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## 1. Practical questions on Brexit and the Corona crisis

### Trade agreement does not bring legal certainty for European works councils

From 1 January 2021, the UK will no longer be subject to EU laws. At the very last second, a trade agreement was reached on 24 December 2020, granting the UK economy duty-free access to the European Single Market. The EU was able to enforce a level playing field on labour rights and environmental standards, but they will be frozen at the current level. The UK will not have to make any improvements in the future.



The trade agreement defines the following labour and social standards that are subject to a special protection: (a) fundamental rights at work, (b) occupational health and safety standards, (c) fair working conditions and employment standards; (d) information and consultation rights at company level; (e) restructuring of undertakings. Compliance will not be monitored by the European Court of Justice, but through a three-stage conciliation procedure. At first, there is a formal consultation between the parties. After 90 days, the issue is then examined by a panel of three experts, one each from the EU, the UK and another world region. They submit their final report with recommendations after 195 days at the latest. If one party does not comply, the other party may impose punitive tariffs.

[Full text of the trade agreement](#) (see page 202 onwards)

For European works councils, this creates a legal situation full of contradiction. On the one hand, the abolition of the British EWC Act (TICER) would be a violation of the trade agreement. On the other hand, TICER no longer has any connection to the EWC laws of the EU countries and is no longer subject to the jurisdiction of the European Court of Justice. Currently, there are still five cases pending before the Central Arbitration Committee (CAC) in London, first instance in British EWC law, including one on the election of British delegates to the EWC of the German Siemens group.

### Scotland wants to join the EU rapidly

On 17 December 2020, Nicola Sturgeon, First Minister of Scotland, indicated in a video conference held with the press from continental Europe that an independent Scotland would apply for EU membership without delay. In March 2017, she had already sought permission in London for a second Scottish independence referendum. Since then, popular sentiment has turned: in April 2017, only 34% of all Scots wanted independence (53% did not); by mid-December 2020, 52% were already in favour

of independence (38% opposed). Scottish parliamentary elections will be held in May 2021. Should the Scottish National Party (SNP) increase its share of the vote by almost ten percentage points to 55%, as predicted by current polls, the government in London would be under great pressure to accept the referendum. If the request is rejected, the Scottish government plans to take legal action. Since the union of Scotland and England in 1707, Scotland still has its own supreme court, the Court of Session.

[Full text of the interview](#)

[Commentary in the Scottish press](#)

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## Video conferencing should be allowed until March 2021



On 22 October 2020, the trade union federations in Brussels updated their emergency recommendations for European and SE works councils, which they had developed in March 2020 for online meetings (see [report in EWC News 1/2020](#)). Since the coronavirus pandemic has continued longer than expected, they now no longer call for postponing annual EWC meetings but instead recommend rules for the temporary use of video conferencing.

Face-to-face meetings should be the norm again starting from March 2021. Digital tools must not replace the right to face-to-face meetings, otherwise it would not be possible to work effectively together nor to have solid communication between delegates (see [report in EWC News 3/2020](#)). The unions recommend the use of the highest quality video conferencing systems and to spread meetings over several days, with sessions lasting at most half a day. The guidelines also include rules for secret ballots and a template agreement that can be concluded with central management. In the beginning Special Negotiating Bodies should not hold virtual meetings since delegates generally do not yet know each other very well. The recommendations are available in eight languages.

[Full text of the updated temporary recommendations](#)

[Download of other language versions](#)

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## Germany and France prolong legal basis for video conferencing

Since 26 November 2020, works council meetings in France have been possible as video or telephone conferences and resolutions via instant messaging. The employer, who in France always convenes and chairs meetings, must inform the employee representatives in advance. In certain cases they may refuse a virtual meeting, particularly in the case of collective redundancies. This requires a majority of works council members to give notice at least 24 hours before the start of the meeting. The regulations apply until the end of the public health emergency, i.e. at least until 16 February 2021. A similar regulation already existed in the summer of 2020 (see [report in EWC News 2/2020](#)).



[Full text of the regulation](#)

[FO trade union comments on the regulation](#)

In Germany, the use of videoconferencing, which has been exceptionally permitted since March 2020 (see [report in EWC News 2/2020](#)), has now been prolonged beyond the end of the year until 30 June 2021. Normally, works councils in Germany can only meet and pass resolutions in face-to-face meetings. The special regulation does not mean that the employer can prohibit face-to-face meetings of the works council. The elected chairperson is the only person who can decide this and it has been confirmed by the courts (see [report in EWC News 3/2020](#)). This special regulation also applies to European works councils and SE works councils if they are subject to German law. The employers' associations of the metal-working and electrical industries are seeking to establish video conferencing for an indefinite duration and to put in place a permanent statutory framework for this purpose.

[Report on the prolongation](#)

[Legal commentary on the special regulation](#)

## 2. Current developments at the European level

### Trade unions criticize European Labour Authority's lack of action

On 16 October 2020, the first anniversary of the foundation of the European Labour Authority (ELA), the European trade union federations expressed their disappointment with its work so far. In an open



letter to the European Commission they criticised its failure to act in the first nine complaint cases submitted to it on the day of its foundation (see [report in EWC News 4/2019](#)).

The role of the ELA is to strengthen cooperation between national authorities in labour and social law and through joint inspections, to help ensure that EU law is adhered to. Potential fraud and breaches of regulations, e.g. in the cross-border posting of workers (see [report in EWC News 4/2017](#)), should be better detected than before. This is what the nine complaint cases reported by trade unions in 2019 precisely refer to. Six of them concern Germany. Along with the open letter they have now submitted two more complaints.

[Report on the nine complaints](#)

[Full text of the open letter](#)

[Background report on cross-border posting of workers](#)

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## Sustainable corporate governance to become EU-wide standard

On 26 October 2020, the European Commission launched an online public consultation on corporate law. It is seeking to improve the EU legal framework on corporate governance by summer 2021. Instead of short-term profits, companies should focus more on the creation of long-term and sustainable added value and better align the interests of shareholders, managers, employees and society. This also includes the protection of human rights in the supply chain and environmental concerns.



The consultation will run until 8 February 2021 and is targeted at various stakeholders, including trade unions, works councils and supervisory board members. Although the consultation is not focused on supervisory board employee participation, the subject was analyzed as part of a study carried out by the auditing firm EY, on behalf of the European Commission in July 2020.

[More information on the initiative](#)

[The public consultation questionnaire](#)

[The study on sustainable corporate governance](#)

The Hans Böckler Foundation has pointed out that companies with employee representatives on the supervisory board have performed better since the financial crisis than companies without co-determination. They provide more training, more job security, have more women on the supervisory board, pay more attention to sustainability in daily decisions, seek dialogue with stakeholders more often and link executive board remuneration to sustainability targets more frequently. On 11 February 2020, the German Trade Union Confederation (DGB) had already presented key points for a framework directive on information, consultation and company co-determination. Furthermore, an appeal by more than 80 non-governmental organisations and trade unions which calls for EU directives on human rights and environmental protection, has been running since October 2019.

[Information from the Hans Böckler Foundation](#)

[Full text of DGB key points](#)

[The appeal for human rights and environmental protection](#)

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## Ombudsman criticises consultancy contract awarded to US Fund Management Company



On 23 November 2020, the European Ombudsman, Emily O'Reilly presented a report on an enquiry into the award of a consultancy contract to BlackRock Investment Management. The European Commission should have closely examined possible conflicts of interest with the US investor when it was awarded the contract for a study on green and social criteria in investment, in March 2020. The fund company manages and invests trillions of dollars in assets. Critics from the European Parliament said that it was like letting the fox guard the henhouse.

On 29 April 2020, 92 anti-globalisation and environmental associations as well as trade unions had called on the European Commission to cancel the consultancy contract in an open letter. The European Commission rejected this criticism. It said that BlackRock's offer of 280,000 € was the most financially advantageous and that all other providers would have charged almost twice as much for the extensive study. The Ombudsman criticised BlackRock for offering this expertise at a dumping price in



order to influence political regulation in the field of its own business interests. The EU rules are not robust and clear enough to allow the competent officials to identify conflicts of interest, she declared. A European Ombudsman has existed since 1995, and investigates complaints concerning grievances within EU institutions.

[The open letter against the BlackRock consultancy contract](#)  
[Ombudsman's press release](#)  
[Ombudsman's detailed report](#)  
[Press report on the Ombudsman's decision](#)

### 3. Are there no alternatives to layoffs?

#### SE Works Council provides templates for national negotiations

On 5 October 2020, the Airbus SE Works Council rendered its opinion on the Odyssey project, which involves the loss of 15,000 jobs by the end of 2021 according to the plans of the central management. The information and consultation process had started on 30 June 2020 and included ten meetings. The SE works council wanted exclusively to push for voluntary measures for the job cuts, but was unable to achieve this. As a result, negotiations on this fundamental issue are now to take place separately in each country.



In order to evaluate and properly understand the project, the SE works council commissioned two consultancy firms. With their support, an in-depth dialogue could be held with the concerned business units as well as with the group's management. The resulting report contains an analysis of the transfer of personnel, the losses in jobs and competencies, the accompanying social measures as well as redeployment at the various sites throughout Europe. Central management agreed to consider all proposed alternatives and discuss them during negotiations in each country. The SE works council is making the report available to all local works councils, "in order to eliminate any risk of compulsory redundancies. The burden of the crisis - triggered by the Coronavirus pandemic – should not be put on the backs of workers."

#### Monitoring objective at European level

The SE Works Council also requested that monthly meetings be continued until the Odyssey project has been fully implemented, in order to ensure constructive negotiations in all countries, as well as the follow-up and consolidation of social measures. Collective bargaining on the future of jobs in Germany started on 24 September 2020 and a collective agreement on job security was signed in France on 12 October 2020. There will be no compulsory redundancies in the German Airbus sites at least until the end of March 2021.

[European Confederation of Industrial Trade Unions press release](#)  
[Report on the protests at the beginning of July 2020](#)  
[Report on the start of negotiations in Germany](#)  
[Press release on the conclusion of the agreement in France](#)

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#### Tied vote of the supervisory board irritates trade unions



On 30 September 2020, the supervisory board of Continental, the German automotive supplier from Hanover, which is subject to full-parity co-determination, made the decision to slash 4,800 jobs and close the plants in Aachen and Karben (near Frankfurt) against the votes of the ten employee representatives. On 18 November 2020, the closure of the plant in Roding in the Upper Palatinate was on the agenda, and the employee representatives were again outvoted. The decisive vote was cast by the chairman of the supervisory board who is a shareholder representative and has a double vote in the case of a tie. In German supervisory boards, such tied votes are very rare, since as a rule, consensus is sought before the meetings. The merger of gas producers, Linde and Praxair had led to a similar situation in June 2017 with considerable press coverage (see [report in EWC News 2/2017](#)).

Continental is struggling with the Corona crisis and at the same time wants to focus more on digitalisation and electromobility. Worldwide, 30,000 jobs are at stake, including 13,000 in Germany. German Labour Minister Hubertus Heil (Social Democratic Party) had expressed irritation at the scale of the measures and the head of the IG BCE trade union, Michael Vassiliadis, even spoke of "drastic

job-slashing". "Continental has alienated the entire workforce, damaged its own corporate culture and trodden on co-determination with both feet."

[Press report on the situation](#)

### **Demand for reform of German corporate co-determination**

IG BCE, which has a very social partnership approach, has been hit hard by the rapidity of Continental's management and its lack of willingness to compromise, leaving the works councils with no opportunity to investigate alternatives to site closures with the help of external consultants. On 10 November 2020, it therefore launched a political initiative for better corporate governance and sustainable conflict resolution for the supervisory boards of large corporations. It is demanding that for important decisions (e.g. change of legal form to an SE, relocation of headquarters abroad, company sales, mergers, takeovers, plant closures, mass redundancies), in the event of a conflict between the capital and the employee benches on the supervisory board a neutral mediator should be appointed. The board would vote beforehand to appoint this person with a two-thirds majority. The mediator's proposed resolution of the conflict can only be rejected by a two-thirds majority of the supervisory board. On 27 October 2020, the parliamentary group of the Social Democratic Party (SPD) had already presented a position paper on the development of co-determination.

[The reform proposed by the IG BCE trade union](#)

[Press report on the IG BCE proposal](#)

[Full text of the SPD position paper](#)

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### **Finland seeking to expand co-determination**

On 19 November 2020, the Finnish Ministry of Labour presented the report of a working group on the reform of co-determination which involved employer organisations and trade unions. A public consultation will run until 15 January 2021, after which the government will draft a bill to be passed in parliament in early March 2021. The aim of the reform of the "Act on Cooperation in Undertakings" is to involve employee representatives in strategic company developments at an earlier stage than previously and to strengthen their influence in the case of changes in structure. They should be able to make proposals and negotiate alternative solutions ("change negotiations").



The reform would improve employee representatives' access to information. The employer should report at least quarterly on the company's financial situation, workplace rules and practices, personnel structure, required skills and employee well-being. A development plan for the workforce is then to be drawn up jointly. The participation of employees is also to be improved at the highest level of corporate governance, where they are entitled to one-fifth of the seats in all companies with 150 or more employees. In future, they will have a right to training in order to better fulfill their duties on the board. Since June 2019, Finland has had a red-red-green government with the participation of two left-liberal parties. The coalition agreement provides for the development of co-determination "to strengthen trust between employers and employees". Previously Finland had a conservative government with the participation of a right-wing populist party, which triggered a general strike in September 2015 (see [report in EWC News 3/2015](#)).

[Government press release](#)

[Workplace representation in Finland](#)

## **4. Hostile takeovers keep works councils busy**

### **French works councils force temporary merger standstill**



On 9 October 2020, at the request of several works councils of Suez, the water and waste management group, a court in Paris suspended the purchase of a 30% block of shares by its competitor Veolia Environnement. The workforce, together with the Suez management, wants to preserve the independence of the long-established company and has been holding protest demonstrations for weeks under the slogan "Always Suez" (see [report in EWC News 3/2020](#)). Veolia had acquired the shares for 3.4 billion € on 5 October 2020, but for the time being is not allowed to exercise voting rights. Following the court decision, the shares of the companies concerned

fell sharply. The Paris Court of Appeal upheld the ruling on 19 November 2020, halting the hostile takeover for several months, as in the Gaz de France case in 2006 (see [report in EWC News 1/2008](#)).

The court granted the request for an interim injunction because the Suez works councils had not been informed nor consulted on "decisions already taken". The secretary of the European works council declares: "We require detailed and sound economic information, consistent with social measures, allowing the employee representatives to form a reliable and motivated opinion." So far there has only been information in the press. If the takeover goes ahead, 10,000 jobs would be threatened, half of them in France. In the fight against the hostile takeover, Suez's management suffered a defeat on 19 November 2020. The commercial court in the Paris suburb of Nanterre prohibited the transfer of the water business to a Dutch foundation. This was intended to prevent Veolia Environnement's planned sale of this division to a private equity fund.

#### **The affair within the affair**

The press has nicknamed Veolia Environnement's strategy as a "blitzkrieg" to conquer its rival. The success of the works councils in court has turned it into "trench warfare", the outcome of which no one can predict. The share package belonged to the Engie electricity group, in which the French state holds a 24% stake. There was a conflictual vote of Engie's administrative board, on whether to sell the Suez shares to Veolia Environnement. The 13 members include four employee and three government representatives. Seven members voted in favour of the share sale and four against (including the three government representatives). Two employee representatives from the CFDT union did not attend the meeting, allegedly at the request of the French President's office. The French left-wing party "La France Insoumise" is seeking to investigate all these events in a parliamentary enquiry.

[Press report on the court ruling](#)

[Press report on the transaction](#)

[Interview with the works council's lawyer](#)

[Press report on the court of appeal's ruling](#)

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#### **Demands for safeguarding pension rights and social standards**

On 29 October 2020, G4S management, together with its European Works Council, called on shareholders to reject a hostile takeover bid. G4S, based in Greater London, is the world's largest security services provider (including cash-in-transit, guarding and facilities management) with 533,000 employees in 85 countries. Since 30 September 2020, GardaWorld from Canada has been trying to swallow its five-times-larger British competitor G4S. On 9 October 2020, the US security group Allied Universal also submitted a bid. It is twice the size of GardaWorld, but still considerably smaller than G4S.



The workers affected have a lot at stake, especially their pension rights. The EWC stresses however further aspects in its public statement. For example, it calls for a pan-European economic committee to better assess the consequences of future restructuring. Both parties should commit to safeguarding jobs and existing working conditions. GardaWorld has so far only committed to this for the UK. The EWC praises EU industrial relations, social dialogue and collective bargaining at G4S and notes that GardaWorld has no track record on these matters. It is complaining that there are unresolved human rights and labour rights issues in both companies outside Europe.

EWC members advocate a modern approach to industrial relations with regular social dialogue at national, European and global levels. This should be complemented by transparent reporting in the company's annual report, including a special section for the views of employee representatives. G4S has had an EWC in place since 1996 (see [report in EWC News 4/2012](#)) and concluded an international framework agreement with trade unions in 2008 (see [report in EWC News 4/2008](#)).

[Press report on the hostile takeover](#)

[The opinion of the European Works Council](#)

[The opinion of the British trade union GMB](#)

## **5. Court rulings and fines**

#### **Swedish textile trading company must pay record fine**

On 1 October 2020, the Hamburg Commissioner for Data Protection and Freedom of Information imposed a 35.3 million € fine on the Hamburg-based company Hennes & Mauritz Online Shop. In its





service centre in Nuremberg, private information on several hundred employees had been collected without their knowledge since 2014, including on their state of health and personal relationships. Through one-on-one talks and corridor conversations supervisors were able to acquire a broad knowledge of each employee's private life, ranging from harmless details to family problems and even religious confession, and stored this in a digital personnel file with a high level of detail. Due to a configuration error, this data was made accessible to the entire workforce for a few hours in October 2019 and was discovered by some employees by chance. H & M now wants to pay a financial compensation of 2,500 € to each one affected for the violation of their privacy. The scandal also led to the first election of a works council at the Nuremberg service centre in summer 2020.

[Press release from the Data Protection Commissioner](#)  
[Background report on the circumstances](#)

The fine is intended to deter employers from violating privacy and is based on the EU General Data Protection Regulation, which is in force since May 2018 (see [report in EWC News 1/2016](#)). According to Article 83, fines must be "effective, proportionate and dissuasive" and can represent up to 4% of the total annual turnover generated worldwide. Recital 36 of the EWC Directive also requires "sanctions that are effective, dissuasive and proportionate to the gravity of the infringement". However, in a report in May 2018, the European Commission found "that in most Member States dissuasive and proportionate sanctions are not imposed" when European works council rights are disregarded (see [report in EWC News 2/2018](#)).

[Full text of the General Data Protection Regulation](#)

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### **Dismissal of EWC vice-chairperson declared null and void**

On 13 October 2020, the Supreme Court in Madrid ruled on the question of whether an EWC member may be dismissed for passing on confidential information from the European Works Council to works councils in Spain. The US company IBM had fired the EWC vice-chairwoman without notice, which the judges considered a violation of the freedom of association guaranteed by the constitution. In addition to full salary back payment, she received compensation of 18,000 € (the upper limit in Spain is 25,000 €) and was able to return to work after five months.



In February 2018, immediately following an EWC meeting, she had informed the Spanish works councils of an impending downsizing of the workforce. The works councils then proceeded to inform the workforce. On 9 April 2018, she was dismissed without notice, although she had been employed by the company since 1984 and had been a member of the EWC since 1999. On 3 September 2018, a social court in Madrid declared the dismissal invalid. However, the company continued court proceedings all the way up to the Supreme Court but failed in all instances. The EU Directive explicitly stipulates that EWC members may (and should) inform the works councils in their country. There are provisions for the EWC to directly inform the workforce only if there is no employee representation in a country, for part or all of the workforce.

### **Redundancies are in principle not subject to confidentiality**

The Supreme Court made a very far-reaching decision. Even if information concerning a restructuring is explicitly declared confidential by central management, if jobs are affected, it can never be subject to an obligation of confidentiality in the EWC. This view is also shared by the European Court of Justice in a 2005 ruling. An employee representative on the board of a Danish bank informed his union about a planned merger. Such a breach of the duty of confidentiality is permissible if it concerns the disclosure of information for the fulfilment of trade union duties, according to the European Court of Justice (see [report in EWC News 3/2009](#)).

This principle is also adopted in the EU Directive on the Protection of Trade Secrets of June 2016. The acquisition and disclosure of trade secrets is always considered lawful in the context of the exercise of the rights of workers' representatives to information, consultation and participation and in the collective defense of the interests of workers and employers, including co-determination (Articles 3 and 5 and Recital 18).

[Full text of The EU Directive on the Protection of Trade Secrets](#)

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### **US computer manufacturer loses legal battle against its EWC**



On 2 December 2020, the London Central Arbitration Committee (CAC), the first instance in UK EWC law, ruled that HP Inc. central management had not sufficiently informed the EWC of 349 job cuts. On 7 May 2020, the EWC held an extraordinary video conference during which central management had provided only superficial documentation. Management claimed that all important information was only available in the US.

In the oral video hearing held on 5 November 2020, the EWC argued that due to the lack of economic figures it was not in a position to "to undertake an in-depth assessment of the possible impact" as required by Article 2-f of the EWC Directive. It was therefore unable to render an opinion. The company nevertheless carried out the planned layoffs. The CAC, after reviewing extensive documents, minutes and emails, confirmed the EWC's reasoning but did not impose any sanctions. In July 2019, the Employment Appeal Tribunal for England and Wales had already rejected an EWC's claim for injunctive relief in the comparable case of the US company Oracle (see [report in EWC News 3/2019](#)).

The CAC based its decision in particular on the following aspects: The central management had not presented any economic reasons for the job cuts in each specific case. There was also no breakdown by country and by activity. There was insufficient information on the associated savings and costs. The impact on remaining workers and clients was also not communicated. In fact, the meeting held on 7 May 2020 was a sort of "song and dance act" without the possibility of analyzing the reasons behind the restructuring. The CAC decision on HP Inc. reminds us of the ruling in the case against Alcatel-Lucent, the telecom equipment supplier, in France in April 2007 (see [report in EWC News 2/2007](#)).

### **CAC ruling despite change of national law**

HP Inc., a successor of Hewlett Packard, is the world's largest manufacturer of printers with a 40% market share. In October 2015, the division for enterprise customers was spun off under the name Hewlett Packard Enterprise (HPE). Of the original 300,000 employees worldwide, only 50,000 remain at HP Inc., mostly in sales and services. Hewlett Packard was already involved in a court case in 2012. Once again, this was also triggered by inadequate information on collective redundancies (see [report in EWC News 3/2012](#)). Afterwards, the EWC was dissolved and negotiations took place for years in the successor companies (see [report in EWC News 1/2017](#)). Negotiations failed at both HPE and HP Inc. and both operate on the basis of the subsidiary requirements ("EWC by law"). The EWC of HP Inc. which represents 9,350 employees in the European Single Market was previously operating under UK law but since 1 November 2020 is now under Irish jurisdiction. Although the dismissals have been completed and the CAC is now no longer competent, the case was taken to its conclusion. In Germany, such court proceedings are dismissed if they concern past, completed procedures, as was the case most recently with Deutsche Telekom (see [report in EWC News 2/2019](#)).

[Full text of the CAC ruling](#)

## **6. Negotiations on EWC agreements**

### **French family business integrates German car repair workshops**

On 7 October 2020, Mobivia's European works council held its constituent meeting by video conference. Prior to this, a special negotiating body had completely revised the EWC agreement that had been in place since 2005. Mobivia is based in Sainghin-en-Mélantois near the Belgian border and acquired the German ATU Group with 10,000 employees in Germany and Austria, in 2016. As a result, Mobivia grew to double its size with 2,070 workshops in 19 countries and became the European market leader for vehicle maintenance. The EWC represents 21,300 employees in eight EU countries.



In the new EWC, ATU's German workforce represents almost half of Mobivia's European workforce and holds five of the 14 seats. The EWC board is made up of five employee representatives, two each from Germany and France and one from Portugal. The EWC is chaired by the employer, the secretary is from Germany and his deputy from France. They meet at least once a quarter. The 14 EWC members also meet every quarter. In addition, the board can call an extraordinary plenary meeting of the EWC at any time. Meetings are held exclusively in France. The day before, the employee representatives hold an internal preliminary meeting, in which a substitute member from each trade union may participate. In the plenary meetings reports are not only given by central management, but also by the management of individual countries.



The EWC has no fixed budget which is unusual for a French EWC agreement. Instead, the central management - following the German model - bears all costs incurred, including legal advice for the EWC. Each member and substitute member is entitled to ten days training during the four-year term of office, four of which are individual days in the respective country of origin. In addition to the time for meetings, the members of the EWC Board are entitled to 15 days time-off work per year, the other delegates to seven. In addition, the Board is entitled to a total of twelve days per year to visit subsidiaries. As is customary in France, the EWC commissions an chartered accountant once a year to analyse the company balance sheets.

[Report on the constituent meeting](#)

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### French nursing home operator lets negotiations fail



Negotiations on an EWC agreement for Orpea broke down on 23 October 2020. The group operates around 1,000 facilities with over 80,000 beds in 14 EU countries and has expanded rapidly through acquisitions. In Germany, it ranks fourth in the industry. The European market leader is Korian, where an exemplary EWC agreement was signed in April 2019 (see [report in EWC News 2/2019](#)), the first ever in the care sector at the time.

After the application to establish an EWC in November 2017, the constituent meeting of the special negotiating body took place in April 2018 in Bischoffsheim (Alsace). Central management waited until shortly before the end of the three-year negotiation period to present its very first draft of an EWC agreement. In the midst of the Coronavirus pandemic, it then wanted to complete the negotiations during a face-to-face meeting on one single day and refused to hold a video conference. All delegates refused to participate. As a result, an EWC "by law" is now being established for Orpea which is based on the subsidiary requirements of the French Labour Code and will cover the 60,000 employees in the EU.

The management of this publicly listed group has repeatedly drawn attention to itself through anti-union behavior. In France, CGT employee representatives were spied on and in Belgium there were strikes over understaffing. The German subsidiary Celenus engaged in a dispute lasting for years with the ver.di trade union.

[Report on the constituent SNB meeting](#)

[Press release on the breakdown of negotiations](#)

[Report on the events in Germany.](#)

## 7. Unusual situations for European works councils

### German software provider changes legal form for the umpteenth time

Since 18 June 2020, CompuGroup Medical (CGM), based in Koblenz, has been operating as an SE & Co. KGaA (partnership limited by shares). The publicly listed family company develops software for the healthcare sector and had converted to a European Company (SE) in February 2016, thereby freezing the one-third employee participation in the supervisory board (see [report in EWC News 1/2016](#)). Now there is no longer any co-determination in the SE and the two employee representatives on the SE supervisory board have lost their seats.



Although the KGaA is now subject to German full-parity co-determination, the supervisory board has fewer rights than in an SE. Of the twelve members - following the elections which are to be held shortly - four employee representatives will be appointed from the German works councils and two from the trade unions. The SE works council with 20 members has also been dissolved. The workforce can request to set up a "normal" European works council, but negotiations can take up to three years. In the meantime, there will no longer be any transnational representation for the sites in 15 European countries. CGM has 6,300 employees worldwide and also has a presence in South Africa, Turkey and the USA. At seed producer KWS Saat, which also converted into an SE & Co. KGaA in July 2019, the SE works council was converted into an EWC and was able to continue working seamlessly (see [report in EWC News 4/2019](#)).

[Full text of the conversion report](#)

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## North German building materials and energy trading group does without SNB



Since 24 September 2020, the team Group from Süderbrarup (near Flensburg) has been operating as a European Company (SE). The company has 3,200 employees and only has a presence in Germany. While the legal form SE is usually used to avoid co-determination, it is exactly the opposite case in the team SE. Previously, the supervisory board was composed of four employee and eight shareholder representatives.

Now there is almost full-parity representation in the SE: five out of the eleven supervisory board members are appointed by the German Group works council. This construction therefore matches the majority situation which is set out in the German Co-determination Act in the case of contested votes in the supervisory board: the employee bench can always be outvoted due to the double voting rights of the chairperson. An SE agreement based on only one-third participation would not have been a fallback solution with well over 2,000 employees.

The co-determination agreement was concluded between the management and the German Group works council on 11 December 2019. It does not provide for the establishment of an SE works council, as there are no employees abroad. For the same reason, a special negotiating body (SNB) was not established. The management describes this in its merger plan as an unnecessary bureaucratic act. However, waiving an SNB is only possible under the EU Merger Directive, whereby the standard rules then automatically apply (see [report in EWC News 4/2017](#)).

[Press release on the SE conversion](#)  
[Full text of the merger plan](#)

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## US management declares EWC dissolved

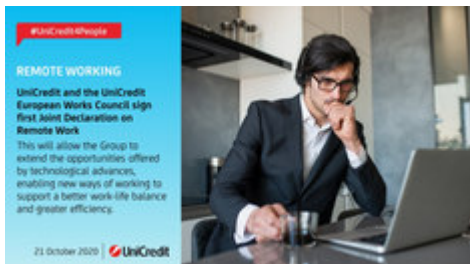
As of 20 October 2020, there is reportedly no longer a European works council at the IT group Verizon. The UK subsidiary informed the previous chairperson from France of this decision. At the same time, the headquarters in the US instructed the subsidiary in Ireland to initiate new elections, which is happening extremely slowly. The management is annoyed with the EWC because it has initiated legal proceedings several times. Most recently, the company was even fined (see [report in EWC News 3/2020](#)).



Management argues that the previous EWC agreement under UK law was for a four-year term and was not renewed. It does not provide for any prolongation. Therefore, the EWC is automatically dissolved and must be completely re-elected. In the interim period, which can last up to a year, there is no EWC and management is free to carry out any restructuring without information and consultation. The EWC (which allegedly no longer exists) filed a complaint against this legal opinion with the Central Arbitration Committee (CAC) in London on 15 December 2020. The EWC was originally founded in March 2009 (see [report in EWC News 2/2009](#)).

## 8. Dispute over transnational company agreements

### Joint declaration on Remote Working at UniCredit



On 21 October 2020, a declaration on remote working was signed between the central management and the European works council of the Italian bank UniCredit, covering over 90,000 employees in Europe. In addition to Italy, Germany and Austria, the bank has a strong presence in Central and Eastern Europe. The guidelines, principles and minimum standards of the declaration are to be implemented through local negotiations in the respective countries.

The joint declaration already looks beyond the Coronavirus pandemic and aims to better balance professional and private life. Home office should only be possible on a voluntary basis, and respect normal working hours, which therefore implies the right to disconnect. Respect for privacy and the protection of personal data are important. At the head office and central facilities in each country, 40% of the working time can be transferred to the home office on a weekly or monthly basis (e.g. two days per week), and in the branches up to 20% (e.g. one day per week).

The Select Committee of the EWC will regularly monitor the implementation. The declaration explicitly refers to a position paper of the European Social Partners in the Finance sector on the impact of digitalisation on employment from November 2018. At UniCredit, there are already four transnational agreements with the European Works Council and, since January 2019, an international framework agreement with the trade unions (see [report in EWC News 1/2019](#)).

[Press release on the conclusion of the declaration](#)

[Full text of the declaration on remote work](#)

[The position paper of the social partners in the finance sector](#)

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### Harsh criticism from the Italian banking union FABI

In an article published in the business newspaper, Il Sole 24 Ore on 13 November 2020, the General Secretary of the FABI trade union, Lando Maria Sileoni (photo), called on the banking sector employers' association ABI to intervene against the joint declaration of the European works council and the management of UniCredit. FABI is the largest union in the Italian finance sector, with almost 100,000 members, and is affiliated to UNI, the European Federation of Services Unions, but competes with the three major Italian confederations. The criticism highlights a fundamental conflict over the role of unions on the one hand and European works councils on the other.



According to Lando Maria Sileoni, UniCredit is only allowed to negotiate working conditions for Italy with the Italian trade unions and no one else. "The European Works Council can neither negotiate nor elaborate or conclude framework agreements". The joint declaration violates Italian Labour Law and the national sectoral collective agreement. In Italy, collective bargaining is regulated by the social partners themselves in a nationwide agreement (see [report in EWC News 3/2018](#)). Sileoni fears that remote working in subsidiaries will lead to precarious working conditions and the possibility to sell banking products online. Such "wild" forms of remote working at UniCredit would not only lead to further job losses, but automatically to the loss of acquired rights.

[Full text of the article](#)

### Can the EWC be a bargaining partner for a company agreement?

Transnational company agreements have been concluded in more and more companies since 2000. They go beyond the narrow framework of information and consultation and regulate, for example, minimum social standards or the anticipation of company restructuring. The European works council is often the initiator and involved in the negotiation and subsequent monitoring. So far, however, there exists no legal certainty for this form of agreement (see [report in EWC News 3/2013](#)). It is also unclear who should sign the agreements: the European works council (i.e. German model) or the unions (i.e. French model) or both? In practice, the German model, whereby company employee representatives lead negotiations and end up signing themselves, is becoming more and more prevalent. In September 2019, this was also done in the Italian insurance group Generali (see [report in EWC News 3/2019](#)).

[Database with texts of transnational company agreements](#)

## 9. The view beyond Europe

### Japanese sports goods manufacturer expands framework agreement



On 1 October 2020, Mizuno signed a new global framework agreement with two trade unions in Japan and the International Trade Union Confederation industriALL in Geneva. It builds on and significantly expands the agreement concluded in 2011. Mizuno not only commits to international labour standards, human rights and free trade union activity for 5,100 employees of the group, but also integrates all suppliers.

Management and unions set up a global labour relations committee that meets annually to monitor the agreement. The unions are given access to all suppliers' production sites around the world. In the event of disputes, either side can go to the Court of Arbitration of the Swiss Chambers of Commerce. Mizuno is only the second company in Japan to have signed an international framework agreement. The department store chain Takashimaya made a start in 2008 (see [report in EWC News 4/2008](#)).



### **Tchibo to minimise impact of Coronavirus pandemic in supply chain**

On 12 November 2020, the central management of the German coffee and consumer goods chain, Tchibo published a joint declaration with the International Trade Union Confederation industriALL in Geneva. It includes a commitment to contribute to the economic recovery of the clothing industry and the safety of workers in global supply chains. Payments to suppliers are to be stable and reliable, and the health and safety of all workers in Tchibo's entire non-food supply chain is to be ensured.



The Hamburg-based company has 11,450 employees, including 7,400 in Germany. There are shops in seven other countries, particularly in Austria, the Czechia and Hungary. An international framework agreement has been in force since September 2016 (see [report in EWC News 3/2016](#)) and Tchibo joined 43 companies in calling for a supply chain law in December 2019, which is also supported by the German government (see [report in EWC News 4/2019](#)).

[Report on the joint declaration](#)  
[The Tchibo sustainability report](#)  
[The demand for a supply chain law](#)  
[Reports on South East Asia's working world in these times of pandemic](#)

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### **Global program to improve health and well-being**



On 18 November 2020, Axa's central management signed a health charter with the European works council. The French insurance is aiming to better harmonize social benefits worldwide. Each of its 121,000 employees is entitled to a full medical check-up every two years and an annual flu vaccination. Axa will offer information and awareness days in all of its locations around the globe to prevent health risks. Employees with professional or personal problems can access counselling and psychological support. The implementation of the charter will start in January 2021 and will be monitored by the European works council.

[Company press release](#)  
[European works council press release](#)  
[Full text of the health charter](#)

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## **10. Campaigns and Information services**

### **Petition for more democracy in the workplace**

The European Trade Union Confederation (ETUC) has for many years been criticizing the inadequate EU legal framework for democracy in the workplace. The Coronavirus pandemic, with its massive social and economic consequences, demonstrates very clearly why workers need to have their say. On 16 October 2020, it launched an online petition calling in particular for greater involvement of employee representatives in restructuring and a revision of the EWC Directive. It was handed over to the European Parliament on 26 November 2020.



[Full text of the petition](#)  
[Press release on the presentation of the petition](#)

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### **Online guidelines on occupational health and safety**

The European Agency for Safety and Health at Work (EU-OSHA), based in Bilbao, Spain, provides interactive multilingual guidelines on its web page. These include e-tools on handling dangerous substances in the workplace, work-related risks in vehicle safety, health protection for senior employees and managing stress and psychosocial risks.



## [Overview of the guidelines](#)

### Blog posts on European economic policy

The German Friedrich Ebert Foundation is accompanying the German EU Council presidency on its website with a blog series on a more sustainable economic development. It includes contributions from MEPs, academics, unionists and representatives of associations from Germany and abroad on the visions for the future of the EU, the hoped-for Green New Deal and the social dimension of Europe.



[The blog on progressive economic policy](#)

### Campaign for fair taxation of Internet Corporations



Multinational corporations pay 30% less corporate tax than local companies and taxation in the digital economy, at just under 9.5%, is not even half as high as the 23.2% in the traditional economy. "Make Multinationals pay" is the demand of a campaign which the Austrian Trade Union Confederation (ÖGB) and the Federal Chamber of Labour are running for fairer taxation.

[The campaign website](#)

[Background report on tax avoidance](#)

[Demand for a global minimum level of taxation](#)

## 11. New publications

### Overview of the low-wage sector in 28 European countries

On 28 June 2020, the European United Left Group in the European Parliament presented this comprehensive analysis of minimum wage systems in 28 countries (EU plus the UK). In addition to facts and figures on the scope and level of minimum wages in each country, current disputes on minimum wage development are also described in detail. Minimum wages define a lower limit below which certain jobs may not be paid. Most European countries have legally fixed minimum wages, a few countries have such a well-functioning collective bargaining system that the legislator does not have to intervene at all (see [report in EWC News 3/2020](#)). As a stepping-stone towards a European minimum wage policy, the European Commission presented the proposal for an EU Directive on adequate minimum wages on 28 October 2020. It also stipulates the involvement of the social partners in setting and updating each country's minimum wage.



[Download the country study](#)

[Report on the European Commission's proposal](#)

[Full text of the proposed directive](#)

[Critical evaluation of the proposed directive](#)

### Work and Innovation from Germany to South Africa

In September 2020, this study by the Friedrich Ebert Foundation was published in four languages as part of the project "Trade Unions in Change 4.0". The authors outline how works councils and IG Metall trade union can shape digitalisation in the interests of workers and proactively engage in innovation processes. They describe this using four case studies: a Bavarian site of Mann+Hummel, a manufacturer of air filter systems; four Airbus sites in northern Germany; a Siemens geared motor plant in Tübingen and the US automotive supplier Lear Corporation, where the European Works Council was also involved. After extensive production capacities were established in Serbia, Morocco



and South Africa, the EWC invited guests from these countries to its meeting in 2019. Initially, management refused to give its report in front of the guests. Since 2020, there has been a "Regional Partnership Meeting" for Europe and Africa.

[Download the study.](#)  
[Download the study.](#)  
[Download the study.](#)  
[Download the study.](#)

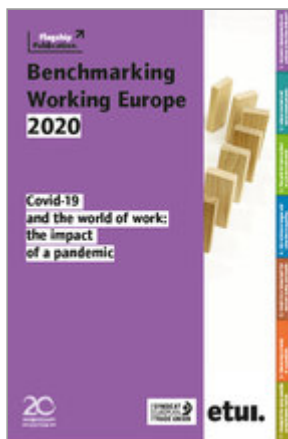
## Dealing with redundancies in the UK

On 6 October 2020, the British Trades Union Congress (TUC) published a guide on dealing with redundancies. In the UK, the Coronavirus pandemic has led to large-scale redundancies - even more than in other countries (see [report in EWC News 3/2020](#)) - so the guide currently has a significant relevance. It contains chapters on the different ways of terminating employment, on the selection criteria for compulsory redundancies, on the consultation of employee representatives in case of collective redundancies and on legal action. The special rules for insolvency and for apprentices are also presented. A case study describes the re-skilling opportunities offered after the collapse of the tourism group Thomas Cook in September 2019. Large parts of the labour legislation covered in this guide are based on EU requirements and are to remain in place despite Brexit.



[Guide download](#)  
[Study on lack of knowledge of dismissal legislation in UK companies](#)

## Annual stocktaking of the European working world



An anniversary volume of the "Benchmarking Working Europe" series was launched in Brussels on 10 December 2020. The yearbook summarizes the most important developments in industrial relations in Europe and has been published by the European Trade Union Institute (ETUI) for 20 years. The current edition focuses on the Coronavirus pandemic, which is a common thread running through all chapters. It deals with economic developments, the labour market, ways towards an ecological restructuring of the economy, minimum wages and collective agreements, occupational health and safety and democracy in the workplace. At the end there is an overview of possible future scenarios following the pandemic. Chapter 6 is particularly interesting for European works councils. The authors point out that workers' rights are not in quarantine during the pandemic. However, despite the approaching tsunami of restructuring, they are often ignored (see [report in EWC News 3/2020](#)).

[The Yearbook website](#)  
[Overview of chapter 6](#)  
[Download the 2020 Yearbook](#)  
[Download previous yearbooks](#)

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

### EWC basic seminar under Corona conditions

From 20 to 23 October 2020, the annual introductory seminar took place at Montabaur Castle. The originally planned date in April 2020 had to be postponed due to the Coronavirus pandemic. Although a number of registered participants cancelled at short notice for this alternative date, a small group of EWC members from six companies did finally make the journey. The program included the labour relations of the most important EU countries, the design of a consultation procedure and a number of practical case studies. The introductory seminar has been held every year since 2009 and the next one is planned for 25 to 28 May 2021.





## SE fundamental issue on its way to the Federal Labour Court



On 29 October 2020, the Hamburg State Employment Court rejected the application of the German Group works council of Olympus to establish a Special Negotiating Body. The central management of the Japanese group is resisting both the establishment of an SE works council and a European works council, as well as the (re)introduction of co-determination in the supervisory board. A legal construction as SE & Co. KG (SE limited partnership), initially founded without employees as a "letterbox company" in England and later relocated to Hamburg, now acts as a holding company for around 7,000 employees in Europe (see [report in EWC News 3/2019](#)).

The construction is above all praised by company lawyers, since it allows practically every form of cross-border employee participation, including co-determination on the supervisory board, to be completely bypassed. However, the Group works council considers this to be a violation of employee participation protected by EU law and is being advised on this by the EWC Academy. In the course of the SE conversion, all employee representatives had to leave the supervisory board in 2013.

The Hamburg State Employment Court granted leave for appeal to the Federal Labour Court because "decisive legal questions arising from SE legislation for the establishment of an SE without employees and the question of the applicable law following the transfer of the company's headquarters", have not yet been clarified by the highest courts. As this is a precedent for the entire SE landscape, the Federal Labour Court could immediately refer the matter to the European Court of Justice, as it did in August 2020, in the case of the software group SAP (see [report in EWC News 3/2020](#)).

### [Background information on the legal form of SE](#)

## Recent interview and news article on co-determination avoidance

The December 2020 issue of the monthly magazine "Arbeitsrecht im Betrieb" (Labour Law in the Workplace) contains an interview under the heading of "EWC Act requires improvement". In it, the managing director of the EWC Academy expresses his opinion on the question of what European works councils can expect from German labour courts. There is a significant gap with court rulings passed in France and Great Britain on EWC matters. The interview ends with the conclusion: "The German EWC Act does not comply with European law. However: if it's not legally challenged then nothing will change."

[Full text of the interview](#)  
[Subscribe to the magazine](#)



On 14 December 2020, a technical article entitled "Co-determination avoidance - Tesla is only the tip of the iceberg" was published in the Works Council News of the Institute for Further Education of Works Councils (ifb). In it, the managing director of the EWC Academy describes how the SE legal form and other foreign legal forms are used to undermine German co-determination.

[ifb Works Council News article](#)

## 13. Current seminar schedule

The EWC Academy and its forerunner organisation has been organising conferences and seminars for members of European Works Councils, SE Works Councils and Special Negotiating Bodies since January 2009. To date, 844 employee representatives from 292 companies have taken part, many of them on several occasions. This represents 25% of all transnational works council bodies in Europe. In addition, there are numerous in-house events and guest lectures given to other organizations.

### **EWC and SE seminar at Montabaur Castle**



From 25 to 28 May 2021, our annual introductory seminar for members (including future members) of European works councils, SE works councils and special negotiating bodies will take place in Montabaur. The castle is located near the ICE high-speed railway station halfway between Frankfurt-am-Main and Cologne. Several seminar modules will be offered for beginners and advanced participants.

[Introductory seminar program](#)

[Report from a previous introductory seminar in Montabaur](#)

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### **13th Hamburg conference for European and SE works councils *(changed date)***

As every year, our annual conference will be held in 2021, but due to the Coronavirus pandemic not on the usual date in January, but on 28 and 29 June 2021. To start with, the latest developments in the EWC and SE landscape and the legal impact of Brexit will be presented, followed by case studies from two companies. One of the focal points will be the proper handling of confidential information that the EWC receives - or does not receive (see [report in EWC News 2/2020](#)). The exact program will be available shortly.



[Report on the last Hamburg conference](#)

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### **Works councils between Home Office, Cloud Computing and New Media**



A data protection seminar will be held in Mainz from 5 to 7 July 2021, which is being extended to cover other current topics. The focus will be on the EU General Data Protection Regulation. In addition, topics that have gained greater importance during the Coronavirus pandemic will be covered: Home Office, Cloud Computing and New Media. During the seminar, a risk assessment will be carried out taking into account the respective company structures; issues around outsourced data processing and possible template regulations for company agreements will also be presented. The social side-events of the seminar include a visit to the historic Kupferberg Terrace, the deepest champagne cellar in the world (photo from a previous seminar).

[Data protection seminar program](#)

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### **Seminar on Industrial Relations in Hungary *(changed date)***

A seminar will be held in Budapest from 1 to 3 September 2021, which will be of particular interest to works council members in companies with sites in Hungary. What is the current situation in a country with full employment and large wage increases? How do works councils and unions represent employees in the workplace? Experts and experienced practitioners from Hungary will report on these questions. The strong interdependence of the automotive industry led to production interruptions in Germany in January 2019 because of industrial action in Hungary (see [report in EWC News 1/2019](#)).



[Seminar program](#)

[Press report on the situation of trade unions in Hungary](#)

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### **In-house events**

An overview of possible topics for in-house events can be found here:

[Examples for in-house seminars](#)

## 14. Imprint

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