

European Works Councils: “You can’t drive a car without wheels”

The WRC’s first decisions on complaints by a European Works Council – involving Verizon – raise issues that have pan-European significance, says Dr Werner Altmeyer from the EWC Academy in Hamburg. In this article, Dr Altmeyer outlines his views on the Verizon EWC decisions, the ‘professionalisation’ of works councils and why there is a need for legal clarity in Ireland.

According to a new WRC decision (ADJ-00034402), the EWC chairman of the US company Verizon is to personally pay several thousand euro for consultation and training, not the central management. This contradicts fundamental principles of the EU Directive.

Ireland is taking a special path with this decision, fundamentally different from the UK and continental Europe. On the surface, the Verizon EWC decisions (*see Legal Highlight in IRN 15/2023*) are about bills for seminars and advice, but at the heart of it are the foundations of a works council system.

The WRC decisions may support the European Commission’s criticism that sufficient access to experts is not guaranteed in Ireland. This was one of the triggering points of the infringement proceedings against Ireland launched by the European Commission in May 2022.

As a result of Brexit, Ireland has moved up to third place in the EU in terms of the number of European Works Councils. Ireland is now in the same league as Germany and France. Many more workers in continental Europe are affected by the Irish EWC legislation than workers in Ireland itself.

With the EWC, Ireland had to adopt a system into the national legal order that is alien to the Irish tradition. The “blueprint” for the EWC Directive came more from Germany-Austria-Netherlands (in terms of the structure and internal functioning of the EWC, but without co-determination) and France (in terms of information and consultation). Therefore, a look at these countries can be helpful in assessing fundamental issues of a works council system.

What is the difference between a works council and a trade union?

Unions represent members, especially in collective bargaining, and members pay a membership fee. Unions therefore have their own financial resources and are allowed to call strikes.

A works council can never call a strike, even in France. It represents the entire workforce, regardless of whether they belong to a union or not. Workers do not pay contributions to the council (except in Austria), so it has no financial resources of its own.

All necessary costs of the council are borne by the company; it is practically a kind of “department” within the company but stands outside the hierarchy. There is no upper limit for this (except in France, where there is a budget set by law).

For companies, the legal ban on strikes comes at a price. The council is the “parliament” for workers. In EWCs there are many delegates who belong to unions, but to different ones. In many EU countries there are competing unions, especially in the

Mediterranean, which can be compared to political parties in parliament. There are also EWC members who do not belong to a union, just as there are independent MPs.

LEGAL CAPACITY OF WORKS COUNCILS

The council is a collective body that can only act by majority vote, like a parliament. It is surprising that this collective responsibility is not

reflected in the Irish legal system, as only individual EWC members can take legal action.

In some EU countries, councils have the status of a legal entity, e.g. in France. They are registred with the

Companies Registration Office and have their own bank account from which they can pay, for example, lawyers.

In other countries, such as Germany and the Netherlands, councils are not a legal entity, but have legal capacity and property rights to conclude binding contracts with external business partners, which leads to an obligation for central management to bear the costs.

Contracts with an external service provider are not concluded by the employer on behalf of the council, but by the council itself. This is especially

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true when hiring lawyers, which must be based on the trust of the client (i.e. the council).

This principle of any works council system has not been taken into account at all in Irish legislation. There must be no unequal treatment of EWCs with and without a budget, or with and without legal personality. This principle was confirmed by the European General Court in a judgment of December 2022.

EWC IS PART OF CORPORATE GOVERNANCE

The agenda of an EWC is very similar to the agenda of a supervisory board. Important strategic issues of transnational significance must be submitted to both the Board and the EWC.

Implementation is only allowed after the Board has agreed and the EWC has completed consultation. In order to do its work professionally, the EWC needs extensive expert support – especially in restructuring.

According to an empirical study, the costs for this can amount to several tens of thousands of euro per year – in extreme cases up to €500,000. The total cost of an average EWC can easily reach €1 million per year or more. A large part of this is interpretation costs. Such sums can never be raised by individual EWC members.

“SPIRIT OF COOPERATION”

In a works council system, this definition has a fixed meaning: the council may not call a strike, but must resolve all disputes through legal channels. The definition does not mean that the council first needs the employer’s consent to conclude a contract with external service providers.

This is illustrated by a recent legal dispute in Austria. An EWC based on the subsidiary requirements was refused by the employer to hire interpreters for a meeting. If the EWC were to first resolve this issue through legal action, the meeting could not take place for years and the employer would be able to bring the EWC to a standstill.

Therefore, the EWC had to contract interpreters immediately and sue for the bill later. The Labour and Social Court of Vienna ruled in March 2022 that this procedure could not be objected to.

The ban on strikes is compensated by giving the council extensive access to the “means required” to create a level playing field with the employer. Lawyers, experts, administrative assistants or even (in large companies) scientific staff and extensive training entitlements are part of the normal means to be paid by the employer.

If social partnership with strong works councils were bad for business, why is Germany doing so well in the global economy?

WHY SHOULD I PAY YOUR LAWYER IF YOU SUE ME?

This is a question that Anglo-Saxon (especially US) managers often ask the council. They do not understand the system. In return for the ban on strikes, all costs must be borne by the company. This also applies when there are disputes.

In Germany, this question has been decided over and over again in countless rulings since World War II. The principle is that if the employer uses a lawyer, the council is also allowed to do so, in and out of court. The UK struggled with the issue for years, until the first decisions of the Central Arbitration Committee fully aligned with continental European principles and the principles of the EWC Directive.

In Ireland, this discussion is still to come. It means that solicitors and barristers from both sides have to be paid by the company. This applies regardless of which side wins the dispute.

Of course, it puts a lot of pressure on companies to avoid litigation. This is precisely the spirit of cooperation, because without strength on either side, there is no social partnership.

Unions without the right to strike would be collective begging. Works councils without funding would be a sham “parliament” without a function. If individual EWC members had to bear the costs, no one would run for election to avoid the financial risk.

PROFESSIONALISATION OF WORKS COUNCILS

Unions can support the EWC as an advisor, but cannot cover its costs. Some unions even invoice the employer for advice and training of the EWC and thus become a “normal” service provider. In Germany, the unions have set up their own limited companies to bill employers for council training.

In France there are large consultancies that exclusively advise councils. The market leader in Paris has 800 employees and an annual turnover of over €100 million. In Germany, the market leader has 200 permanent employees and 1,000 freelancers. In addition, there are numerous law firms that work exclusively for councils.

The professionalisation has given rise to an industry of its own, and there are even special trade fairs for works councils. This may sound unusual for Ireland.

But clarity and legal certainty must also prevail for this industry under Irish law, because Ireland is now playing in the same league as Germany and France. And EWCs in Ireland need access to this support, otherwise the car has no wheels.