

**REMARKS BY TOM HAYES**  
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Covid-19 presents businesses, and the societies in which we are embedded, with a challenge unprecedented in many of our lifetimes. A global pandemic. Impacting everyone and everywhere at the same time.

Our priority must be the safeguarding of lives, the health and safety of our employees and customers and doing what is necessary to ensure that the business can rebuild and rebound when this is over.

As we will hear on this call, many countries have financial schemes in place to assist companies in retaining employees and keeping their skill base intact. Redundant, skilled employees are not easy to replace. And it is costly to do so. So, you'll probably want to make use of these schemes if you can.

Tough and heart-wrenching decisions always pose for us this question: are we doing the right thing? The right thing for all our stakeholders, including our employees, their families, and the communities in which we are based? Get it wrong and reputations that took years to build will be shredded and the court of public opinion will be unforgiving.

We have never been in such a situation before so there are no stars to guide us. We all have to decide as we go.

If the priority now is the safeguarding of lives, the health and safety of our employees and doing what is necessary to ensure that the business can rebuild and rebound when this is over, then urgency may have to take priority over process.

## **So, do we need to inform and consult EWCs over Covid19-related decisions?**

Ideally, yes but in today's reality how practical is it? Just think for a minute of what is required either under agreements or the Subsidiary Requirements in "exceptional circumstances".

Putting together a report which is sent to the EWC in sufficient time so that the members of the EWC can undertake an "in-depth" assessment, with the help of an expert, and prepare for consultations. We then have to organise a consultation meeting and wait for the EWC's opinion.

In all honesty, between the time we put a report together and the time of the meeting the information would be well out of date. Not much point in having meetings on the basis of information that is no longer relevant.

Certainly, as decisions are being made we should keep our EWC members informed, where possible. But, quite frankly, a voluntary opinion from an EWC is of little value when economic survival and the lives and health of many thousands of employees may be at stake.

So, yes, we should inform when we can, but the priority has to be to act when we must with speed and decisiveness and later, when this is behind us we can explain, as necessary.

And if this is true of exceptional circumstances meetings, the it is even more true of the Annual Meeting. And let me put it bluntly. The annual meeting can wait.... And wait again if necessary.

## **So, can and should we hold meetings virtually?**

The original EWC legislation was crafted in a time before the internet, laptops and mobile phones had the capacity that they have today. To meet, you had to meet in person. Not so today. The technology allows us to meet virtually.

Or, as I prefer to put it, “connected meetings”, because the words “virtual meeting” convey the impression that they are not real meetings. Like fantasy football.

But connected meetings are real meetings and they will be the way of the future.

In light of Covid-19, meeting in a connected way is the only option that is now available. There is a lockdown on travel, save for essential workers. And I doubt that EWC meetings could justify the risk to health or satisfy our obligations under emergency legislation.

For some companies, such as those in the IT space, connected meetings are relatively easy to arrange. They have the technology and most of the EWC members work with electronic meetings in their day jobs. English is generally the working language.

For other companies, connected meetings may not be so easy. And in all companies, EWC members may not have easy access to the technology, bearing in mind that interpretation may be required and the need to ensure sufficient security for sensitive discussions.

On the issue of interpretation, it is possible to provide interpretation for connected meetings. Interpretation is not a barrier to such meetings,

It seems to us that, if at all possible, invitations to connected meetings should be issued to EWC members in current circumstances, if indeed meetings are required. But it may simply not be possible if vital and urgent change has to be made, and made at speed.

EWC members will be suspicious that if they agree to connected meetings now, companies may try to avoid in-person meetings in the future. I personally believe that we are going to see a lot more conference and video meetings in the future. But I also believe that we will still need face-to-face meetings. The interactions that occur in and around in-person meetings, over dinner, coffee breaks, beer in the bar, is the “social glue” that sticks things together.

Obviously, this is a call each of you have to make for yourselves. But I would advise being open and saying that the future will be a mix on real/connected meetings. The idea that every time we need to meet we all have to get on a plane is dead. Connected meetings go with the grain of reducing carbon footprints. Face-to-face only when it adds genuine value will be the order of the day in the future.

Sure, when this is over we will have to rethink some things, many things, and employee relations practices will also have to change. 1970s methodologies belong in the 1970s.

### **What happens if the EWC refuses to meet?**

Then, it refuses to meet and sidelines itself. EWCs based on UK or Irish law that refuse to meet will take themselves out of the picture. Their role is to offer a voluntary opinion on proposed decisions, if they so wish. As the UK’s CAC made clear in *Oracle* the fact that an opinion is voluntary and not mandatory means there is no obligation on the employer to wait for the opinion before proceeding.

Unless the Agreements constituting them say otherwise, these EWCs have no veto on management decisions, no delaying powers. So, if EWCs refuse to meet, and they can only meet in a connected way in current circumstances, then management simply moves on and takes needed actions.

Certainly, meetings can be postponed, but until when? I see that some football leagues are still hoping they can complete the season. Some hope. Just accept that a lot of

things in 2020 will have to be written off. As the Olympic Committee has finally recognised.

EWCs annual meetings fall into the category of “dispensable in emergency circumstances”. If EWC meetings can be arranged electronically and the offer is refused, then we just take the view that there will be no meetings. And when business does return to normal it will likely be a very different world.

### **Could courts subsequently annul decisions taking with informing and consulting EWCs?**

Under UK law, TICER makes it clear that neither the CAC nor the EAT has the power to set aside management decisions or to annul actions taken and implemented. Irish law is not so explicit, but I would be very surprised if Irish courts took it upon themselves to grant themselves such powers. And if they did, the law would surely be urgently reviewed.

The likely penalties are simply financial. About €12K under Irish law, and STG100K under UK law. But, quite frankly, I cannot see any court finding that management which took quick and necessary action in the face of Covid-19 at fault because it failed to inform and consult its EWC, especially if it had offered to inform virtually, to meet virtually, and that offer was declined.

So, in conclusion, do what you can in the circumstances. Do what you can using the technologies available. Do what you believe to be right.

At the end of the day, we can do no more.