

Coordination and Interaction in European Works Councils



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Eckhard Voss

Senior advisor and member of the management board at wmp consult
eckhard.voss@wilke-maack.de

Fabrice Warneck

Director of Syndex Europe and International
f.warneck@indewo.eu

Sarah-Schulze Marmeling

Consultant and researcher at wmp consult
Sarah-schulze-marmeling@wilke-maack.de

Niklas Franke

Project Officer at the ETUC
nfranke@etuc.org

Stefan Gran

Senior Advisor on Workers' Participation
sgran@etuc.org

TABLE OF CONTENTS

	FOREWORD	6
1	INTRODUCTION	8
	1.1 Background, policy context and objectives of the research	8
	1.2 Methodology and case studies	9
2	DESK RESEARCH: WELL-KNOWN PROBLEMS AND POSSIBLE SOLUTIONS	11
	2.1 Benefits and value of European Works Councils	12
	2.2 Interaction and interlinkages between different levels of workers' voices as an important challenge for EWCs	13
3	FROM DIVERSE INDUSTRIAL RELATIONS AND SOCIAL DIALOGUE TO A BROKEN MIRROR?	16
	3.1 Quality and efficiency of social dialogue in transnational companies	16
	3.2 Legal changes to social dialogue at national and European level also have an influence	17
	3.3 The role of trade unions in EWCs: clear added value but lacking a clear mandate	18
	3.4 Board-level participation makes a difference ... under certain conditions	19
	3.5 Legal and economic experts reinforce the EWC members' position	20
	3.6 Ongoing and additional future challenges	20
4	INTERACTION AND COORDINATION	22
	4.1 Confirmation of well-known facts as regards top-down and bottom-up processes of communication and information flows and articulation of interests	22
	4.2 The expanding role of the Select Committee: democracy versus efficiency?	23
	4.3 Going virtual: impact and lasting effects of the COVID pandemic	24
	4.4 Role of coordination by sectoral trade unions at European and national level in relation to EWCs	24
	4.5 Linking EWCs, European sectoral trade union policy and EU level sectoral social dialogue	25

5	TRANSNATIONAL RESTRUCTURING: FROM FORMALISED PROCEDURES TO REAL INFLUENCE	26
5.1	Transnational restructuring: no longer an exceptional case but an everyday reality implications for information and consultation as well as coordination	26
5.2	Quality and effectiveness of information and consultation arrangements and procedures at European, national and company level	27
5.3	Involvement and role of national trade unions	28
5.4	Involvement of national and European trade union federations	29
5.5	Critical practices	
6	CONCLUSIONS AND RECOMMENDATIONS	31
6.1	Why coordination and interaction are essential	31
6.2	Legal change: aligning the EWC Directive to ongoing and emerging needs	32
6.3	Recommendations on other measures	33

FOREWORD



The importance of democracy at work is particularly evident with regard to the European Works Councils (EWC). In times when multinational corporations make their decisions at headquarters, hundreds of kilometres away from the branch, it is important that workers can also assert their rights in the workplace. Unfortunately, this is the exception.

Too often, management uses the loopholes of the legislation to weaken the EWC: ignoring information and consultation obligations, limiting the freedom of EWCs to communicate with the local level, restricting access to the sites of the multinationals, applying abusive confidentiality provisions, to name only a few examples.

While this study goes to print, the European Parliament is working on an initiative report calling to revise the EWC Directive and close some of these loopholes. What's special about the report this time: If it's approved in plenary, the European Commission is obliged to react. This is an opportunity to strengthen EWCs that the ETUC has long been calling for.

While these loopholes have to be closed by the EU institutions in the long run, EWCs have to invest in other solutions to strengthen their capacity in the short term. Communication and coordination between the EWC and workers' representatives of the multinationals is key here. Whether it is with the local trade union and workers' representatives in the national branch, the board-level representatives, or the European Trade Union Federation – the network of worker voice should include EWC members and facilitate exchange and support. This is crucial to influencing management decisions.

Statistics still show that the connectivity and ties between EWC members and their fellow representatives can still be strengthened. The ETUC has therefore commissioned this study to spread knowledge and best practices for EWC members when coordinating with other institutions of labour representation. The ETUC will further contribute to the internal capacity building of EWCs while maintaining pressure on the European institutions to improve the legislation.

Isabelle Schömann

Confederal Secretary at the ETUC

INTRODUCTION

1

1.1 Background, policy context and objectives of the research

As claimed by the ETUC, Democracy at Work is part of a broader approach for a more social Europe. Enshrined in the EU treaties and the European Social Charter of the Council of Europe, it entails stronger information and consultation rights as well as board-level workers' participation.

However, the profound and severe impact of the COVID pandemic and the current overlapping of different trends and transitions in our labour market – digitalisation, decarbonisation and implementation of the Green New Deal as well as COVID related restructuring in many sectors – have again illustrated the significant gaps and deficiencies of democracy at work. The structural shortcomings have been highlighted, for example, by the report on the state of social dialogue by the special advisor to EU Commissioner Nicolas Schmit¹ or, with regard to transnational information and consultation, by the results of a large and comprehensive survey amongst more than 1,500 delegates from nearly 400 EWCs.² Furthermore, in relation to the existing disparities between EU Member States in terms of the quality of social dialogue and democracy at work, a five-country comparative study for the European Economic and Social Committee has demonstrated the major need to strengthen Democracy at Work in order to avoid further imbalances between countries. Resilience and the social dimensions of transitions and change must also be strengthened.³

In addition to the structural weaknesses and shortcomings of the Recast EWC Directive, transnational information, consultation and workers' participation must also be improved: the legislative reform in the field of transnational corporate restructuring and mobility has been intensified (company law package) without providing robust provisions to protect workers' rights and avoid abuse and fraud.

The research conducted should also be incorporated into the call for legislative initiatives to ensure that workers' involvement keeps pace with the accelerated transnational restructuring and change facilitated by the EU company law framework.

The main objectives of the research project were:

- ▶ to present how the different rights and exchanges of information, consultation and participation are combined with each other;
- ▶ to explore whether workers and their representatives are able to use these different instruments effectively to obtain information in advance and to influence company decisions;
- ▶ to highlight shortcomings and challenges of the current legal frameworks and areas which would need to be modified and improved as well as to identify best practices and good interactions between different levels and different instruments of workers' involvement.

¹ *Report on strengthening EU social dialogue*. By Ms Andrea Nahles, Special Advisor on Social Dialogue to Nicolas Schmit, Commissioner for Jobs and Social Rights, Brussels, February 2021.

² De Spiegelaere S. and Jagodziński R. 2019: *Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives*, Brussels, ETUI.

³ Voss, E. and Pulignano, V. 2020: *An EU legal framework on safeguarding and strengthening workers' information, consultation and participation*. Study for the European Economic and Social Committee, Brussels.

Thus, based on qualitative research, the study should provide a better understanding of the combination of different instruments of workers' information, consultation and participation (conceptual framework); explore current practices in terms of good practices as well as deficiencies and shortcomings; and provide suggestions for improvements as regards the current legal framework.

1.2 Methodology and case studies

In line with the objectives of the research study to assess the collaboration and coordination of different levels of workers' involvement, the analytical approach and methodology consisted of desk research but essentially of the elaboration of case studies of individual EWC practices and experiences.

The case studies reflect the different conditions of national contextual frameworks (different models of information, consultation and workers' board-level participation, different geographical areas in the EU) as well as company-specific conditions of social dialogue. Case studies were also selected from different sectors.

A sample of EWCs that match the research criteria mentioned above was selected in close collaboration with the European Trade Union Federations at sector level (EFBWW, EFFAT, EPSU, ETF, industriAll Europe and UNI Europa). Based on a longlist of 25 cases that was prepared by the wmp-Syndex team, virtual meetings with each of the ETUFs were organised and the list was consolidated, resulting in 20 transnational companies with an EWC that matched the selection criteria.

It should also be noted that a number of cases were removed from the initial lists for various reasons, including, in particular, due to complicated ongoing restructuring cases and consultation processes and the excessive workload of senior EWC members.

The sample of 20 cases that was agreed upon with the ETUFs consisted of cases deemed relevant for the purpose of the research as they reflect:

- ▶ a broad variety of sector-related framework conditions;
- ▶ different headquarter countries, corporate cultures, social dialogue traditions and industrial relations, including in terms of company board -level participation of employees;
- ▶ different EWCs in terms of size, heterogeneity and contents/provisions of agreements;
- ▶ different experiences and types of restructuring and reorganisation, ranging from closures to transnational mergers;
- ▶ different positive and negative experiences from the perspective of senior EWC members and the European Trade Union Federations;
- ▶ different experiences in terms of trade union presence and involvement and coordination at transnational and national level.

Though fieldwork was strongly facilitated by the ETUFs through the provision of contacts to the respective EWC coordinators, in many cases it proved to be quite difficult to carry out interviews with EWC secretariats and senior personnel. In each case, an interview with the EWC chair/secretariat in the headquarter country and a senior delegate in one additional country (selected in agreement with the EWC chair and/or trade union coordinator) was envisaged. In addition to this, interviews were conducted with EWC trade union coordinators. In total, 36 interviews were carried out between the beginning and end of summer/autumn 2022.

In the majority of cases, these difficulties were caused by excessive workloads resulting from the current reorganisation and restructuring measures. There were also 2-3 cases included in the sample that involve EWC cases for which the European Trade Union Federations did not give any knowledge and contacts to the EWC, i.e., cases that appear not to be coordinated (at least not at the European level).⁴

⁴ This experience of EWC practice without coordination at EU level is reflected in one case study in the sample.

The following table provides an overview of the final sample of the 14 case studies, covering 15 companies⁵ that have been implemented in the context of the research.

Table 1 Overview of the sample of EWC cases

Company	Sector	EWC	HQ	Year EWC established	Latest change/ Renegotiation
Alstom	Metal / Rail	European Works Forum	France	1996	2015
Antalis	Services / Commerce	Antalis EWC	France	1996	2021
Arctic Paper	Chemicals / Paper	Arctic Paper EWC	Poland	2011	2018
Asahi Breweries Europe	Food / Brewery	Asahi Breweries Europe Group (ABEG) EWC	Japan / UK	2006	2018
Compass Group	Food / Catering and Cleaning	Compass Group EWC	UK / Germany	1996	2015
General Electric	Metal / Energy	General Electric EWC	US / UK	1998	2018
Generali Group	Services / Finance	General Group EWC	Italy	1997	2012
Group FNAC	Services / Commerce	Group FNAC EWC	France	2016	2021
H&M	Retail and clothing	H&M EWC	Sweden	1997	2007
Korian Group	Services / Care	Korian Group EWC	France	2019	2019
ÖBB Group	Transport / Railways	ÖBB Group European Works Council	Austria	2011	2019
Philipp Morris International	Food / Tobacco	Philip Morris European Council for Employees	US / Switzerland	1996	2016
Stellantis	Metal/ Automotive	---	France	Ongoing	---
Uniper & Fortum	Energy	Uniper SE Works Council	Germany	2009	2016
		Fortum European Council	Finland	1999	2019

* Information on the date of the initial EWC agreement and workforce size is obtained from the ETUI EWC database and the EWC secretariat.

⁵ One of the case studies actually covers two companies with the perspective of merging the EWCs/SE Works Councils at the time of writing.

DESK RESEARCH: WELL-KNOWN PROBLEMS AND POSSIBLE SOLUTIONS

2

The research conducted by wmp and Syndex addresses a gap in previous research by focussing on the question of how different levels of workers' involvement and different instruments of information, consultation, bargaining and participation work in conjunction with each other.

Until now, most scientific studies available have only focussed on either the functioning of EWCs or national I&C rights and processes or board-level representation, without providing a more in-depth analysis of the different rights and levels and their relationship from a more qualitative perspective.⁶

The almost three decades of experience of transnational information and consultation in European Works Councils gained since their establishment in 1994 has allowed extensive literature on the subject to be produced. The research shows that EWCs have moved in very diverse directions:

A large representative survey of more than 1,600 representatives from 365 EWCs and SE Works Councils conducted by the ETUI in 2019 showed that even with regard to closures and workforce cutbacks in a transnational context, only around half of all EWC members felt that there had been meaningful information and consultation. On all other topics of transnational restructuring, less than half of respondents considered consultation to be useful. For example, only 27% felt that consultation on outsourcing and subcontracting is useful.⁷

On the other hand, as illustrated by a large number of joint instruments (declarations, guidelines, codes of conduct, ...) there are EWCs that have moved beyond mere information and consultation into practices that could be described as transnational "social partnerships" or "co-management".

This wide variety of EWC practices also reflects the rather loose legal framework and the fact that each EWC is based on a company-specific agreement and on a negotiated solution of operation and involvement. Each EWC therefore has its own story to tell and its specific strengths and weaknesses or, as the research put it, an "EWC is not monolithic, but comprises a wide range of forms and types reflecting different paths of development".⁸

⁶ Although, from the perspective of both management and labour and the HR management perspective, recent research of the authors has addressed the issue of linkages between the transnational and national/workplace level of social dialogues in transnational companies. See: Voss, Eckhard, together with Broughton, Andrea and Rodriguez Contreras, Ricardo 2020: *Multi-level forms of social dialogue and HR practices in multinational companies*. Eurofound Dublin. Voss, Eckhard, together with Broughton, Andrea, Pulignano, Valeria and Franca, Valentina 2020: *Case studies on social dialogue and HR practices in four European global companies*, Eurofound Working Paper. Voss, Eckhard; Broughton, Andrea; Pulignano, Valeria; Franca, Valentina; Rodriguez Contreras, Ricardo 2018: *Exploring the connections between EU- and national-level social dialogue*. Eurofound, Dublin.

⁷ De Spiegelare, S. and Jagodziński, R. 2020: *Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives*, Brussels, ETUI. https://www.etui.org/sites/default/files/2020-06/09_ETUI_Survey_UK_print%20and%20web_0.pdf.

⁸ Pulignano, V./Turk, J. (2016): *European Works Councils on the move: Management perspectives on the development of a transnational institution for social dialogue*. Working paper Centre for Sociological Research (CeSO) Employment (industrial) Relations and Labour Markets 2016-1, Leuven, KU Leuven, p. 99. On EWCs and information and consultation practices in multinational companies see also the recent Eurofound study: Voss, Eckhard, together with Broughton, Andrea and Rodriguez Contreras, Ricardo 2020: *Multi-level forms of social dialogue and HR practices in multinational companies*. Eurofound Dublin. <https://www.eurofound.europa.eu/publications/report/2020/social-dialogue-and-hr-practices-in-european-global-companies>.

2.1 Benefits and value of European Works Councils

EWCs are a unique feature of transnational industrial relations that doesn't exist in other parts of the world. From the employee perspective, they enable workers' representatives to obtain legitimate transnational information and to have the opportunity to be involved in the decision-making process through consultation⁹. Considering the transnational scale of restructuring, purely local information and consultation processes are not sufficient to ensure that employees have full access to information about both the decision itself and its implications. Furthermore, where the impact of a measure is likely to play out in different countries simultaneously, isolated local information and consultation processes do not enable workers' representatives to coordinate their positions and actions on those restructurings. Therefore, EWCs were designed to address precisely this issue of inconsistencies between corporate decision-making and employees' rights to information and consultation. Indeed, transnational restructuring is one of the core competences of the EWC and the SE works council. In terms of restructuring in particular, the added value of EWCs should not be measured against the co-determination rights that exist, for example, in large German companies. Rather than substituting national workers' rights, the added-value of EWCs is demonstrated in the transnational arena where EWCs have filled a void given that, prior to this, no legal right to represent workers at transnational level existed and there were no obligations of transnational management whatsoever to involve workers in the information and decision-making process.¹⁰ Nevertheless, even in the absence of binding co-determination rights, examples of de-facto practices that illustrate the potential of EWCs to influence company decisions in transnational companies can be found.

Looking at the potential added value from the perspective of employees, **the body's transformation from being used mainly as a tool for information and consultation and for coordinating European and national information flows into a body with a focus on practices, even going beyond the provisions of the EWC Directive, is intensifying** as illustrated both by interviews with EWC trade union coordinators as well as by interviews with management representatives.¹¹ EWCs have been able to influence planned decisions on restructuring so that fewer employees have been affected negatively. In addition, restructuring operations have been accompanied by European wide social plans and further measures. In those countries where employee representatives and trade unions are in a weaker position, EWCs can have a positive or supportive impact on a company's practices and influences. EWCs have the potential to play an active role in transnational company restructuring operations in a way that complements and articulates employee interests at both local and national levels. From the perspective of employees, an EWC that is involved in transnational restructuring in a timely manner can have several functions: it can be instrumental in co-ordinating employees' responses to the restructuring and serve as the catalyst for the creation of a genuinely European strategy or action. It can be used to obtain more information and buy some time, which could prove useful at the local level, at which social plans may be negotiated. Furthermore, the EWC can bring in the necessary experts to assist in evaluating the company's plans and suggest alternatives. It can support local strategies by exerting influence on management at the European level, and it has unifying and identificatory potential for workforces of different countries.¹²

From the management perspective, EWCs also offer a specific added value. According to a study involving over fifty interviews with managers responsible for EWCs, 55% of interviewees reported that from the management perspective, the benefits of EWCs outweigh their costs, and 70% agreed that EWCs did add value from the company perspective¹³. More specifically, interviewees reported that EWCs fulfilled certain functions for the company, especially in the form of a forum for informational exchange: they enabled improved top-down and bottom-up communication; they can be used as a means to promote the corporate identity of multinational companies, especially after restructuring events; management can also use the EWC as "a mechanism to facilitate change" and to help with the introduction of strategic transnational initiatives.¹⁴

⁹ Olijslagers, Ch./De Spiegelaere, S. (2019): *Why aren't there more European Works Councils? A Belgian perspective*. ETUI Policy Brief 7/2019.

¹⁰ The first transnational employee representation structures date back to the 1980s. Even before the EWC Directive came into force, around 430 EWCs based on voluntary agreements already existed, many of them in France. See: Hoffmann, J./ Hoffmann, R./ Kirton-Darling, J./ Rampeltshammer, L. (eds., 2002): *The Europeanisation of industrial relations in a global perspective*, Eurofound, Dublin, p. 78.

¹¹ Waddington, J. et al. (2016): *Managers, BusinessEurope and the development of European Works Councils*, Brussels. ETUI Working Paper 2016.06.

¹² Olijslagers, Ch./De Spiegelaere, S. (2019): *Why aren't there more European Works Councils? A Belgian perspective*. ETUI Policy Brief 7/2019.

¹³ Pulignano, V./Turk, J. (2016): *European Works Councils on the move: Management perspectives on the development of a transnational institution for social dialogue*. Working paper Centre for Sociological Research (CeSO) Employment (industrial) Relations and Labour Markets 2016-1, Leuven, KU Leuven.

¹⁴ Ibid.

2.2 Interaction and interlinkages between different levels of workers' voices as an important challenge for EWCs

Despite the benefits EWCs clearly provide, research in recent years has unveiled some problems which regularly arise during the practical implementation and operation of EWCs.

Among them are the typical problems associated with interactions between the transnational and local levels of social dialogue. More specifically, these concern the quality of articulation¹⁵, the question of trust-based relationships and the creation of a collective identity and goals between different levels of social dialogue and EWC members from different countries¹⁶. For instance, the establishment of shared objectives and the agreement on a shared understanding of the notion of transnationality seem to be problems that regularly occur on a practical level.¹⁷

Regarding the articulation between different levels of interest representation, the 2009 Recast Directive requires new EWC agreements to include arrangements on reporting between them, in order to better link the European and the national/local level and improve clarity on rights and duties to report back. Analyses of current EWC agreements have shown that most of them provide for expert advice and support¹⁸ and include arrangements for various aspects of articulation.¹⁹ Also, according to the first large scale survey of EWC members conducted by ETUI in 2010²⁰, more than 90% of respondents said they reported back to local employees on a regular basis. However, very few agreements have defined more concrete practices on the specific role and responsibility of different levels of workers' participation.²¹ Thus, insecurities about the appropriate form of reporting have arisen and, since the implementation of the Recast Directive, there have been no increases in communications inbetween meetings.²²

The difficulties in effective reporting between different levels can often be traced back to another typical problem of EWCs: a general lack of time, skills and financial and organisational resources needed to run an EWC smoothly. In this context, it should be noted that the Recast Directive only acknowledged for the Special Negotiation Board that there is a need for sufficient resources and that external support by trade union advisors is important. This provision is not related to EWCs. Furthermore, because of this legal deficiency, the situation in most EWCs is viewed as unsatisfactory: well over half of all EWCs have just one plenary meeting per year and are unable to bring in external experts, conduct qualification and training activities in a satisfactory matter, or are not entitled to visit local plants.

¹⁵ There is no acknowledged definition of articulation. In sociology and industrial relations research, the concept has been explored to analyse the fixation ability of meaning, interest and identities (Laclau and Mouffe) and understand the organisational coordination within associations (Crouch). With a view to the multi-level system of European social dialogue, *"articulation is defined as the establishment of cohesive interrelationships both vertically (between European, national, sectoral and company levels) and horizontally (between different countries and/or sectors and/or subsidiaries of the same multinational)"*. (Voss, E.; Broughton, A. and Pulignano, V. (2018): Exploring the connections between EU- and national-level social dialogue, Eurofound, Luxembourg.

¹⁶ See Pulignano, V. (2017): Articulation and the role of EWC: explaining the social effects within (and across) transnational workplaces, European Journal of Industrial Relations; Voss, E./ Broughton, A./ Pulignano, V./ Franca, V./Rodriguez Contreras, R. (2018): Exploring the connections between EU- and national-level social dialogue. Publications Office of the European Union, Luxembourg; De Spiegelaere, S./Jagodzinski, R. (2019): Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives. ETUI, Brussels. See also: Peter Kerckhofs (2015): European Works Council developments before, during and after the crisis. Eurofound, Luxembourg.

¹⁷ See Pulignano, V./Turk, J. (2016): European Works Councils on the move: Management perspectives on the development of a transnational institution for social dialogue. Working paper Centre for Sociological Research (CeSO) Employment (industrial) Relations and Labour Markets 2016-1, Leuven, KU Leuven; European Commission (2018): Evaluation accompanying the Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast), p. 45.

¹⁸ De Spiegelaere, S./Jagodzinski, R. (2016): The right and duty of European Works Councils to report back to the workforce: broad uptake, little specificity, ETUI Policy Brief 2/2016.

¹⁹ De Spiegelaere, S. (2016): Too little, too late? Evaluating the European Works Councils Recast Directive, Report 138, Brussels, ETUI.

²⁰ Waddington, J. (2010): European Works Councils and industrial relations: a transnational industrial relations institution in the making, London, Routledge.

²¹ Jagodzinski, R. et al. (2015): Variations on a theme? The Implementation of the EWC Recast Directive, Brussels, p. 60-62.

²² De Spiegelaere, S./Jagodzinski, R. (2019): Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives. ETUI, Brussels.

Despite the well-known barriers to effective EWC practices, there are several instruments and best practices that could provide practical solutions to the above-mentioned challenges.

The research identifies two different activities of EWCs: on the one hand, information and consultation relating to the business “as usual” and, on the other hand, dealing with reorganisations and other forms of restructuring. In addition, in many cases EWCs and management have developed a transnational social dialogue that goes beyond the legal requirements to inform and consult. This dialogue, often related to human resources topics, may be formalised under joint declarations, codes of conduct or guidelines. However, the formalisation of this social dialogue does not necessarily guarantee the implementation of the objectives identified (e.g. the impact of digitalisation on the workforce, data protection, equality policy, ...) and those documents rarely provide for implementation and benchmark processes.

As stated above, the current imbalance of power towards management often impedes common actions. More extensive and in-depth legal interventions that are assisted by subsidiary initiatives could solve this problem, as could a more serious commitment by the European Commission to truly and fully implement the Recast Directive in all EU Member States²³. As three in four EWC members wish to have more effective sanction and enforcement mechanisms in place, legal regulations nullifying decisions taken by the management without prior EWC consultation would bring about positive change according to many EWC representatives and trade unions. In order to improve the quality of information and consultation, legal regulations could also define the range of topics EWC members must be informed about, or the frequency with which EWC meetings must take place. Moreover, the legal framework could also extend the resources provided to EWC members to support the implementation of their work.²⁴

Nevertheless, EWC members are not completely dependent on the employer’s goodwill and the legal framework – there are many instances where the EWC is able (i.e., supported by the EWC Directive) to engage in autonomous action.

As experience shows, a key factor that contributes to the functioning of the EWC has been greater professionalisation in organising consultations with management, and strengthening and institutionalising interlinkages between European and local levels of interest representation and trade union activities. The dedicated and trained employee representatives as well as the deep rooting of the EWC into the broader structures of company level workers’ participation have also proved to be important factors²⁵.

Such a change, however, cannot be achieved solely by documentation and spreading information on good practices or a practical handbook, as was proposed by the European Commission following the evaluation of the Recast Directive in 2018.²⁶

Where links to company level workers’ participation structures exist and are actively used, the EWC will have better access to more up to date and complete information, a prerequisite for anticipating change and restructuring processes and becoming involved in them. A much more regular exchange of information and systematic reporting would therefore be helpful, for example, by forging closer links between the EWC and board-level workers’ representatives.²⁷

The interlinkage between local and European trade union activities and the role of European Trade Union Federations is also crucial to help EWCs receive the resources, expertise and coordination they need, especially in the context of restructuring. The engagement of the European trade union movement can be critical for the future success of EWCs. Furthermore, national trade union organisations can play an important role in strength-

²³ European Commission (2018): Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast).

²⁴ De Spiegelaere, S./Jagodzinski, R. (2019): Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives. ETUI, Brussels.

²⁵ Rosenbohm, S. / Hertwig, M. (2017): *Employee interests in multinational companies: European Works Councils and the problem of articulation*, paper presented at the 33rd EGOS Conference, Copenhagen.

²⁶ European Commission (2018): *Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)*.

²⁷ According to a recent research paper, enhanced cooperation between EWCs with board-level employee representatives would require “(i) strong board-level employee representation (BLER) legislation at national and European Union (EU) level; (ii) specialised training and resources to build communication networks, with the commitment of trade unions; and (iii) provisions securing stability. See: Lafuente, S.; De Spiegelaere and Jagodzinski, R. (2022): *Friends in high places Relations between European works councils and board-level employee representatives*, ETUI Policy Brief 2022.02.

ening the functioning of EWCs: not only can they inform employee representatives about the added value of EWCs and help them with establishment procedures²⁸, but EWCs with a trade union coordinator present simply function better – they have better internal organisation, meet more often, receive more training, communicate more and show higher levels of trust between representatives from different countries.²⁹

When consolidating such good practices, the Directive should include provisions on the roles of the different players including European Trade Union Federations, trade unions and works councils. Furthermore, other structures of local employee representation should be strengthened.³⁰ However, this need has not sufficiently been addressed by the European Commission in its evaluation of the Recast Directive.³¹

Recently, the European Parliament has presented several initiatives to reinforce Democracy at work, some of which are reflected in the Bischoff report and the draft Radtke report.³² Such initiatives

- ▶ Call for a new framework directive on workers' information, consultation and participation “for the various kinds of European companies, and for companies that use EU company mobility instruments, in order to establish minimum standards on issues such as anticipating change, including with regard to measures concerning climate change, digital transformation and restructuring, in particular at company level”;
- ▶ request the clarification or improvement of key legal wording like “transnationality” and “confidentiality”;
- ▶ call for workers' rights to be improved by providing on additional yearly meeting as a minimum requirement;
- ▶ support a review of the directive in a bid to achieve more significant outcomes of litigation such as “temporary suspension” of management plans / decisions and higher financial penalties.

As demonstrated by this chapter, legislative developments related to EWCs should be strengthened in order to seize all the opportunities offered by democracy at work. By analysing the case studies, the following chapter serves to illustrate the heterogeneity of practices which may raise questions with regard to the fundamental principle of the effectiveness of the law.

²⁸ Olijslagers, Ch./De Spiegelaere, S. (2019): *Why aren't there more European Works Councils? A Belgian perspective*. ETUI Policy Brief 7/2019.

²⁹ De Spiegelaere, S./Jagodzinski, R. (2019): *Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives*. ETUI, Brussels.

³⁰ Olijslagers, Ch./De Spiegelaere, S. (2019): *Why aren't there more European Works Councils? A Belgian perspective*. ETUI Policy Brief 7/2019.

³¹ European Commission (2018): *Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)*.

³² *Draft report with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL), 12.04.2022* https://www.europarl.europa.eu/doceo/document/EMPL-PR-730043_EN.pdf Report on democracy at work: a European framework for employees' participation rights and the revision of the European Works Council Directive (2021/2005(INI)), https://www.europarl.europa.eu/doceo/document/A-9-2021-0331_EN.html

FROM DIVERSE INDUSTRIAL RELATIONS AND SOCIAL DIALOGUE TO A BROKEN MIRROR?

3

3.1 Quality and efficiency of social dialogue in transnational companies

The research shows that in terms of the quality and efficiency of social dialogue, there are significant differences between the transnational companies analysed. A number of factors were identified that contribute to quality and efficiency according to EWC stakeholders.

Key results

- ▶ The 14 case studies and 15 companies that were analysed reflect a deep heterogeneity of EWC practices from a quality and efficiency perspective in terms of having a real impact on working conditions, corporate HR and labour policies;
- ▶ On the one hand, we have identified practices that are still characterised by a merely symbolic EWC body where management mainly provides information and no real consultation takes place;
- ▶ On the other hand, there are practices where the EWC has developed into a European level of interest representation that is acknowledged as a serious partner of central management. In such cases, this has resulted in concrete and measurable impacts on restructuring and change management, and the EWC has become an important actor of social dialogue throughout the whole company;
- ▶ Good practices reported in the study often resulted from conflicts with central management over issues such as renegotiating an out-dated and weak agreement (e.g., Compass, Philip Morris, H&M, ...).

Factors that contribute to quality and efficiency include

- ▶ Clear added value for employees (company level reps and sectoral trade unions) as a result of using the EWC;
- ▶ Pressure on management (including legal and other action);
- ▶ Strong linkages and integration of the EWC with national rank and file of sectoral and company level trade union structures, works councils and/or employee committees;
- ▶ Good relationship and pro-active approach of the EWC with regard to European level trade unionism (communication, asking for support/advice, interest in learning from good practices, etc.);
- ▶ Involvement of senior trade union works council and other employee leaders (e.g., supervisory board members) in the EWC;
- ▶ The latter is also a prerequisite to encourage central management to listen and engage more actively and more seriously.

Establishing working groups / committees



The added value of working groups includes: gaining a better understanding of real needs; the possibility of involving employees from national level in EWC practice; the tendency to have more frequent meetings; having a positive impact on collaboration and exchange across borders.

Korian: the Committee has two permanent working groups, one for health and safety and the other for social issues (employment, mobility, training, equality, etc.).

FNAC Darty: the EWC has the option to organise working groups, including one set up for sustainable development, a key topic related to the company's goal to develop its competitive edge in this area.

Other examples are Korian, ÖBB, General Electric or Philipp Morris International

- ▶ H&M: the division of Europe into sub-regions is a starting point for the development of further structures of internal coordination in the EWC;
- ▶ According to the EWC agreement, “the costs of national preparatory activities in connection with EWC meetings shall be established in accordance with national laws and agreements” (section 7 of the agreement). It is unlikely that national laws or agreements provide for these costs of meeting preparation, but this article is a) an invitation to organise preparatory activities (meetings, communications, ...) and b) a way for local union representatives or workers' representatives to claim access to workers and their workplaces in the framework of the EWC membership mandate;
- ▶ Indeed, in some countries, more time credits are needed to fulfil the mandate. If the EWC agreement (re) negotiation gets bogged down with management, the national level might be an alternative to strengthen the workers' group position, provided that these initiatives are again well coordinated with the help of the ETUF and its affiliated organisations.

3.2 Interaction and interlinkages between different levels of workers' voices as an important challenge for EWCs

A number of cases illustrate that legal changes have an impact on the quality of social dialogue as well as the functioning of the EWC. This is not only with regard to legal changes in response to the Recast EWC Directive but also with regard to other legislation such as that governing employers' due diligence obligations.

Positive impact of national legislation on corporate duty of vigilance



Korian: the agreement makes a reference to the French law on the duty of vigilance of 2017, which makes it possible to envisage that the EWC could be involved in the elaboration of vigilance plans (due diligence) for the prevention of risks related to the activities of the Korian Group and its established business partners.

KORIAN

Other examples:

- ▶ The 2009 Recast Directive has resulted in better agreements. Renegotiations in some cases were only possible after the EWC terminated the old agreement (Compass);
- ▶ An increasing need to become well informed about what occurs at EU level in terms of legal initiatives and change (energy and climate, transport policies, merger control, social and employment policies, due diligence, etc.);
- ▶ Brexit: In most cases where this is relevant, the EWC applies also to (potential) former EU countries and keeps their delegates involve (Antalis, Korian, Compass, etc.).

Legal change resulting in new challenges: examples from France and Spain



Trade union and workers' representatives are under pressure: the Macron ordinances of 2017³³ have contributed to a considerable reduction in the number of representatives and delegation hours for staff representative bodies. Thus, in the case of Korian, the elected employee representatives in France represent 400 establishments through only 10 representative bodies. The law, in fact, provides for the accumulation of mandates which places an excessive burden on each representative, particularly given the diversity of the subjects they have to deal with. It also means that they lose a great deal of proximity to the field and therefore to the problems of employees.

This is similar in Spain, where it seems impossible to visit or even contact most of the workplaces before participating in the EWC. Interviewees expressed the desire to have more delegation hours to exercise their mandate, not only at national level but also as a member of the EWC.

Positive and negative experiences of adapting and improving the EWC agreement and bringing it in line with the Recast Directive 2009/38/EC

- ▶ H&M: the EWC wants to renegotiate its agreement to bring it into line with the Directive 2009/38/EC; the agreement is very short and not very descriptive. It does not provide for consultation of EWC members but envisages a forum for "information, exchange and discussion". Because management used delaying techniques during the renegotiation, the EWC has decided to terminate the agreement in 2022.

3.3 The role of trade unions in EWCs: clear added value but lacking a clear mandate

Interviewees highlighted the need and/or added value of having a close relationship with ETUF coordinators and EWC experts from European trade unions.

This confirms the existing findings as regards the added value of European coordination and the provision of support: EWCs function better if a trade union coordinator is present – they have better internal organisation, meet more often, receive more training, communicate more and show higher levels of trust between representatives from different countries.³⁴

³³ The 5 ordinances were adopted by the government on 2/09/2017 and review the French labour code on the following points: collective bargaining, risk prevention at the workplace, workers' representative bodies, individual and collective redundancies, workforce redeployment.

³⁴ De Spiegelaere, S./Jagodzinski, R. (2019): Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives. ETUI, Brussels.

However, the current legal context of EWCs foresees only the involvement of European trade union federations in the context of the SNB and negotiations and renegotiations of an EWC.³⁵ The added value, however, goes beyond establishing or renegotiating an EWC: it is also essential for training, having access to legal advice and advice in situations of restructuring and, perhaps most importantly, improving mutual trust and understanding within the EWC.

Examples

- ▶ Antalis: EWC training by Uni Europa has a key impact on the capacity of workers' representatives to work together;
- ▶ Uniper: close collaboration with both industriAll Europe and EPSU in the context of negotiating the agreement on the SE Works Council;
- ▶ Stellantis: industriAll Europe plays an important role in coordinating and moderating the involvement of national trade unions in the merger of three large automotive companies. National trade unions also play a significant role in spreading and sharing information between different levels of representation at national level (i.e., between the national central works council and other national bodies).

3.4 Board-level participation makes a difference... under certain conditions

Under certain conditions, a close liaison between EWCs and employee representatives at board-level has a positive impact on transnational social dialogue at company level, mutual trust and respect and the integration of different national subsidiaries.

Added value of a close relationship between the EWC and board-level representatives



Though it lacks the element of co-determination, works councils and board-level representatives in Austria play a strong role in the ÖBB EWC case. In Austria, social dialogue is also facilitated by board-level representation of employees and the fact that senior employee representatives not only have key functions in the ÖBB central and divisional works councils but are also represented at board-level and at the European Works Council. According to the Austrian corporate governance law, one third of the supervisory board members are employee representatives. It should also be noted that ÖBB is an important employer in Austria (and the largest provider of apprenticeship training) and therefore, several company-level employee representatives are also leading actors within the Vida trade union (the same situation is true for the Hungarian company MÁV).

- ▶ Compass and Asahi: a win-win situation for both sides. Workers on supervisory boards often lack information on problems, challenges and HR and working condition requirements in other countries. For them, the exchange with and information received by the EWC is important. On the other hand, employee representatives on the supervisory and administrative board will, across-countries, strengthen the legitimacy of the EWC not only against management but also at national level.

³⁵ EWC Directive, Recital 27 and Art. 5(4).



Legal regulations restricting additional mandates of board-level employee representatives

In some countries (e.g., France, the Netherlands, ...) it is illegal for members of the supervisory board or board of directors to have any other mandate as an employee representative, including being a member of the EWC or a trade union delegate. Newly appointed board-level employee representatives are obliged to terminate such mandates immediately. Although legitimate communication flows between these representatives and the EWC may exist, attention must be paid to legal constraints.³⁶ In several cases (Alstom, Stellantis), board-level employee representatives are bound by confidentiality obligations and thus are not in a position to bring insights to the EWC members. This issue is debated with management in several cases.

Only in France is there a legal rule prohibiting the accumulation of representative mandates in the same company.

3.5 Legal and economic experts reinforce the EWC members' position

An important finding of the research is that resources in terms of having time off EWC-related work as well as resources for training and expertise are an important condition for an EWC to function well;

- ▶ As stated by interviewees in various EWCs (e.g. Korian, Fortum) support from legal advisors is important. They could clarify legal uncertainties as regards sufficiency of information and consultation or the transnational nature of a measure, etc. The Dutch transposition law serves as an example of best practice in this regard: the EWC and Select Committee may be assisted by one expert per agenda item and the company also has the obligation to pay for expert support in legal proceedings;
- ▶ However, access to legal and other experts is extremely unequal: some EWC secretariats have a strong resource base and time-off personnel, including funds for full-time experts/advisors, whereas others lack such resources and the work has to be carried out in addition to "normal" work (examples: Colleagues at Arctic Paper EWC secretariat in Poland; Senior Italian or Spanish EWC members in the EWC of ÖBB and Compass);
- ▶ FNAC Darty: during the pandemic, thanks to the comparative work conducted by an external expert, the EWC was able to expose the differences in treatment between employees in the same group and obtained a commitment from management to end these disparities.

3.6 Ongoing and additional future challenges

As highlighted by EWC delegates as well as trade union coordinators and European Trade Union Federations, it is important that EWCs are not only reacting to management decisions but that they are developing their own agenda and addressing common challenges of the workforce in a pro-active way.

³⁶ According to an ETUI Policy Paper however, only in France is there a legal rule prohibiting the accumulation of representative mandates in the same company such as a mandate within the EWC and mandate as a workers' representative in the company board. See Lafuente, S.; De Spiegelaere and Jagodzinski, R. (2022): Friends in high places Relations between European works councils and board-level employee representatives, ETUI Policy Brief 2022.02, p. 5.

- ▶ ÖBB: the agreement on a Memorandum of Understanding on Remote Working reached in November 2021 is regarded by the EWC and by national and European sectoral trade union federations as an important achievement of the EWC that was absolutely necessary in the light of the massive increase in working from home during the pandemic. The Memorandum is regarded as a small but important first step in establishing group wide minimum standards of regulating remote working throughout the group as a whole;
- ▶ An agreement on remote working was also negotiated and signed at Generali;
- ▶ In other companies (e.g., Compass) the EWC and the trade unions involved have tried to convince management about the need for similar group wide regulation, but this was opposed by the employer, arguing that this issue is not a transnational issue but a national one.

INTERACTION AND COORDINATION

4

4.1 Confirmation of well-known facts as regards top-down and bottom-up processes of communication and information flows and articulation of interests

As regards interaction and coordination of different levels of interest representation, workers' participation, and trade union company and sector related policies, the research has identified a number of good practices but also ongoing challenges.

The good practice of linking the European and national level



Korian: agreement establishes a highly detailed process of linking the national and European levels.

Fortum: as an appendix to the agreement, a detailed country-by-country description of the "information flow" from the EWC to the national/company level workers' representation bodies has been added. For each country, the respective workers' representatives are named in the respective chart.

Compass: the EWC agreement includes a section on "Linking European and national information and consultation processes" which focusses mainly on the synchronisation of such information and consultation processes between European and national levels, i.e. the EWC should be informed earlier or at the same time as national/local bodies.

But the sample of cases' research also gave examples of negative experiences and practices from the workers' perspective

- ▶ H&M and Asahi: the agreement limits the exchange between EWC members and members of national works councils as it takes a restrictive approach in this respect, requiring that confidential information is only shared between EWC members and not with other employee representatives;
- ▶ Asahi: the EWC may develop internal operating rules. However, the room for manoeuvre of workers' representatives to develop a coordination mechanism is limited by the agreement that states that "no provision of such rules shall be deemed to be binding on the AEI Group unless the Chair of the EWC has first accepted it. Such rules shall not contain provisions which contravene the terms of the EWC agreement."

Further challenges have been reported by the chairwoman of the Compass EWC

- ▶ When information is received late, it is often not possible to involve local unions. This is very often the case and therefore it is very difficult to organise a comprehensive and meaningful consultation process;

- ▶ In the event that no union is present within a subsidiary, involvement and consultation with local employee reps is simply not possible;
- ▶ According to both EFFAT and UNITE, it is important that EU and transnational level trade union coordination plays a stronger role in keeping contact and communicating with national level sectoral unions. But this is very difficult due to a lack of resources and time.

It should be noted that details of the agreement and differences in cross-border exchange and communication also have an impact on communication and articulation, as illustrated by the FNAC Darty case

- ▶ The majority of seats are held by one country, France, with an important diversity of unions. Two brands under one group. It was difficult to establish cohesion;
- ▶ Today, exchanges seem to be of more interest to representatives from countries with poorer working conditions (Spain and Portugal). However, the goals need to be suitable for all countries represented to avoid deterioration of solidarity.

4.2 The expanding role of the Select Committee: democracy versus efficiency?

When it comes to the role of the Select Committees, many EWC delegates have reported that – also triggered by an increase in (virtual) meetings with the transnational management during the COVID pandemic – the Select Committee plays an increasingly important role in the context of informing and preparing consultations in transnational restructuring plans and decisions. This role is judged quite differently by EWC members: while some welcome this trend as it facilitates and perpetuates information flows and trustful dialogue, others are concerned that this trends weakens the role of the EWC plenary sessions.

- ▶ Antalis: according to interviewees, management tried to replace the EWC with the select committee (5 people), a notion that was rejected by the EWC members when the new amendment was negotiated;
- ▶ Generali: under certain conditions, the Select Committee, consisting of 8 members, can be informed and consulted instead of the EWC. The EWC is informed of the Select Committee's action afterwards. However, the EWC remains authorised to endorse joint statements with management;
- ▶ Asahi: EWC delegates reported that occasionally the Select Committee replaces the EWC, such as at extraordinary meetings. The EWC agreement provides for two ordinary meetings a year, management prefers to consult the Select Committee in case of additional meetings.

Learning

The following learnings have emerged from the case studies:

- ▶ There seems to be a general trend that central management prefers to engage more closely with the Select Committee with regard to exchanges and discussions about corporate matters such as reorganisation and restructuring;
- ▶ This means that the Select Committee will therefore have an important role in explaining decisions or plans to the whole EWC. Such a situation may be problematic as there is the risk that the EWC could be instrumentalised by central management;
- ▶ Interviewees have thus highlighted the need to maintain trust and close relations by communicating in an open and transparent way by reporting back to all EWC delegates and trade unions involved.

4.3 Going virtual: impact and lasting effects of the COVID pandemic

All interview partners reported that the COVID pandemic and its impact on working from home and remote working as well as the need to organise virtual web meetings instead of physical meetings has had a significant impact on the work and functioning of the EWC.

- ▶ H&M: the Covid-19 pandemic has given a new impetus to the EWC as many video-conference meetings have been organised: these frequent exchanges give an interesting dynamic, allowing a more regular and timelier follow-up of exchanges. There is now a monthly meeting of the Select Committee, and the team now receives more information from management;
- ▶ Uniper & Fortum, Generali, Stellantis and Philip Morris reported a similar experience: the switch to virtual meetings has made it possible to organise many more meetings which, according to interviewees, had a positive impact on the flow of information and the development of joint understanding and trust amongst group members;
- ▶ Generali: weekly online meetings are held every Monday between the secretary, the deputy secretary and the group's HR management in order to perform a quick review of current events in European countries: this is a practice that was put in place in light of the pandemic and which the interviewees would like to see formalised in the EWC agreement;
- ▶ Challenges: the chair of the Compass EWC also highlighted the positive impact of more virtual meetings of the Select Committee but also stressed that during the pandemic no physical meetings of the entire EWC were possible. Based on her experience, physical meetings of plenary sessions are absolutely essential and cannot be substituted by virtual meetings, particularly when it comes to integrating new delegates, addressing difficult topics and developing joint opinions for negotiations with management. This threat of substitution is also a reality in other case studies which, at this stage, remains informally expressed by management. According to interviewees, management has identified this substitution to be a great opportunity to cut meeting related expenses but at the expense of the cohesion of EWC members.

4.4 Role of coordination by sectoral trade unions at European and national level in relation to EWCs

- ▶ UNI Europa has appointed a coordinator who has put a lot of effort into making the communication between the EWC members work. Together with the secretary, they have democratised access to online platforms and machine translation software (Antalis);
- ▶ Korian and Fortum: agreement establishes a highly detailed process for linking the national and European levels (see case studies in the annex);
- ▶ Asahi: an EWC member suggested mobilising additional resources for the ETUFs in order to strengthen their coordination and support activities with regard to EWCs.

Stellantis: the importance of European coordination and a strong mandate from national trade unions



As a result of the merger of the French PSA group and the Italian American Fiat Chrysler Group in 2021 involving 16 automotive brands, three different EWCs will merge. For this purpose, a 30-member strong SNB body has been established.

The Coordination Committee of the SNB consists of one representative of each of the three pre-existing EWCs, assisted by an expert of IndustriAll Europe. The SNB also has the support of and close links with the national metalworkers trade unions in France, Germany and Italy.

These three EWCs have a different history and cultural habits but the current representatives of each of the three pre-existing EWCs communicate with each other almost monthly (through Teams meetings) in order to share information and show a unified line in front of management. All interviewees stated that they were satisfied about these regular exchanges.

STELLANTIS

4.5 Linking EWCs, European sectoral trade union policy and EU level sectoral social dialogue

A further dimension of interaction and coordination that so far has gained less attention by research and policy debate relates to European sectoral trade union policies and social dialogue with European level employer organisations, i.e. sectoral social dialogue committees.

- ▶ The Generali EWC links up with the European sectoral social dialogue, which consists of the European insurance employers' federations and the affiliated trade unions of UNI Europa Finance. By doing so, the EWC offers a practice that could be replicated.

Compass: linking the EWC with EU level sectoral trade union policy and sectoral social dialogue



A further dimension of coordination and interaction relates to the relationship between the EWC and the European Trade Union Federation (ETUF) at sectoral level: The Compass EWC has a close relationship with EFFAT as the vast majority of Compass' business is in food services, and in most countries workers in this sector are affiliated to EFFAT member organisations. In addition, EFFAT has been involved with negotiating the EWC agreements and coordinating the work of the EWC since the beginning. Nevertheless, as Compass is also active in property services and cleaning, EFFAT keeps UNI Europa, the ETUF in charge of these sectors, in the loop. Apart from the EWC Select Committee, the UNITE Coordinator plays an important role in this regard. For EFFAT, the active involvement of transnational companies and their EWCs in the development of European sectoral policy is very important. This also applies to the role of EWC representatives and TNC managements in European sectoral social dialogue activities.

TRANSNATIONAL RESTRUCTURING: FROM FORMALISED PROCEDURES TO REAL INFLUENCE

5

5.1 Transnational restructuring: no longer an exceptional case but an everyday reality – implications for information and consultation as well as coordination

Some thoughts in the light of the case study experience:

We found significant differences in the understanding and treatment of “transnational matters”, ranging from managerial approaches that apply a very strict and narrow interpretation (see Arctic Paper, closure of the site in Germany) to approaches (Philipp Morris) that regard any significant restructuring at national level as a matter for EWC discussion and respective consultation, if the parties agree upon this.

- ▶ In Stellantis, as a result of the merger of Fiat Chrysler Automobiles und Groupe PSA in 2021, there have always been changes and restructuring operations going on at national and international levels. According to interviewees this has raised questions about the demarcation of national and transnational restructuring and the start of restructuring. Interviewees expressed the need to clearly redefine this (which is not yet the case as negotiations about the new EWC agreement are still ongoing) in order to ensure that the EWC is informed and consulted when so entitled;
- ▶ In contrast, the Alstom EWC agreement includes a very precise definition of transnationality that clearly defines when the EWC should be consulted. Consultation is foreseen when at least 1% of the European workforce in at least two countries represented is affected by a project related to either the structure of the group (mergers and acquisitions, divestments, etc.), a change in the work organisation, or restructuring.

Contrary to this, the treatment of transnational matters and restructuring seems instead to be related to the quality of social dialogue at transnational level rather than to what is written and defined in the EWC agreement.

- ▶ In some cases (e.g. FNAC Darty), although the agreement states that management plans impacting only one country of operations may constitute a transnational topic falling under the scope of the EWC (in line with recital 16 of the EU Directive of 2009), management did not inform and consult the EWC members before withdrawing from one country. However, other less formal meetings were organised for national restructurings (French Head of HR meeting with Belgian delegation in Paris regarding job cuts);
- ▶ Again, another informal example (Asahi) suggests that although management refused to debate a national collective redundancy plan at the EWC level, one union representative was able to travel from Poland to the company’s headquarters country and influence management’s decision, resulting in a significant reduction in the number of redundancies (from 130 to 20).

5.2 Quality and effectiveness of information and consultation arrangements and procedures at European, national and company level

According to the research, the quality and effectiveness of information and meaningful consultation from the workers' perspective is something that is not simply granted by the EWC agreement. The following quite different examples show that improvements and meaningful information and consultation processes are often only achieved by applying pressure in the light of negative practice experiences or on the basis of a joint learning process.

- ▶ Antalis: about ten years ago, the EWC collectively left the meeting room to show their disapproval of the lack of information available: this action yielded results;
- ▶ Korian: in agreement with the EWC, the time allowed for consultation is adapted to the consequences of the measures envisaged by management, which potentially allows the information and consultation process to be organised effectively;
- ▶ Fortum: an annex to the EWC agreement includes a detailed overview of the information flow from the European to the national level. This overview is detailed for all countries involved in the EWC, taking into account the specificities of the respective national systems of employee interest representation and information and consultation.

Interviewees also reported negative experiences and practices

- ▶ At H&M, and in the case of the closure of shops, it is not possible to find out which geographical areas are most affected and how many jobs have been lost. According to the interviewees, management refuses to provide country by country information, only aggregated data;
- ▶ FNAC Darty also refuses to provide country by country data: management groups countries two by two as a minimum.

Good practices

- ▶ At the same time, the FNAC Darty case illustrates the need for close cooperation between European and national level workers' representation: when management refused to provide the EWC economic experts with country-specific results (the company's annual figures are presented and made public by sub-region), the EWC members decided to provide their experts with their own country-specific information. When employee representatives from one country communicate about a management project and its social implications, the other representatives can better prepare themselves in their respective countries for information, consultation and negotiation sessions;
- ▶ At Fortum in Finland, the EWC responded to the lack of information provided by management and management's delay in providing sufficient information by taking legal action. This had a positive impact on management's practice to provide information. According to interviewees it is important to receive support from the national trade union.

5.3 Involvement and role of national trade unions

As shown in the examples below, good practices for shaping restructuring decisions and their implementation need to be based on the close cooperation and interaction between EWCs and national level workers' representation bodies.

- ▶ Antalis: according to the agreement, the EWC receives the specific information related to its mandate, as well as the information forwarded by management to the national workers' and trade union bodies concerned by the restructuring;
- ▶ Synchronising information: when a European restructuring took place (semi-externalisation of IT department), thanks to good coordination, the EWC's position was communicated to the national works councils and the two levels of information were compared in order to gain a more accurate understanding and to avoid unfounded rumours. The EWC's position helped the national works councils to position themselves in this process (Generali);
- ▶ The Generali case also suggests that it is important that the EWCs issue joint declarations together with central management – this is helpful for national workers' representatives to initiate local negotiations (important in countries with weak social dialogue).

Stellantis: organising workers' voice in restructuring



The chairs of the OV and PSA EWCs, the trade union coordinator temporarily replacing the FCA EWC chair, and the industriAll Europe coordinators accompanying the previous EWCs, assisted by the SNB expert of industriAll Europe, created an informal group to share information and join forces before the final settlement of the new merged EWC.

All interviewees seem to agree on the priorities for the future joint EWC. The most common points include:

- Information & consultation on all major issues and at an early stage (when still useful);
- Establishment of a precise definition of transnationality to capture the great number of ongoing and future projects of restructuring. The inclusion of the UK, Serbia and Turkey although they are not EU member States because they are significant in terms of employees;
- More than one annual meeting and entitlement to several steering committee meetings;
- Right to expertise;
- Recognition of the role of trade unions in the agreement;
- Other rights (interpreters, legal assistance, training...).

STELLANTIS

5.4 Involvement of national and European trade union federations

Das Beispiel des EBR der ÖBB zeigt den klaren Mehrwert einer eng koordinierten EBR- und nationalen Gewerkschaftspraxis in Bezug auf konkrete Erfolge für Länder, in denen die Arbeitsbeziehungen für Arbeitnehmer und Gewerkschaften weniger günstig sind.

EBR des ÖBB-Konzerns – wenn der EBR ein starkes Mandat für alle beteiligten Interessengruppen hat, sind echte Fortschritte möglich



According to the interviewees at ÖBB EWC, an example of good practice in restructuring is the role of the EWC right at the beginning of its establishment in the context of the integration and restructuring of MÁV Cargo.

The European works council had a role in the peaceful structural adjustment – nonetheless still having a very significant reduction in headcount (from 3,000 to 2,000). At the end of this process, an agreement was concluded with employment guarantees.

Another example of good practices, highlighted by interviewees in Austria, regards outsourcing:

Outsourcing of activities to low-wage countries has happened time and time again. Jobs have been lost and quality has suffered, closures have been imminent, and hundreds of workers have been affected. Through negotiations of the works councils, not only were the ÖBB workshops preserved but investments were also made in the locations. According to the Vice-Chair of the EWC, “the national works councils involved in the EWC fight together for fair wages and good working hours.”

At a Slovenian subsidiary in the ÖBB freight sector, the EWC and national works councils involved succeeded in getting all negotiating partners to agree upon fair working conditions for the driving staff.

5.5 Critical practices

A number of practices have been reported by senior EWC members as well as by trade union coordinators and European Trade Union Federations that must be regarded as critical because they are either not provided for by the Directive (most notably a negotiation role of the EWC) or they involve managerial behaviour in restructuring situations that is not in line with the objectives of the Directive.

Transnational Declarations and Agreements

- ▶ The Generali EWC has adopted several joint declarations with management on topics like remote working, crisis management, human rights... but these are just guidelines, the expected measures and activities to implement them should “fully respect the local autonomy of the respective social parties in formulating statements, concluding agreements and any other act in this field” meaning that local social partners are not obliged to take action. However, more recently, a follow-up mechanism was established with the EWC and its Select Committee in the form of regular information meetings;
- ▶ At Philip Morris International, the decision of central management to outsource “shared services” resulted in the (successful) demand of the EWC to reach a transnational agreement on data privacy and protection.

Bad practices

- ▶ Confidentiality: Antalis management keeps the vast majority of information provided to the EWC confidential. The minutes are sometimes validated a year after the meeting, meaning they are no longer relevant;
- ▶ Philip Morris: consultation lacks clear provisions as regards the start and end of the consultation procedure;
- ▶ Generali: although several national restructurings took place, local representatives did not appeal to the EWC due to a lack of interest, as their national bodies are probably well prepared for crisis management. However, this is a missed opportunity to verify whether or not other countries are concerned by similar management projects and to strive for solidarity;
- ▶ Generali: in relation to companies newly acquired by the group, an interviewee noted that “the local employee representatives do not have any legal access to the foreign head of the company, and there are no provisions to meet their colleagues from other countries for discussions.”

CONCLUSIONS AND RECOMMENDATIONS

6

The different cases studied show that the quality of (re-)negotiated agreements between management and SNBs/EWCs varies greatly. Although a good agreement is fundamental to supporting the EWC members, it is not sufficient on its own to guarantee democracy at work. Indeed, the quality of social dialogue can be strengthened by a constructive relationship between the EWC members themselves, who should express themselves with one voice. Moreover, the recognition of the role of the EWC vis-à-vis national structures of workers' representation is also an important element to improve efficiency and effectiveness. Finally, the current legislative loopholes identified in this report once again demonstrate the urgent need to reinforce workers' rights.

6.1 Why coordination and interaction are essential



► Solidarity and cohesion

In some cases, the lack of visibility (communication, activities, outputs, EWC members, ...) of the EWC by national and local level representatives is quoted as being the main barrier to its effectiveness. Consequently, national and local representatives do not think to involve the EWC when needed.

The sample of cases shows that the influence and real impact of the EWC is stronger when all types and levels of trade union and workers' representatives are backing the EWC and actively involved in transnational social dialogue.

If this is the case, the EWC has the potential to complement and strengthen national level interest representation and collective bargaining. This is obvious when considering those EWCs who managed to keep British representatives on board while their country was leaving the legislative scope of the EU.

► Lack of means

However, in contrast to certain management practices in transnational companies, workers' interest representation and coordination is still strongly rooted in the national context. Transnational interest representation in terms of resources, time-off, further training and competence acquisition depends entirely on the goodwill of management. This situation is not satisfactory in the least as it hampers the quality and efficiency of transnational social dialogue.

▶ National-level influence

National legislative states of play have a significant impact that could be better geared towards the empowerment of EWC members. Depending on the composition of the seats by country, this impact could be positive or negative, especially when negotiating the EWC agreement. In some countries, national laws give progressive rights and prerogatives to workers' representatives (e.g. unlimited time credit, access to all sites) and in other countries the opposite is true. More account should be taken of the evolution of industrial relations systems in the strategies of union and workers' representatives. In France, for example, on the one hand the drastic reduction of national workers' representatives weakens their availability to coordinate at the European level, while on the other hand they are given new national prerogatives concerning the impact of their company on climate change, which is a very useful topic for EWC debates.

▶ Due diligence

This is also true for countries like France, Germany and Norway that have recently adopted new legislation on due diligence that could enable the EWC members to influence company management as regards the supply chain.

6.2 Legal change: aligning the EWC Directive to ongoing and emerging needs



▶ ETUFs and Trade union coordinator

The essential role of European and national trade unions not only in the negotiation and renegotiation of agreements but also in everyday life, and the efficient and high quality of EWC practice should be acknowledged by the Directive. Each EWC should have its own trade union coordinator.

▶ Processes and methodologies

In larger EWCs, ad-hoc and permanent working groups, committees for different branches of a company have a major impact on the quality of EWC work, including the “closeness” to workplaces and the interaction between the European and local level.

▶ Expertise

Most of the cases and agreements analysed foresee the possibility of the EWC to involve technical experts (economic, legal, health & safety, ...) in situations of restructuring. The Dutch and French situations should be promoted because they provide for regular support from experts.

▶ Coordination is important for gathering quality information

EWCs and experts are generally restricted to information provided by management. The case studies show that EWC members could, except where forbidden by an EWC agreement, circulate national information provided to local representatives. Experts and EWC members could therefore benefit from a more coherent and refined overview to analyse management strategies and plans.

► Confidentiality

Regrettably, this coordination may be banned by agreements or by management on a case-by-case basis, despite the EU legislators' initial intention to promote links between national and European levels of workers' representation. However, there seems to be no objective justification to impose a veil between different levels of workers' participation.

► Board-level and EWC workers' representatives

The question of confidentiality is also an issue as regards the need for cooperation between board-level workers' representatives and EWC members. Balanced legal solutions could be found to relieve the pressure on these representatives.

► Training

Rights in terms of national industrial relations systems differ greatly by country. The need for training modules on this topic was expressed on several occasions as a way to minimise the impact of cultural differences and improve understanding of the applicable rules: it would help EWCs to work better together. Several case studies suggest that, in general, training is a cornerstone of EWC efficiency in terms of its cohesion and ability to act. In this regard, access to training sessions by external trainers, including ETUFs, should be reinforced.

6.3 Recommendations on other measures



► Action pays back

In many cases, EWC members facing lack of managerial cooperation had to adopt strict solutions such as leaving the meeting room, threatening to take legal action, issuing public statements, terminating the EWC agreement... In each case, these actions have been fruitful and facilitated achievements.

► Transnationality

A good definition of transnationality in the EWC agreement is a major concern because this concept is often misinterpreted by the actors on the ground. Management tries to reduce the scope of transnationality to minimise the competence of the EWC, for example by trying to impose a percentage of employees covered or an amount of annual turnover. These practices should be rejected wherever possible. Even with a good agreement, EWC members must ensure that it is properly implemented.

► Sectoral social dialogue

Where ETUFs are experiencing difficulties in developing social dialogue with European employers' federations on a particular item, they could involve EWC representatives to share their "field" experiences when good practices can be shared. In addition, EWC representatives could also benefit from ESSC guidance and recommendations to reinforce company-level dialogue with employers on topics of relevance to them.

▶ Experienced EWC representatives

To guarantee the legitimacy of the EWC, its effectiveness in terms of information and consultation procedures as well as the overall quality of the work, it is essential that it consists of leading figures both in terms of workers and management. This should definitely also involve employee representatives at board-level of the company.

▶ Select Committees

In a number of cases analysed in this report, Select Committees are instrumental to ensuring the effective circulation of coordination and information. In some cases however, the Select Committee may have a dominant role to the extent that it may replace the EWC plenary meetings for information-consultation processes. This is, in principle, a situation that pleases management who may be looking to speed up processes at a low cost. However, democracy at work matters. Select committees and spokespersons should always remain within the boundaries of operational and executive responsibility.

▶ Results-oriented EWCs

Without prejudice to the right to collective bargaining of trade unions, EWCs should adopt a results-oriented policy/strategy. In the cases analysed, EWCs with an annual work programme are very rare. However, it is important that EWCs move from a defensive to a proactive position in order to achieve concrete results. This would facilitate EWC members' engagement in EU debate when this is needed. Rather than being subject to managerial agendas, EWCs should try to push through the issues that they consider as priorities. For example, some EWCs have been able to obtain commitments from European level management on important issues such as remote working, a rapidly growing phenomenon. These commitments may stimulate national social dialogue where it is weak. However, the effective implementation or transposition of those European commitments is also an issue that EWCs can address, as demonstrated by some of the reported best practices.

▶ Remote meetings

The impact of the Covid-19 crisis on the EWCs consists of a skyrocketing number of remote meetings, often replacing face-to-face ones. The threat of increased substitution is already a reality in many cases which, at this stage, remains informally expressed by management which has identified a great opportunity to cut meeting related expenses and undermine the cohesion of EWC members. EWCs should avoid these practices and, where necessary, come to an agreement with management on a written framework for additional meetings, in remote form, to those provided for in the EWC agreement.

▶ Access to Court

In the cases analysed, litigation was rarely an option for EWC members. A clarification of national legal proceedings would be a major help to guarantee the respect of employees' rights. It should be straightforward and easy to have recourse to court proceedings in each country. This is particularly true for the several cases analysed where management seemed to hide national level information by aggregating data or when extraordinary meetings are denied although restructuring plans are being developed.



For further information on our actions, demands and support to affiliates, please visit our website:

www.democracyatwork.eu

www.worker-participation.eu

ETUC - European Trade Union Confederation

Boulevard du Roi Albert II, 5 - B - 1210 Brussels

Tel +32 (0)2 224 04 11 - E-mail etuc@etuc.org

www.etuc.org



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