves labour court (photo), against the cigarette packet manufacturer, MM Graphia Trier. The local works council chairman is a select committee member of the European works council of the Austrian group Mayr-Melnhof Packaging. The travel expenses for his participation in a select committee meeting held on 15 and 16 May 2019 in Vienna had not been reimbursed by central management. According to German EWC legislation, apart from central management abroad, the German employer must also assume liability. The complaint refers to these regulations. Another participant in the meeting, who likewise did not have his travel expenses reimbursed had already filed a complaint with the Oldenburg labour courts on 21 June 2019. There has never been a similar case so far in Germany. The EWC of Mayr-Melnhof Packaging has been operating on the basis of the subsidiary requirements "default EWC" since 1 January 2018, since a previous EWC agreement had not been extended, and the subsequent negotiations had failed (see [report in EWC News 2/2018](#)). In April 2019 central management announced that it is only willing to finance plenary EWC meetings, no further select committee meetings.



## 6. Revised EWC agreements

### US travel service provider improves standards



A revised EWC agreement for American Express Global Business Travel ("GBT") was signed on 20 March 2019 in Amsterdam. This joint venture with 16,000 employees in 140 countries around the globe was founded in 2014 following the sale of a 50% share of the travel division of American Express, the US based financial services group, to an investor group. American Express has had a European Forum in place since 1998 under Irish jurisdiction. After the sale, GBT established its own European works council in March 2015 under English jurisdiction.

The new agreement is fully subject to the provisions of the new EU Directive. The EWC is a joint



body made up of several employer and 15 employee representatives. They are responsible for 16 countries. The United Kingdom is the largest country with 2,200 employees and two seats, followed by Germany and Spain with 1,300 and 1,000 employees respectively and one seat each. A coordination committee which handles the day-to-day activities is composed of five representatives from different countries, who must all be able to communicate fluently in English. The time-off work allowance is defined precisely and ranges from 20 to 80 hours per year. No EWC member is allowed to spend more than 10% of his/her working hours on local and European works council activities. This limitation does not however apply in exceptional circumstances (consultations for restructuring) and in practice is meaningless in some countries, e.g. in Germany, where some works council members are released 100% from their normal work by national laws.

One plenary meeting is held over three days each year and one meeting of the coordination committee. The EWC has an annual budget of 10,000 € for training and 15,000 € for experts. An ad-hoc arbitration board is established to resolve any disputes and is composed of one member from each party, who must then agree on a third member. Only afterwards can any legal action be taken. The company bears all the costs for the arbitration board and for any legal proceedings. At any time, central management may unilaterally change the applicable national legislation (e.g. after Brexit), whereby the contents of the EWC agreement is to remain unaltered.

### **Consultation procedure according to SE legislation**

In the case of restructuring, alternative proposals and opinions made by the EWC are to be appropriately taken into consideration by management as part of the internal decision-making process, and before their final decision is taken. A joint decision is reached on the duration of any consultation procedure, which is structured in four phases, for each individual case. The EWC agreement defines that the key goal of the consultation procedure is to reach a socially acceptable solution. This corresponds to the high standards, which would otherwise only apply to SE works councils.

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### **English EWC relocates from Luxembourg to Dublin**

The EWC agreement for Colt Technology Services was updated on 28 May 2019 in London. It applies to 2,700 employees in 13 EU Member States and Switzerland. The IT service provider (Colt stands for City Of London Telecommunications) established its EWC in 2004 and had last revised its EWC agreement in June 2012 under Luxembourg jurisdiction (see [report in EWC News 3/2012](#)). From now on, Irish legislation will apply, although there are only 24 employees there. Apart from the United Kingdom with 800 employees, the largest countries are Spain and Germany with around 500 employees each.



Up to now, India was also represented in the EWC, but will no longer be in the future. The British representatives will lose their mandates on the day after Brexit, whereas Switzerland will remain member. So far, the EWC could not be assisted by external experts. In order to obtain this right, it had to accept a fixed deadline of 15 working days for the completion of any consultation procedures, which did not exist beforehand. The number of annual plenary meetings was reduced from two to one, but the size of the steering committee increased from three to five members. Since there is a lot of restructuring in the IT industry, the relatively small size of the workforce of Colt Technology Services in many countries, ensures that the EWC is able to work more efficiently. The EWC Academy acted as advisor during the difficult negotiations.

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### **Merger in aerospace sector**



A EWC agreement for Collins's Aerospace was signed on 4 June 2019 in Gdańsk. This leads to the merger of the two former European works councils of UTC Aerospace Systems and Rockwell Collins. The US conglomerate, United Technologies Corporation (UTC) bought the airplane supplier, Rockwell Collins, in November 2018 in the USA. The new company has 15,000 employees in Europe of which one third are in the United Kingdom. The second largest country is France, followed by Germany.

The discussions between the two EWC bodies had begun in October 2018 in Birmingham (see [report in EWC News 4/2018](#)). During a meeting held on 20 and 21 February 2019 at Toulouse



airport, the details for the negotiations with central management were elaborated which then began on 12 March 2019 in Brussels. The EWC members were advised throughout by the EWC Academy. The result represents a compromise between the two old EWC agreements.

### **New EWC Directive under Belgian jurisdiction**

UTC Aerospace Systems previously had a "voluntary" agreement under German jurisdiction, which was not subject to the EU Directive, whereas Rockwell Collins was subject to the new Directive under Luxembourg jurisdiction (see [report in EWC News 1/2014](#)). At the beginning of the negotiations central management was not willing to explicitly take the new EU Directive as a basis for the agreement. This would have led to the EWC members requesting the establishment of a Special Negotiating Body. Both parties finally agreed on the new EWC Directive under Belgian jurisdiction.

The new EWC, which meets once annually, has 18 members and represents twelve EU countries and Switzerland. A Brexit clause secures the long-term inclusion of the British workforce. The employer chairs the EWC and the employee side elects a six member steering committee. The transnational competence has been more comprehensively defined than in the EU Directive, and the deadline for rendering an opinion has been extended from two to three weeks. Disputes are to be resolved through a conciliation procedure, and any legal action is only possible thereafter.

## **7. Newly established European works councils**

### **Belgian frozen food producer terminates three-year negotiations**

The family-owned business Ardo signed a EWC agreement on 3 April 2019 at its headquarters in Ardoois (West Flanders) with the Special Negotiating Body. Ardo has 21 sites in nine countries with 3,800 employees. The agreement is largely inspired by the Directive's subsidiary requirements, but has a few particularities. As such, any transfer of production output between individual locations has been excluded from the scope of the EWC, since it occurs frequently.



Each country has one seat for each 10% of the European workforce or part thereof, and the EWC may appoint up to three additional members. The EWC meets at least once annually with central management. The select committee consists of the elected chairman, the deputy and five further members. Extraordinary meetings may be requested, if at least 25 employees are affected by restructuring in each of two countries. The European Federation for Food, Agriculture and Tourism unions EFFAT has a guest mandate, and the EWC can be assisted by a paid expert of its own choice. An arbitration board composed of three members is established to resolve any disputes.

[Report on the signing](#)

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### **First EWC established in the healthcare sector**



A EWC agreement was concluded on 29 April 2019 in Paris for Korian, the market leader in healthcare services in Europe. This listed French group operates over 850 facilities in six EU Member States with 300,000 patients and residents. Korian has 20,000 employees in both France and Germany, 9,000 in Belgium, 2,300 in Italy as well as several hundred in the Netherlands and Spain. They are represented by 18 representatives in the EWC, who meet twice annually.

The agreement is the first in this growth sector and is setting standards, since it goes beyond the normal standards of the EU Directive. As such, the scope of the EWC in transnational matters has been defined very broadly enabling any non-French representatives to also work closely in collaboration with the EWC for major restructuring in their countries. The EWC is chaired by the employer and the representatives elect a secretary and four further members from different countries to form a select committee. They meet twice a year with central management. The EWC can be assisted by a representative of the European Federation of Public Service Unions (EPSU) as well as paid experts and has a right of access to all subsidiaries in Europe.

There are two permanent working groups, which hold meetings at least once per year and may be assisted by experts; one on the group's social policy and another on occupational health and safety.

If required, further working groups may be established ad hoc. In addition to the official meetings, EWC members have a time-off work allowance from 60 to 160 hours per year depending on function. Training is provided at least once per year. Any disputes are submitted to a four-member joint arbitration board. If this conciliation fails, an external Mediator is called in. Court action is only possible thereafter. Central management bears all the costs for any legal proceedings.

[Press release on signing](#)

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## French family-owned business establishes EWC

A EWC agreement was signed for Bel, the French cheese producer, on 20 June 2019 in their company headquarters in the Paris suburb of Suresnes. Bel has 12,600 employees worldwide, half of which are in Europe and 3,900 in France. Besides eleven EU countries, Switzerland and the Ukraine are also represented in the EWC. If a country leaves the EU, it continues to remain within the scope of the agreement.



The EWC has 24 members, including seven from France, who meet once per year under the chairmanship of the HR manager. The select committee, composed of six employee representatives, is also chaired by the same manager. An advisor from the European Federation EFFAT participates in all meetings. The coordination between the EWC and the national works councils has been very precisely regulated. As such, any consultation with the EWC must be terminated at least seven days before the end of the consultation deadline for the local works councils involved. EWC members have a right of access to all subsidiaries and hold at least one annual meeting with their respective home HR manager.

As usual in France, consultation with experts is very comprehensively regulated. The EWC may commission a chartered accountant for up to 20 days of consultation each year and benefits from an additional budget of 10,000 € for further advisors. Central management bears all the running costs of the EWC, which has an additional 3,000 € per year for its own expenses. EWC members have an annual allowance of 15 to 35 hours' time-off work depending on function, in addition to meetings. Video conferences are possible only after the agreement of all EWC members.

## 8. EWC establishment enforced by law

### Legal action filed just before IPO



A EWC agreement was concluded for the English automobile supplier TI Fluid Systems on 27 March 2019 in Oxford. Legal action before the Central Arbitration Committee (CAC) in London was required since central management had ignored the request to establish a EWC. It was filed briefly before the company's launch on the stock market in October 2017 and withdrawn in February 2018, once the Special Negotiating Body had been put in place. The company has 28,700 employees of which one third are in Europe and was owned by a US financial investor prior to the IPO.

The EWC agreement is relatively short and is largely in line with the subsidiary requirements of the EU Directive. The EWC meets once per year and represents twelve EU countries including the UK after Brexit. The chairperson is an elected employee representative, and central management provides a coordinator to organize the meetings. The steering committee is made up of five members from five different countries. In the context of consultation procedures, any opinions must be rendered within 30 days after the meeting at the latest. Training is possible both as a group and individually. Several East European countries were not involved in the negotiations, since they did not have any employee representatives so far.

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## Contentious EWC agreement against the law

An agreement for the establishment of a European works council for the French dairy group, Lactalis was signed on 23 May 2019 at their headquarters in Laval (Loire region). The trade unions had had to enforce the start of negotiations by taking legal action (see [report in EWC News 3/2018](#)). Ultimately, the Special Negotiating Body (SNB) accepted the agreement with a very



slight majority of eleven out of 19 votes. This vote and hence the entire EWC agreement covering 30,000 employees could now be invalidated due to the fact that the SNB was not correctly established.

Central management had refused to give any mandate to small countries with fewer than 100 employees, as well as to the United Kingdom (due to the forthcoming Brexit). The EU Directive requires however that every country within the current European Economic Area having at least one employee has to take part in negotiations. The issue of whether an incorrectly established SNB has any legal consequences, is also being contested at the German online fashion retailer Zalando (see [report in EWC News 4/2015](#)). Furthermore, central management put pressure on the representatives to renounce their right to be assisted by external experts also through a highly controversial vote-off.

The family owned business was hereby able to ensure that the EWC agreement remains substantially below EU standards and even infringes EU law in some aspects. The employer chairs the EWC and is accompanied by four directors. The employee representatives elect a secretary and one deputy, and there is no select committee. The EWC meets once per year and only by video conference for exceptional circumstances. Apart from the time for meetings, each EWC member is allotted one day time-off work per year. Language courses are funded, but are to take place outside working hours. External experts may not be commissioned. All documents handled by the EWC are to be considered as confidential and may not be communicated to the local works councils in the individual countries. Notice can be given to terminate the agreement in 2027 at the earliest. The United Kingdom is included in the EWC, only if the Brexit is finally called off. The text is considered to be the worst ever EWC agreement concluded in France.

## 9. The view beyond Europe

### British-Dutch consumer goods manufacturer restricts temporary jobs



Unilever group executives signed a global joint commitment on sustainable employment with two international trade union federations on 10 May 2019 in their London headquarters on the banks of the Thames (photo). The principles of equal pay for equal work as well as non-discrimination in working conditions are hereby applicable to all contract workers throughout the 300 factories in 69 countries, irrespective of whether they are employed directly by Unilever or through an agency. The contracting parties have already been holding bi-annual meetings together since 2010 which will also serve to monitor the agreement in the future. The European works council had already concluded a framework agreement with central management on strategic HR development in March 2019 (see [report in EWC News 1/2019](#)).

[Report on the signing](#)  
[Full text of the Joint Commitment](#)

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### First Global trade union network in the health sector

50 employee representatives from Fresenius came together from all parts of the world for a meeting in Frankfurt am Main held on 16 and 17 May 2019 at the same time as the health group's annual general meeting of shareholders. Reports from the participants revealed that Fresenius violates its own code of business conduct in some countries, such as in the USA for example. The trade union network is therefore seeking to conclude an international framework agreement to cover the 280,000 employees in 100 countries which would oblige the German medical technology manufacturer and clinic operator to commit to social and trade union standards on a global basis.



[Conference press release](#)  
[Detailed report on the conference](#)  
[Coverage in business press](#)  
[Interview on the situation in the USA](#)  
[Report on US trade unionists' visit to Berlin](#)

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## French car manufacturer secures skills development



Group executives from Renault signed an international framework agreement on developing the quality of working life with several trade union federations and their World works council on 9 July 2019 in Paris. New vehicle propulsion systems and digitalization are major challenges for the motor industry. The necessary skills development for Renault's 120,000 employees worldwide is to be negotiated with the employee representatives. The group has already committed itself to global social standards since 2004 in a framework

agreement with the trade unions. The World works council was then established in March 2015 (see [report in EWC News 2/2015](#)).

[Report on the signing](#)

[Full text of the framework agreement on skills development](#)

[Full text of the framework agreement on social standards](#)

## 10. Interesting websites

### Deutsche Telekom's European works council

The EWC of Deutsche Telekom in collaboration with trade unions from ten countries is elaborating practical approaches for codetermination on Digitalization and Work 4.0 in the IT and telecommunications sector within the framework of the DigiT.eu project. The first workshop of this two-year project, which is sponsored by the European Commission, was held in October 2018 in Vienna. All project activities are presented on a website.



[The project website](#)

[Report on the workshop in Vienna](#)

[The first project newsletter](#)

[The second project newsletter](#)



### European exchange on vocational training

The project SACADOS enabled employee representatives from six countries to exchange experience on forward-looking development of employee skills by means of study visits in Italy (photo) and Germany. Furthermore, the material and information required by works councils for vocational training purposes were developed and tested in eleven national seminars including a toolkit and a method using "problem solving circles". The material is available for download on a dedicated website in several languages.

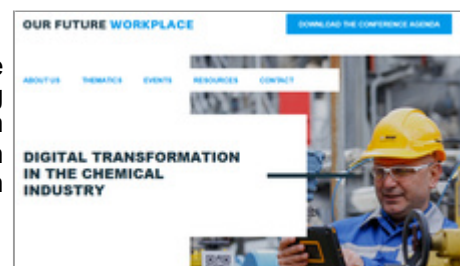
[The project website](#)

[Presentation on the problem solving circles](#)

[Guidance for works councils](#)

### Digital transformation in the chemical industry

With financial support from the European Commission, the social partners in the chemical industry are currently running a project to analyze industry-specific digitalization challenges and to establish the framework for a joint action plan. The documents are available in several languages on a dedicated website.



[The project website](#)

### European Digitalization Index



The Digital Economy and Society Index (DESI) which is composed of different indicators is released each year by the European

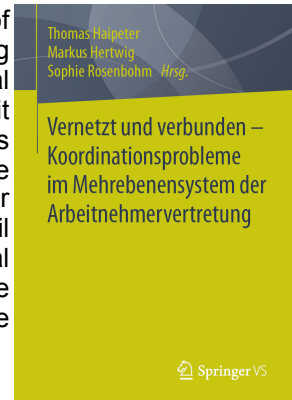
Commission to rank the digital performance of individual EU Member States. Scandinavia and Estonia scored particularly well. A great deal of detailed information can be found on the Index website.

[The Index website](#)  
[Press release on 2019 figures](#)

## 11. New publications

### How do local works councils and EWCs work together?

A volume examining the interaction between the different levels of workplace representation within companies was published at the beginning of 2019. From the daisy-chain in Germany (local works councils, central works councils, group works councils and board-level participation) it covers right through to the European and World works councils. Various authors shed light on the co-operation between works councils, the workforce, trade unions, advisors and union shop-stewards. One chapter focusses on the legal relationship between the European works council and employee representatives in individual countries. International framework agreements and the creation of cross-border added-value networks were also examined in detail in the book. An English language publication with similar content from the same publisher is also available.



[Further information on the book](#)  
[Online order](#)  
[English language publication from the same publisher](#)

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### Concise review of labour relations in Germany



This study was released in April 2019 as part of a country package from the Friedrich Ebert Foundation. It describes the current political situation, developments in collective bargaining systems and the trade union landscape. Since the financial market crisis, the German economy has recovered better than other EU Member States and the unemployment rate has decreased sharply. The levels of collective bargaining have nevertheless declined and the penetration of works councils is sinking. The study defines the challenges for the "German model" of industrial relations, where an ever increasing divide is revealed between the stable industry sectors and the fringe zones in the services sector. One of the chapters examines the social consequences of digitalization and rationalization in the German workplace. The 48 page study is available in four languages (German, English, French, and Spanish).

[Study download](#)  
[Search menu for other languages](#) (enter name of author)  
[Study on the membership policy of IG Metall](#)

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### How do employee rights stand around the globe?

The latest "Global Rights Index" from the International Trade Union Confederation (ITUC) was published on 19 June 2019. It analyzes the respect of employee workplace rights around the globe. The situation has deteriorated in several European countries. 40% of them do not explicitly recognize e.g. the right to become a member of a trade union and half of them have restricted rights to collective bargaining. Belarus, Greece and Turkey are classified as countries without any legal guarantees. Romania is criticized for "the systematic violation of the law". Reports from Bulgaria, Hungary, Poland, and Spain as well as from the United Kingdom describe "regular violations of the law". In countries such as Belgium, Portugal, Croatia, Czechia and Switzerland "repeated breaches of the law" are documented in the report.



[The most important results of the report](#)

## Legal commentary on German EWC law



The long awaited third edition of the reference commentary on German European works council legislation was published at the end of June 2019. The 630 pages of annotations also examines the participation rights in the European Company (SE) from an employee perspective. The authors highlight several innovations of the 2009 EWC Directive and continually refer to court rulings from previous years throughout Europe. In their opinion, the insufficient sanctions for infringement of EWC rights (15,000 € is the maximum fine in Germany) contradict the EU Directive, according to which sanctions must be "effective, dissuasive and proportionate to the seriousness of the offence". The book's appendix includes a set of template texts, such as a EWC agreement and key points for rules of procedure.

[Online order](#)

[Further information on the book](#)

## Forthcoming event

Ralf Ralf-Peter Hayen from the DGB trade union confederation head office is one of the authors of this book and will be a speaker during the EWC Academy legal workshop held from 15 to 18 October 2019 in Berlin.



[Program and registration form](#)

## 12. The EWC Academy: Examples of our work

### Anniversary seminar in Montabaur Castle

For ten years now there have been EWC and a SE introductory seminars organized every year, and most recently from 23 to 26 April 2019. This time the participants came from nine different companies, of which four were based in France. The working experience in France as the motherland of the EWC consultation model was a focal point of the seminar. Labour relations in other EU countries were also covered as well as the practical experience in European and SE works councils. The next introductory seminar in Montabaur Castle will be held from 14 to 17 April 2020.



[EWC Introductory seminar program](#)

### Seeking a legally watertight EWC agreement



From 5 to 7 June 2019, the members of the Vorwerk European works council held their annual meeting in the company's training facilities, an art deco villa in Wuppertal (photo). The representatives operate on the basis of a "voluntary" EWC agreement from 1996, which was updated in May 2012 (see [report in EWC News 2/2012](#)). Assisted by the EWC Academy, negotiations began with central management to reach a full-fledged EWC agreement based on the EU Directive. The German family-owned business has 12,000 employees dealing in household appliances, carpets and cosmetics. The European works council represents nine EU countries as well as Switzerland and Russia.

### US Company holds EWC plenary in Poland

The European works council of Johnson & Johnson met from 17 to 20 June 2019 in Warsaw. In the last months the US consumer goods group had sold some of its business units and the EWC was involved at an early stage. However the proposals, which the EWC formulated in the context of the consultations, were hardly taken into consideration by central management. The delegates discussed ways of increasing





their influence on restructuring in the future with support from the EWC Academy. The EWC agreement is subject to the EU Directive under Belgian jurisdiction and was last updated in December 2017 (see [report in EWC News 1/2018](#)).

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### Training for South Korean automobile supplier



The EWC Academy provided training for members of the European works council of Hanon Systems in Kerpen (near Cologne) on 26 and 27 June 2019. The manufacturer of air conditioning technology was a subsidiary of the US group Visteon, up to June 2015 and till today is still located at same address (photo). In March 2019, Hanon acquired some business units from Magna International, a Canadian-Austrian automobile supplier which are now also represented in Hanon's EWC. The training served to develop a mutual understanding of the EWC work with these new representatives. The Hanon EWC agreement is based on German law (see [report in EWC News](#)

[4/2015](#)).

### 13. Current seminar schedule

The EWC Academy and its forerunner organization have been holding conferences and seminars for the members of European works councils, SE works councils and Special Negotiating Bodies since January 2009. So far, 816 employee representatives from 285 companies have taken part including many of them for several times. This represents around 25% of all transnational works council bodies in Europe. In addition there are numerous in-house events and guest lectures given to other organizations.

[Overview of the forthcoming seminar dates](#)

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### Legal EWC workshop

The next workshop on EWC legislation is being held from 15 to 18 October 2019, this time in Berlin. It covers the legal subtleties of a EWC agreement, past EWC case-law and the application of the new EU standards in cases of legal doubt. One of the speakers will again be Ralf-Peter Hayen, Head of Legal Department at the DGB confederation head office in Berlin and a fine connoisseur on the subject.



[Program and registration form](#)

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### 12<sup>th</sup> Hamburg conference for European and SE works councils



As every year, our annual conference is being held on 27 and 28 January 2020. To start with, the latest developments in the EWC and SE landscape will be presented together with recent court rulings. The agenda includes case studies ("best practice") from various companies. This time, the EWC chairman of Unilever will give a report on the pan-European Future of Work framework agreement which was concluded in March 2019 (see [report in EWC News 1/2019](#)).

[Full conference program](#)

[Flashback: Report on the last Hamburg conference](#)

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### EWC and SE seminar in Montabaur Castle

Our annual introductory seminar for the members (or future members) of European and SE works councils as well as Special Negotiating Bodies is being organized from 14 to 17 April 2020 in Montabaur Castle. The castle is situated close to the high-speed railway station



half-way between Frankfurt and Cologne. The following seminar modules will be covered at two levels in parallel:

- EWC and SE initiation seminar (for beginners)
- From a "song and dance act" to a full-fledged consultation body (for advanced)

[Program of modules for both seminars](#)

[Report on previous introductory seminar in Montabaur](#)

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### **In-house events**

Please find an overview of possible topics for in-house events below:

[Examples of in-house seminars](#)

## **14. Imprint**

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