

Memorandum

European Works Councils

Recommendations
for policy making
based on current experiences



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edited by
Romuald Jagodzinski,
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Executive summary

The EWC directive set in place a new approach to information and consultation within transnational companies. Fourteen years after the adoption of the directive it is now clear that several aspects of the directive are in acute need of revision if the purposes intended of the directive by the European Commission are to be met. This view is also confirmed by the experiences of EWC members who identify marked inadequacies in the quality of information and consultation available within EWCs. This memorandum reviews the inadequacies of the current directive and isolates those areas in which need to be revised if the directive is to work as intended by the Commission. The key research findings identified by the memorandum include:

- European directives must reflect that information and consultation is a fundamental right in the European Union. Thus, a revised EWC directive has to ensure that this right is applicable, at the appropriate level, in the everyday working lives of persons employed in multi-national companies operating in Europe;
- In more than 60 per cent of eligible companies no EWC has yet been set up. Court judgements at European and national level have revealed and drawn attention to numerous shortcomings in the current directive. Many of these shortcomings are linked to the inadequate definitions and the absence of appropriate sanctions in the current directive. A revised EWC directive thus should contain measures clearly designed to remedy the non-implementation of the directive. Among these measures should be provision for an EU company register that will guarantee transparency on employee figures and for a shortening of the negotiation period prior to the establishment of an EWC;
- The shortcomings of the current EWC legislation are attributable mainly to the insufficient and inappropriate nature of the information provided to

EWCs, which prevents proper consultation. Definitions of information and consultation must be upgraded, at least to already existing standards (for example requirements of the SE directive 2001/86/EC) and geared towards negotiation designed to lead to trans-national agreements. Similarly, a definition of the term “trans-national” must be included in a revised directive to ensure that EWC representatives can adequately represent their constituents;

- Access to legal remedies for any deficiencies in the directive should be available to all parties irrespective of their financial circumstances. A revised directive should guarantee such access.
- The position of European trade unions vis-à-vis EWCs has been shown to be constructive and essential to the operation of EWCs. Linkages between European trade unions and EWCs should be strengthened in the revised directive to ensure the creation of an adequate building block for an effective future system of EU labour relations and to reinforce social inclusion in Europe;
- EWCs are an appropriate platform for the conduct of social dialogue at global level. Thus, a revised directive must strengthen EWCs’ competence to engage in trans-national collective negotiations where representatives consider such negotiations to be appropriate;
- EWCs make a major positive contribution to the economic situation of companies insofar as they help to create common corporate identity and to seek ways of dealing creatively with cultural diversity amongst employees. Thus, EWCs have to be regarded as a key element of employee participation and corporate governance;
- The absence of a clause in the directive that specifies an allowance for training for EWC representatives with no loss of pay has resulted in many representatives being inadequately prepared to perform their duties. A revised directive needs to remedy this shortcoming.

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Introduction

The importance and relevance of EWCs has been demonstrated within many trans-national companies. Today, EWCs represent a key element of the European social model. In a few advanced cases, EWCs encourage and support a participative style of company management that benefits from the institutional organisation of labour's voice at trans-national level. The inadequate legal underpinning of EWCs, however, has limited their effectiveness. In the light of the inadequacies of the directive, an adjustment of the legal basis at EU level is necessary if EWCs are to meet the objectives set for them by the Commission in terms of information disclosure and consultation, as well as involvement in company restructuring. Reform of the legislation is also necessary in the light of the Charter of Fundamental Rights which stipulates the need for timely information and consultation when individuals are affected by company decisions. Furthermore, since European freedoms, such as the cross-border mobility of companies and of capital, will continue to be developed, it is inconceivable that the EU should abstain from creating a parallel legal position for workers. Simultaneously, legal reform will strike a more balanced position in the power triangle constituted by the main stakeholders of a company: namely, investors, managers and employees.

Some facts on EWCs

On the basis of European directive 94/45/EC, more than 1000 EWCs have been created, more than 850 of which are in operation today. In addition, there exist a number of other, mostly trade-union-initiated, cases of trans-border collaboration to match the increasing European operations of companies that have taken up the opportunities provided by the common market and other European regulations. Such regulations include the European Company/Cooperative Society Statute (2001/86/EC; 2003/72/EC) and directive 2005/56/EC designed to facilitate cross-border mergers. In addition to, and as a partial extension of, EWCs, more than 45 trans-national interest

representation bodies have already been established by agreements concluded in SEs. At the national level, EU directive 2002/14/EC provides for EU-wide standards of information and consultation for employees. Moreover, ten other European directives on more specific issues – such as collective redundancies, transfer of undertakings and health and safety – secure workers' involvement whenever they are affected by company decisions. This network of regulations creates a vital platform at both national and workplace level that contributes to the successful functioning of EWCs. To encourage and further this process, the European Commission has invested substantial financial resources in promoting the establishment of, and improving the functioning of, EWCs.

Since the adoption of the directive EWCs have increasingly become partners in negotiations with company managements. As a result of new challenges stemming from the increasing complexity of business activities of globally operating multi-national companies, EWCs are also involved in the preparation and implementation of *international framework agreements* concluded between international headquarters of multinational undertakings and global and European trade union federations. Additionally, other forms of trans-national agreement on various social aspects have also been concluded by EWCs with management of some companies.

Within a comparably short period, EWCs have thus acquired a crucial position in the architecture of companies' governance. In advanced cases, they can be regarded as an integral part of corporate structure. Such an approach benefits all stakeholders and should be underpinned by stronger legal provisions. The strengthening of social dialogue at company level has also promoted the role of EWCs. Thanks to a joint effort by all parties involved in EWC activities, social relations have been stabilised, particularly at difficult times when restructuring, relocation or plant closures are under consideration.

EWCs have also played an important role in the recent EU enlargement rounds. They represented an invigorating factor, assisting in the transfer of 'old' EU practices of labour relations to the new Member States by the establishment of social partnership-oriented labour relations, even in cases notable for the absence of institutions and structures, such as (local) trade unions or employers' federations.

European legislation is a precondition for EWCs

The EWC directive did not result from successful social dialogue between employers' organisations and trade unions. From the beginning, business propagated the concept of voluntarism, leaving it to the discretion of the individual company whether to introduce the new institutions or not. Without the European legislator's intervention, EWCs would have remained a marginal phenomenon.

The idea of establishing a system of information and consultation in transnationally operating undertakings and groups of undertakings met with strong resistance from the business community. It was thus evident that a voluntaristic approach could not succeed as it would guarantee neither a comprehensive coverage of undertakings and groups of undertakings nor the minimum conditions indispensable for the functioning of such a system. No more than a handful of multinational companies – primarily based in France – voluntarily introduced a system of information and consultation. The predominant motive in such cases was the wish to improve the company image.

The resistance of business proved strong enough to ensure rejection of the Vredeling proposal. Only by means of cooperation between trade unions and European politicians, backed by academic data and the Commission, was the project able to be revitalised. *The Charter of Social Rights of Workers in the European Community, introduced in 1989*, provided an important basis of legitimacy for the establishment of a directive. The project was able to succeed, however, only by means of a change of paradigm. Accordingly, instead of the substantial regulation contained in the Vredeling proposal, the directive adopts a primarily procedural approach, establishing a negotiating structure combined with a set of fallback clauses designed for introduction in the event of failure of the negotiated approach. In addition, Article 13 of the directive created a very successful incentive for the establishment of a voluntary system of information and consultation. Even though the fallback clauses are very

seldom applied, they have proved a forceful incentive in the promotion of EWC agreements.

The fallback clauses (subsidiary requirements) ensure that, if management of the controlling undertaking has obstructed the procedure for establishment of an EWC as prescribed by the directive, workers nonetheless receive the necessary guarantees of transnational dialogue on company level. In this way, they have contributed tremendously to the creation of a large number of EWCs. ***Sanctions in cases where management has failed to comply are clearly required. Agreement on possible sanctions had little chance of being negotiated in the context of European Social Dialogue,*** insofar as Business Europe (formerly UNICE) systematically opposed any proposals on this matter. This shows that there is ***no alternative to hard law*** if EWCs are to be more than a marginal and fragile phenomenon.

POLICY IMPLICATION

IT IS HIGH TIME TO UPDATE THE DIRECTIVE AND ADAPT IT TO THE NEW REALITIES

Revision of the EWC directive is another step in promoting employee rights in Europe. After the initial political struggle, adoption and gradual extension of the EWC directive, including enlargement and the consequent promotion of these bodies to 12 new EU member states, it is high time to revise the directive in the light of current experience. As it is now recognised in the EU that the right to information and consultation at the workplace is a fundamental right. A revised EWC directive should help to ensure that the measure benefits millions of workers in multinational companies in Europe. It must be kept in mind that the right to information and consultation must be made effective by safeguarding it with sanctions, otherwise it will continue to be ignored by many managements.

Information and consultation – a fundamental right in EU law

Article 27 of the European Charter of Fundamental Rights establishes a right to information and consultation in a twofold sense: as a right of the individual employee and as a collective right of the employees’ representatives. That the right to information and consultation is referred to as a basic right in Chapter IV, entitled “Solidarity”, represents a remarkable step in the development of EU Labour Law. Accordingly, European legislation should guarantee that this right can be exercised in practice.

The competence of the Community to legislate in the field of information and consultation of workers is based on Article 137 (1) e) of the EC Treaty.

As a result of several directives (98/59/EC on collective redundancies, 77/187/EC on transfers of undertakings, and 94/45/EC of 22.9.1994 on European Works Councils). all EU member states were obliged to introduce, into their national systems of labour law, rules specifically intended to create a worker representation structure that would ensure information and consultation of workers’ representatives. The system of rights whereby workers and employees’ representatives would be guaranteed information and consultation concerning company activities that affect employees’ interests was further strengthened and completed by directive 2001/86/EC, on employee involvement within the SE, and the general framework directive 2002/14/EC, on information and consultation at national level.

A general right of workers to information and consultation is more likely to result from initiatives taken by the European Community in the field of labour law than from a common acquis deriving from the laws and practices of the EU Member states. The need for initiative at trans-national level is really no surprise given the wide-ranging differences between national systems of employee interest representation. Against this

background, it is understandable that the EU member states have, in varying ways, incorporated the fundamental European right to information and consultation into their national legal frameworks. Not all member states recognise this right as a general right of all workers (and their representatives) employed by firms. Only a few member states – Belgium and the Netherlands, for example – afford this right constitutional status. Such variation in practice arises from the different industrial relations traditions and systems: only in the “two-tier system” is a structure of workers’ representation that is legally independent of the trade unions to be found in firms. The national regulations on information and consultation also vary widely. Details regarding the form and timing of information disclosure and the procedures and content of consultation are not consistent between member states.

The economic effects arising from the exercise of information and consultation rights have also received attention. The right of workers to information and consultation is regarded as a consequence of creating a Europe-wide internal market founded on the essential values on which our societies are based. These values include the concept of a social and democratic dimension of the economy.

POLICY IMPLICATION

EFFECTIVELY IMPLEMENT THE NEW FUNDAMENTAL SOCIAL RIGHT ON INFORMATION AND CONSULTATION

Information and consultation of employees has to be regarded as a fundamental social right within Europe. This indicates that it has to do primarily with the appreciation of human dignity (see Article 1 of the EU Charter).

Under European law and according to the terms of the EWC directive, this fundamental right is applicable by means of collective interest representation. It includes the concept of social rights and the political objective of fostering democratisation of economy.

Having demonstrated their importance in practice, EWCs will become more significant within the framework of the new EU Treaty. By reference to provisions of the Charter of Fundamental Rights, EWCs will become the institution through which workers will be able to achieve their fundamental right of being informed and consulted by management on decisions that substantially affect their working lives.

This is a strong reason for strengthening the terms of the EWC directive.

EWCs seek justice in court to clarify the inadequate provisions of the directive

Judges of European and national courts have expressed their concern about the weak definitions in the EWC directive and have confirmed the need for greater precision. In some 40 EWC-related cases there has been reason to take issues to court on both the national and European level. Examination of these cases reveals that a vast majority have their roots in the imprecise definitions of the current directive. Only through the introduction of greater precision can legal uncertainties be addressed and relations between employers and workers established on the basis of mutual trust.

EWCs established by agreement are a specific embodiment of social dialogue and, despite the fact that each of them is a tailor-made solution adapted to the needs of the individual company, they all rely on hard law. *This hard law sets limits to the intrinsic flexibility of the directive and guarantees a fallback option in cases of conflict.*

Hitherto, the cases dealt with in national courts have tended to focus upon the social dialogue aspect of EWCs. There have been some landmark instances, such as *Renault (Vilvoorde) of 1997 concerning a plant closure that failed to satisfy proper information and consultation requirements (decided in favour of the EWC)* or a more recent lawsuit concerning a merger between French energy and public utilities companies Gaz de France – Suez at the French courts (2006-2007). Court proceedings concerning the functioning of EWCs have been initiated on both the national and European level in a total of 40 cases. Indeed, EWCs were involved in court proceedings from the outset for, in 1996 and 1998 Norwegian and Belgian courts respectively issued rulings upon EWC members' selection procedures.

The Renault (Vilvoorde) 1997 decision strengthened the need to respect employees' voice in company restructuring. Unfortunately, the provisions were not yet watertight and several EWCs were subsequently forced to seek legal redress in regard to restructuring. Various forms of restructuring have triggered a vast majority of the court cases, such as the British Airways case in 2006, where the management, when conducting international restructuring, attempted to circumvent information and consultation obligations by denying the transnational character of these measures. Once again, the court reaffirmed the EWC's undeniable competence on the basis of the directive.

National tribunals have not been the only level at which EWCs have sought justice. ***Three cases directly linked to EWC practice were tried by the European Court of Justice (ECJ).*** These were: Bofrost C-62/99, ADS Anker C-349/01 and Kühne & Nagel C-440/00. These cases referred to the basic right to obtain information about company structure and employees in subsidiaries. This information is crucial for setting up a Special Negotiating Body prior to establishing an EWC. In the last of these cases, the ECJ issued its judgment in 2004, requiring the management of Kühne & Nagel to disclose the necessary information. The ruling was ignored, however, and the EWC has not yet been set up.

Sanctions, an indispensable element of effective law

Finally, the functioning and efficacy of hard law often boils down to sanctions. In any amendment designed to strengthen the position of EWCs, it is essential to provide for adequate sanctions in the event of failure to fully or properly implement the agreement reached between the SNB and the central management. It is clearly equally necessary to impose sanctions in relation to any failure to implement the fallback clauses. Though the ECJ has in the past helped to promote the appropriate implementation of the directive, its interventions have been too piecemeal. A systematic solution in the form of a revised EWC directive must now be applied.

The analysis of EWC-related court cases proves that good provisions in the directive will not function properly ***if deterrents to perpetuate breaches of the law are not in place***. Dissuasive, effective and proportionate sanctions are for many companies the decisive factor when it comes to respect of information and consultation procedures. In all too many cases, trade-offs between the costs of information and consultation and the potential costs of violating the law have been decided by managers in favour of the latter. In order to ensure that employee rights are meaningful, the message must be clear: ***violations of procedures of information and consultation should imply financial consequences for the perpetrator and be declared null and void*** by law.

POLICY IMPLICATION

PROPORTIONATE, EFFECTIVE AND DISSUASIVE SANCTIONS – THE MISSING LINK IN THE EWC DIRECTIVE

National and European court judgments demonstrate the need for a revision of the directive. The findings and decisions of courts must be included in refinements to the directive in order to ensure that EWCs are not exposed to the same problems that have already appeared in numerous courtrooms.

There is, however, one more aspect to this issue: namely, the capacity to go to court. The revised directive must remedy this shortcoming, and guarantee untrammelled access to courts for all EWCs, irrespective of material status. Justice should not be confined to those who can afford it.

It is not enough to further strengthen the position of the EWCs and to facilitate their participative functions (experts, training, separate meetings with interpreters, etc.). In the absence of adequate dissuasive, effective and proportionate sanctions to safeguard employee rights to information and consultation, these rights will be weak and vulnerable.

No transparency: reasons for the non-implementation of the EWC directive

The high rates of company restructuring by mergers and acquisitions, uncertainties of further company development, and the fragmented nature of EWC structures, can be identified as relevant reasons for not establishing EWCs.

Research undertaken into the non-implementation of the EWC directive in German multinationals has uncovered some interesting facts which can inform the current discussion on revision of the directive.

First, although the European Commission acknowledges that the ever-increasing *phenomenon of company mergers and acquisitions has consequences for existing EWCs*, research findings suggest that the measures implemented to date do not go far enough. Although the Commission's recommendations (regarding adaptation clauses or renegotiation) are to be welcomed, research findings indicate the need for the directive to regulate the procedures to be followed during mergers and acquisitions. Such regulation is particularly required when restructuring involves the coming together of two companies where an EWC is already in place.

Second, the *issue of transparency concerning the number of employees* and company structures needs to be addressed if the existing EWC compliance rate of 35 per cent is to be improved. Case study work on German multinationals that have failed to implement the EWC directive reveals a lack of willingness on the part of employers to share information relating to the number of employees within European foreign subsidiaries. Although the European Court of Justice has ruled on numerous occasions that employers are required to disclose such information, this does not deter companies from failing to comply with the EWC directive.

Third, the lack of universal access to an EWC in some Community-scale groups has to be addressed. This shortcoming clearly contradicts the directive's commitment to offering all employees, irrespective of their position within a company, the right to be informed and consulted on European-wide issues. Such situations result from fragmented EWC structures, where some divisions of a Community-scale group have an EWC whilst others are excluded from such an agreement.

POLICY IMPLICATION

INCREASE THE RATE OF COMPLIANCE BY ADOPTING A MORE COMPREHENSIVE APPROACH TO THE APPLICATION OF THE DIRECTIVE

It is suggested that a register that obliges companies to report the number of employees they employ within the European Economic Area needs to be established. In this way greater transparency could be assured. Of course, the viability of such a system of registration would require some form of sanction against employers who continued not to comply with the legislation. Any revision of the EWC directive needs to consider the fragmented nature of some EWC structures.

Inadequate quality of information and consultation

EWC representatives consistently highlight inadequacies in the quality of information and consultation provided by management. These inadequacies create a marked discrepancy between expectations and practice, and are in contradiction with the principal purpose of the directive. Furthermore, a great deal of company restructuring takes place without the involvement of employee representatives. Research shows that employee representatives are excluded from the majority of discussions that precede company restructuring.

Article 1.1 of the EWC directive defines the purpose of the directive as being ‘to improve the right to information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings’. There is no definition of ‘information’ provided within the directive and ‘consultation’ is defined as ‘the exchange of views and establishment of dialogue between employees’ representatives and central management’ (Article 2(f)). *In the absence of appropriate definitions of the key terms that underpin the purpose of the directive, it is necessary to ask the following question: what is the quality of information and consultation that takes place at EWCs?*

This question can be asked in two stages. The first stage enquires about the overall agenda of EWCs, whereas the second stage is concerned with the quality of information and consultation when companies restructure. The information provided is drawn from a large-scale survey of EWC representatives (N=473) in EWCs organised by different European Industry Federations.

Table 1 illustrates the situation at plenary meetings of EWCs as perceived by employee representatives. Each of the agenda items listed is specifically mentioned in at least 70 per cent of current EWC agreements. In other words,

if the quality of information and consultation were of an appropriate quality, the category headed ‘useful information and consultation’ would read at least 70 per cent in every column. The data show that there is a marked discrepancy between expectations and practice. ***The quality of information and consultation is insufficient for employee representatives to engage appropriately with senior managers of multinational companies. The basic purpose of the directive is thus not being met.***

TABLE 1: Was the quality of the information and consultation adequate?

ALL EWC REPRESENTATIVES

Issue	Not Raised	Raised, but useless information	Useful information, but no consultation	Useful information and consultation
	%	%	%	%
Economic and financial situation of the company	7.6	6.4	55.0	31.1
Corporate strategy and investment	8.3	6.4	52.6	32.8
Changes to working methods	37.4	11.0	33.7	17.8
Closures or cutbacks	16.1	11.2	44.5	28.1
Mergers, take-overs or acquisitions	23.2	6.8	53.3	16.6
Reorganisation of production lines	41.6	8.1	35.9	14.4
Transfers/relocation of production	30.8	5.4	43.3	20.5
Employment forecasts	29.6	12.0	41.8	16.6

A key area of engagement of EWCs is during periods of company restructuring. Since the adoption of measures directed towards the single European market, the rate of company restructuring has been high. No fewer than 327 (80.0 per cent) of respondents reported that management had restructured the company to some degree in the past three years. Table 2 shows the quality of information and consultation attached to these restructuring events.

TABLE 2: The EWC and company restructuring

	When was the EWC informed of the restructuring? %	When was the EWC consulted over the restructuring? %
Before the decision was finalised	24.2	19.9
Before the decision was made public	37.0	29.7
After the decision was made public	25.7	20.5
The EWC was not informed/consulted	13.1	30.0
	N=327	N=327

The result is extremely disappointing from the perspective of employee representatives. Less than one quarter of employee representatives are informed of restructuring events before management finalises its decision on such events and less than one fifth of employee representatives are consulted in the same circumstances. The opportunity for employee representatives to be involved in restructuring is thus extremely limited. ***Given that 30.0 per cent of employee representatives are not consulted in any form about restructuring, it is clear that the objectives set by the European Commission for the directive are not being met in practice.***

POLICY IMPLICATION

REMEDY THE INSUFFICIENT SUPPLY OF INFORMATION

EWC representatives unequivocally state that EWCs need better resources for their work: in particular, a strengthening of the definitions of information and consultation would ensure that restructuring takes place after employee participation as was intended by the directive.

Only by defining information and consultation in a manner that addresses issues such as the form in which information is provided, the timeliness of the information provision and consultation, and the capacity of employee representatives to influence the outcome of the process, will the objectives set by the European Commission for the directive be met.

Agreements on information and consultation in EWCs and SE works councils: going beyond the legal minima set by the directives

In an increasing number of cases management have concluded agreements that extend the legal provisions regarding procedures for the involvement of their employees. These agreements are primarily the result of renegotiations based on longstanding practical experience. The SE agreements on involvement of workers in European companies (SE) confirm this observation. At the same time, such agreements underline the need for a better legal basis for EWCs referring to the definitions of rights as, at least, provided by the SE-directive.

Information and consultation rights

Due to the vague and weak provisions on information and consultation in the EWC directive, some EWCs decided to apply their own, more effective, definitions of these key terms. There are more than 40 cases of EWCs that succeeded in reaching agreement with management on more favourable definitions of information and consultation. Among the **more advanced definitions of information** the following examples can be highlighted:

- Cases where it is explicitly stipulated that management decisions shall not be carried out until the EWC has been properly informed and consulted, and stated that in the event of dispute any party may ask to postpone the implementation of the decision by one month, during which time a solution is to be sought (BEHR EWC Agreement);
- International and other information is to be given to the EWC in a timely manner in order to enable the consultation of the EWC to be incorporated into management decision-making processes (Jungheinrich, Veba, ZF Group, Lindt & Sprungli, Sulzer, DSM, Baseler Insurance Group, VWR);

- A regular and formalised reporting procedure was established where company management agreed to provide the EWC with quarterly reports about the corporate situation and developments (Tenovis).

In regard to **consultation, some advanced provisions** going beyond the legal minimum comprise:

- It is obligatory for the EWC to present its opinion on measures planned by the management (by a certain time, for example, within 7 days of the meeting in which information was disclosed to the EWC STMicroelectronics). The obligation on the EWC to present its own opinion upgrades consultation to a normal part of company internal procedures and departs from an understanding of consultation as a time-consuming add-on;
- Constructive proposals and the right to submit recommendations to management are regarded as core competences of many EWCs (for example, Segerstroem, Air France–KLM and Stryker, where no decision can be implemented without proper information and consultation);
- Negotiating rights have been explicitly guaranteed in only a few cases, one example being Södra EWC whose agreement stipulates that it meets *'to consult and negotiate'*.

Principles of information prior to trans-national interest representation body

In some cases where EWCs have taken their grievances to court, the lack of regulation of access to information between the European level bodies (EWCs) and national bodies has given cause for concern (for example Alcatel-Lucent). In order to exclude this potential problem some agreements stipulate that:

- in the event of conflict, the national body (local works council) has priority over the EWC in access to information (for example, Sasol, Royal Bank of Scotland, and Brambles);

- the opinion of the SE-WC will be sought before and/or at least at the same time as the opinion of the representatives of the relevant country (SCOR SE);
- national employee representation bodies and SE WC are to be informed simultaneously (BASF SE).

Measures to ensure effective functioning

Many EWC and SE agreements contain measures aimed at facilitating proper functioning of the institution, in accordance with the specific situation of the company:

- A majority of EWC agreements exceed the legal standard of a single annual meeting, with additional meetings being provided for mostly in the event of exceptional circumstances (in total, some 600 EWC agreements);
- More than 140 EWC agreements refer to either an obligation or a guarantee in relation to provision of the tools required by the EWC for the purpose of informing employees at national level;
- More than 20 EWCs have explicit guarantees of the right to visit company premises (for example EDF, SBB/BBM, EVN, Otis, PSA; Allianz SE);
- Some 70 AWC agreements contain provision for an arbitration body to be set up in the event of dispute on the proper application of the agreement.

Beyond consultation

Thanks to the more precise and more extensive legal provisions on the involvement of employees contained in the SE directive, many SE works councils enjoy better terms for information and consultation than do EWCs. With the change of company status to an SE most pre-existing EWC agreements were improved.

SE agreements contain advanced definitions and provisions designed to establish a highly effective practice of consultation under which outcomes are supposed to be embodied in agreements. For example, in BASF SE

consultation is conducted with the objective of bringing about an agreement with the company *'after comprehensive deliberations have been completed'*. In MAN Diesel SE joint results achieved by the EWC and management *'shall be recorded and signed'* by both parties. In Klöckner & CO SE the agreement on employee participation provides for a link to the board level of a company. In this case, a management decision has to be confirmed by the supervisory board and the EWC may have the right to formulate its own opinion vis-à-vis this body.

In this respect, SE agreements illustrate advanced practices in social dialogue achieved on a basis of agreement between employers and employees. These agreements also show the crucial nature of legal institutions and highlight the inadequacies of the EWC directive.

POLICY IMPLICATION

IMPROVED RIGHTS FOR EWCs ARE EFFECTIVE ELEMENTS OF CORPORATE GOVERNANCE

EWCs (and SE WCs) can, when treated as partners, agree upon arrangements that enable advanced practices in companies. Such provisions not only satisfy employees' fundamental rights, as guaranteed by the Charter of Fundamental Rights, but also, importantly, support companies in making socially responsible decisions in situations of restructuring.

Anticipating change and restructuring: why stronger EWCs are required

Restructuring is integral to the development of MNCs and is a permanent feature of the corporate landscape. Restructuring is also a source of great uncertainty among the workforce of MNCs as it can have significant effects on local, national and international labour markets. A purpose of the EWC directive was to ensure that EWCs participated in corporate restructuring. EWCs are currently the only relevant employee institution capable of living up to the challenge of trans-national restructuring and industrial change.

Thus, the effectiveness of EWCs has to be measured against this political objective and real challenge.

The automobile sector is one of the branches of industry experiencing the most international competition and restructuring. The sector also includes some of the most effective and course-setting EWCs, some of which have evolved into World Works Councils. Traditionally, this sector is also highly unionised at national level and well coordinated at the European level.

The European economy has been characterised by high levels of enterprise restructuring since the late 1980s. Whereas in the past restructuring tended to be the result of crises at individual companies or the decline of industries or regions, today restructuring has a more complex and diffuse character. Certainly, some restructuring is still taking place in order to manage crisis situations and to put individual enterprises back on their feet. Increased competition, continuing redefinition of global value chains as a consequence of rapid technological development, European integration and the establishment of a single market, more favourable transport costs, and, not

least, the continual search for the lowest labour costs, push enterprises to innovate. Another consequence of the integration of networked production systems is that crisis- or innovation-oriented adaptation processes at one node of a network often have direct effects on other locations of the same enterprise or group and not infrequently also on the relevant suppliers. **‘Restructuring’ has therefore become a synonym for industrial change.**

The European Commission has also acknowledged the high rate of restructuring in numerous documents and initiatives. In its Communication of 15 January 2002 – ‘Anticipating and managing change: a dynamic approach to the social aspects of corporate restructuring’ – the Commission emphasised that ‘one of the key factors for the success of restructuring, in terms of strengthening the competitiveness of the business and from the workers’ point of view, is the assurance of good practice in involving workers’ representatives: involvement on an ongoing basis in the general running of the business, but also effective and therefore anticipatory involvement in relation to the possible emergence of changes likely to impact on employment’. In a subsequent **Communication ‘Restructuring and employment’ of 31 March 2005**, the idea is expressed starkly: **‘European works councils have an essential role to play in anticipating and managing restructuring operations’.**

EWCs are major players in restructuring. As the first genuine European-level body they represent employees at various enterprise locations. This is the way to combine both, local and national, as well as transnational and internal-enterprise perspectives. It aims to enable them to make – together with European and national trade union federations, and local actors – a substantial contribution to anticipating and managing restructuring.

In numerous cases it has become obvious that cross-border restructuring processes cannot be effectively discussed at national level, but have to be addressed, at least, at European level, guaranteeing the presence of the central management and the involvement of the EWC and the European Industry Federation (EIF). **Only at the European level do EWCs and EIFs have the possibility of developing trans-national responses to management strategies.** The room for manoeuvre and the chance to really influence

decisions is much greater at a higher level than at a local level where works councils and/or shop stewards committees are mostly confronted with implementation discussions only.

EWCs' role in sectoral restructuring: towards trans-national bargaining

In the **automobile sector the first substantive EWC agreements were signed on the topic of restructuring** by Ford Europe and General Motors Europe. Why did this occur first in this specific sector?

First, the automobile industry is a highly unionised sector. Historically, in European countries, the automobile industry has been a stronghold of unionism and a pioneer of worker demands and industrial relations arrangements, which were later adopted by other industries. The industry continues to play this pioneering role at the European level with the evolution of the role of EWCs towards negotiations on restructuring, with the transformation of EWCs into World Works Councils (WWCs) and with the signature of international framework agreements on corporate social responsibility and social rights by these EWCs and WWCs.

Second, many EWCs in the automobile sector are now more than ten years old. They can be regarded as experienced after having held numerous meetings, particularly of the select committees. This helped them to establish personal contacts and trust between EWC members, which are a prerequisite for developing common strategies. As the sector is highly unionised, the EWCs are also highly (and often completely) unionised. From the beginning, **national unions mandated by the European Metalworkers Federation (EMF) played an important role as external experts and advisers**. This facilitated union coordination and enabled the emergence of strategies coordinated at the European level, which could be harmonised with existing rules of collective bargaining at the national or local level.

Many restructuring problems are clearly of a trans-national character. In the automobile sector EWCs established the rules of priority for the negotiation of a European framework agreement before any national or local negotiations. **In order to develop such initiatives in other sectors, it would be helpful if a priority of information and consultation of the EWC was clearly established.** This information must be given in due time in order to enable a pro-active attitude on the part of the employee representatives. Otherwise, the present situation of uncertainty would continue to prevail. This uncertainty fosters the search for purely local or national solutions, which are frequently shown to be incompatible with the interest of the whole European workforce involved in a transnational restructuring process.

The ability to anticipate change and employee involvement represent two basic prerequisites for successful restructuring. The need to anticipate change implies that it is not sufficient to involve employees only in addressing the social consequences of restructuring. **Consultation must entail employee involvement in the initial phase of shaping restructuring processes.** The ability to forecast and anticipate change and, therefore, the choice of a more proactive strategy, considerably extends the range of actions and the ability to take a positive approach to restructuring, characterised by innovation, diversification, quality improvement, and not just reduction of labour costs.

The **timely involvement in restructuring processes is of course one important precondition in order to guarantee an effective and positive role of EWCs in restructuring.** It is, however, equally important that consultation processes include the possibility of developing alternative proposals to those presented by management. This also implies that EWCs need to extend their competences to develop alternative solutions in the course of consultation.

POLICY IMPLICATIONS

EWCs WORK ONLY IF THEY CAN ANTICIPATE CHANGE - EQUIP EWCs WITH FACILITATING TOOLS

Best practices in dealing with restructuring start with consolidation of the rights and role of EWCs and can develop where interest representation is adequately equipped for the task. Thus, a more robust definition of ‘transnational’ will assist in developing a wider range of employee participation.

Despite a redefinition of information and consultation rights, a revised EWC directive should specify that central management has to present the broader restructuring and investment strategies in the mid-term in order to facilitate the identification of the connections between the single steps in the overall restructuring strategy.

The need to improve EWCs’ role in restructuring includes the development of the knowledge needed. This can be achieved only in the context of training programmes and through the use of experts. The right of training and access to the necessary resources should, therefore, be taken up in the revision of the EWC directive.

Insufficient legal framework for EWCs in Central Eastern Europe

The integration of employee representatives from new member states into EWCs, in many cases informally before enlargement in May 2004, provided an important stimulus for domestic labour relations within new member states. Simultaneously, management and employee representatives were able to learn about the challenges that arise when industrial relations are fragmented and institutions are inadequately developed.

Equally important, EWCs have imported social dialogue on a company level to countries where it has hitherto been absent.

Representatives from Central and Eastern European have been involved in EWCs since the mid-1990s, often initially as observers, but also as full members with voting rights even before 1 May 2004. EU enlargement brought an additional 300 companies within the scope of the EWC directive, including around thirty companies with headquarters in the Central and Eastern European Member States, the largest share being in Poland, the Czech Republic and Hungary. Today, around 1,250 companies covered by the EWC directive operate in those EU member states which joined the Union in 2004 and slightly more than 40 per cent of these companies have an EWC established.

EWCs are an important cornerstone of the EU regulatory framework for a cooperative and dialogue-based model of social relations at the company level. In particular, with regard to the industrial relations systems “in flux” in the Central Eastern European member states, EWCs are an important instrument that may contribute to the firm embedding of an institutionalised system of social dialogue between social partners. EWCs, for example, offered the exceptional possibility of being heard and of receiving

information on management decisions concerning subsidiaries of multinational companies in Central Eastern EU member states during the difficult transformation process. In the context of intensified transnational restructuring and relocation, **EWCs play an important role in building solidarity and fighting rivalries between employees in ‘new’ and ‘old’ EU countries.** It is unquestionable that EWCs have played an important role in fostering social dialogue in undertakings in countries such as Poland and Hungary, where this idea still is an ‘alien’ concept for many managers.

It is evident that **trade unions have attempted to make EWCs efficient bodies.** Trade unions have been involved in setting up EWCs or initiating negotiations. The majority of representatives in EWCs are senior trade union members or officials. For employee representatives, EWCs are seen as an important channel of information and consultation activities at company level and as an instrument of international cooperation. EWCs also offer the opportunity to build strategies for the stronger protection of employees’ rights and interests in the light of globalisation.

Still, in many cases, **employers are trying to use EWC institutions for their own interests** and have unilaterally nominated ‘their’ representatives to the EWCs. To ensure adequate information and consultation, **EWCs should be given a less flexible legal background.** The present legislation allows the EWCs to work in a superficial manner. In this context, representatives from Central and Eastern Europe strongly agree with their colleagues in the West in criticising the infrequency of meetings and the purely informative functions of most EWCs. EWC members also lack training and language skills. As recent surveys show, this has resulted in many EWC delegates from Central and Eastern Europe being frustrated about the efficiency of EWCs as an instrument of transnational interest representation and social dialogue. Empirical and case study evidence also provide strong arguments for improving the resource base (frequency of meetings, provision of training and a more concrete definition of consultation rights) of existing EWCs in order to avoid ‘overstretching’ their formally provided capacities and enabling them to play their role efficiently.

The general pattern of EWC development in Central and Eastern Europe is disappointing. Four years after enlargement only three new EWCs have been created: two in Hungary (MOL, SAB Miller) and one in the Czech Republic (CEZ Group), and none in Poland, Bulgaria and Romania. Four years after EU enlargement, and following a timely transposition of the EWC directive into national law of the Central Eastern EU member states, not all companies with EWCs have integrated employee representatives from these countries into their activities. However, even in those cases where representatives were properly integrated from the beginning, it was not always easy to bridge different expectations and cultural differences between members of different nationalities. A revised directive should take account of this difficulty by providing more precise definitions which better indicate the possibilities and capacities according to which EWCs can evolve, including in relationship to national structures of interest representation.

POLICY IMPLICATION

MAKING THE LEGAL BASIS MORE ROBUST HELPS TO DEVELOP MORE STABLE SOCIAL DIALOGUE AT COMPANY LEVEL

There is a clear and simple lesson to be drawn from the experience of 'EWCs going East': a stronger and improved EWC directive is needed urgently as the Central and Eastern European Member States are becoming more and more integrated in transnational restructuring and divisions of labour and production requires more efficient and effective instruments of transnational dialogue and employee participation. At the moment, the overwhelming majority of EWCs is not able to play this role, not to mention all those multinational companies operating in the New Member States which have not even started to establish EWCs or integrate delegates from Central and Eastern Europe.

Providing a more efficient instrument to support the establishment of more EWCs and dismantle existing barriers to starting and completing negotiations on the setting up of EWCs is urgently needed.

Globalisation, Corporate Social Responsibility and the negotiating power of EWCs

There is growing evidence that many EWCs have developed into genuine negotiating partners, often in conjunction with European industry federations, and are occasionally parties to agreements signed with the management of multinational companies.

EWCs are often actively engaged in social dialogue in multinational companies. In these circumstances transnational agreements on Corporate Social Responsibility (CSR) and a range of other more specific issues have been concluded to ensure the more wide-ranging protection of workers in areas not covered by EU law.

In many cases, EWCs are accepted by managers as negotiating partners, thus promoting a sustainable social dialogue within multinational companies and providing for the involvement of a wide range of workers' representatives in European and worldwide bodies. In some of the agreements that have been reached, better social and ecological performance of multinational companies have been addressed, while **corporate social responsibility** is the subject of other agreements. These agreements go far beyond the originally intended legal purpose of EWCs. The European Commission, for example, reports that no fewer than 147 transnational agreements have been agreed with management in 89 different multinational companies.

EWCs has assisted in the establishment of business-driven CSR initiatives thereby **facilitating all parties within multinational companies to adapt better to globalisation**. This process was acknowledged by the European Commission when it underlined in communication (COM(2006) 136) on CSR the constructive roles performed by EWCs in the development of best practice in the field of CSR. Integral to CSR is the idea of organised social dialogue. It is thus disappointing that many companies that fall within the

scope of the directive have resisted to establishment of EWCs. Such companies clearly oppose social dialogue and resist the extension of workers' participation. A revision of the directive should include measures to overcome this resistance.

There are several cases where EWCs have served as a point of departure for the establishment of worldwide social dialogue by setting up a 'world works council'. Some EWCs have also been actively engaged in developing and concluding international framework agreements in conjunction with international, European and national trade union organisation. Such international framework agreements settled with management are integral to the participation of workers in social aspects of globalisation and turn some unilateral CSR initiatives into joint and binding commitments for the promotion of workers' rights.

Variety rather than homogeneity characterises the involvement in the conclusion of international agreements on any topic. The involvement of EWCs in negotiations varies from one multinational to another: ranging from no involvement at all to regular information during the negotiation process. EWCs are sometimes even consulted on the issues at stake and can be part of the negotiating team and representatives of the EWC may sign the agreement. Ten out of the fifteen agreements the IMF has signed, for example, were also signed by the EWC. It is also worth mentioning that all but one of the international framework agreements which the IMF has signed with German companies were co-signed by the EWC. Research findings suggest that the involvement EWCs in the process of negotiating international framework agreements varies according to sector, nationality and the orientation of the global union federation. Additionally, the involvement of an EWC depends on its capacity to appropriate the issues of globalisation and CSR. In this respect, the limitation to their geographic scope prevents EWCs from fully responding to global challenges.

The involvement of EWCs in CSR- related activities coupled to their involvement in the conclusion of international agreements illustrates the growing standing EWCs among some managers. Because the competence of EWCs in these areas is not guaranteed by law and is acknowledged by

management on an entirely voluntary basis, these developments are not universal. In consequence, within the multinational companies where such developments are not underway workers are excluded from the benefits of CSR initiatives. A revised directive thus needs to ensure that the rights of EWCs in the conclusion of international framework agreements and in promoting CSR are consolidated to ensure that the benefits of these developments are available to all employees, rather than just a few.

POLICY IMPLICATION

ADAPT LEGISLATION TO THE EWC REALITIES OF TODAY

The active involvement of EWCs in international framework agreements, and their significant impact on CSR practice raise the question: does the existing European legal framework reflect current industrial relations practices in multinational companies that operate in Europe? It is clear that the directive does not provide a satisfactory legal underpinning for such activities. Any revision should, therefore, extend the legal underpinning for EWC activities in these areas to bring the legislation in line with emergent practices.

The legal capacities of EWCs to negotiate and sign agreements are limited. Thus, they are not in a position to play a major role in global issues. At the same time, today more than ever, the role of EWCs in the process of developing, negotiating and implementing global agreements is generally important, albeit in no way systematic.

EWCs as drivers of cross-border trade union co-ordination

EWCs have the potential to contribute more actively to the creation and the reinforcement of the process of ‘social inclusion’ in Europe. The realisation of this potential this lies at the core of the European social model.

EWCs enhance the capacity of trade unions to act at the transnational level. Although the capacity of trade unions to engage in cross-border coordination at sectoral level has been strengthened by engagement with EWCs, the absence of any precise role for trade union involvement in the directive undermines the capacity of trade unions in particular circumstances.

As an institution, EWCs represent an important new development, which provides support to employee representatives in provision of guidance and information about company developments. However, EWCs have the potential to achieve much more. As is well known, the implications of managing business operations, which are increasingly pan-European in scope and organisation, have prompted a growing number of multinationals to develop a cross-border, European dimension to their own company-specific industrial relations practices. Research results illustrate that EWCs have the potential to play a part in this coordinated networking for the joint regulation of employment matters in Europe because **EWCs enhance the capacity of trade unions to act at the trans-national level.** Although the capacity of trade unions to engage in cross-border coordination at sectoral level has been strengthened by engagement with EWCs, the absence of any precise role for trade union involvement in the EWCs European directive undermines the capacity of trade unions in particular circumstances. The role of the trade unions in a European dimension, therefore, needs to be improved as part of the process of revision of the EWC directive.

The integration of trade unions within EWCs is crucial for the realisation of trans-national industrial relations in Europe. **If trade union organisations are to be included in the promotion and shaping of international competition in Europe, the distance between trade unionists and the members of the EWCs needs to be narrowed.** In this respect, trade union integration within the EWC structures and activities is a necessity. Such integration can be achieved by developing and reinforcing the role and the function of the trade unions in coordinating diverse employees' interests within (and between) EWCs and as a means to encourage a pan-European rather than a national agenda.

POLICY IMPLICATION

STRENGTHENING THE ROLE OF TRADE UNIONS in EWCs

The strengthening of the role of the trade unions within EWCs will create a useful space within which the goal of pro-active contributions to managing change may be achieved.

Thus, a revised directive should give them a provision for involvement aiming to spread good experiences into other companies and sectors which are less strongly unionised than in the automobile sector.

EWCs do not slow down managerial decision-making

EWCs serve to ensure social freedom by encouraging the search for mutually acceptable solutions to issues concerned with improved productivity and competitiveness. There is no evidence of EWCs slowing down management decision-making in these areas.

Recent research shows that EWCs are becoming a valuable instrument in the governance of trans-national companies in Europe. On the whole, managers see positive effects from EWCs in human resource management and company operation terms, with only a small minority of managers believing that EWCs slow down decision-making within the firm. At the same time, econometric analysis shows that the presence of an EWC has no negative impact on company profitability or stock market valuation. In economic terms, when EWCs have no negative impact on shareholders and a positive effect for employees and managers, then there is a clear positive benefit from EWCs for society as a whole.

A recent survey of senior managers shows clearly that **EWCs perform functions that are difficult to fulfil at the national level in MNCs**. Company values and/or mission statements had been discussed in 69 per cent and corporate social responsibility in 62 per cent of cases at recent meetings of the EWCs surveyed. Issues like cross-border relocations and benchmarking plant performance across borders are also increasingly discussed in EWCs.

Most frequent topics discussed at recent EWC meetings

Topic Discussed	% of EWCs
Company's financial situation	99
Corporate values/mission	69
Acquisitions and mergers	68
Plant cutbacks or closures	66
CSR/Sustainability	62
Process innovation	60
Product innovation	49

Source: TIM Project "Innovative Corporate Cultures and EWCs", 2006.

Although there is a certain diversity of management opinion regarding the effect of EWCs on their companies, in general the assessment is positive. **No than fewer 67 per cent of managers thought that EWCs improved communications with employees 'somewhat' or 'significantly'**, versus only 2 per cent who thought that communications worsened. Almost two thirds felt that employee commitment improved, and none thought that there was a negative impact in this area. 37 per cent believe that the effectiveness of the implementation of management decisions was improved through the EWC, while only 3 per cent had a negative opinion on this topic. Only in the case of 'speed of decision-making' was there a balance of positive and negative opinions – however, the clear majority (81 per cent) felt that altogether there was no significant impact here.

Percentage of managers believing that EWCs have a positive versus negative impact

Impact of EWC on:	Positive	Negative
Communications with employees	67	2
Employee commitment to company objectives	62	0
Effectiveness of implementation of management decisions	37	3
Speed of decision-making in the company	10	9

Source: TIM Project 'Innovative Corporate Cultures and EWCs', 2006.

Econometric analysis measuring the impact of the presence or absence of an EWC among the top 600 stock-market-listed companies in Europe shows that the presence of an EWC has no negative effects for shareholders. Neither in the case of return on equity (ROE), return on assets (ROA), or stock market valuation (Market-to-Book Ratio) did the variable indicating presence of an EWC have a significant negative value.

POLICY IMPLICATION
STRENGTHENING EWCs – A CLEAR BENEFIT
FOR EUROPE

Corporations are faced with a number of key challenges when they expand across national borders. How do they integrate diverse national cultures and industrial relations practices? How can they create a common corporate identity, especially when workplaces in other countries are acquired? How can they see that minimum standards for labour practices are implemented outside of the home country? How can they ensure a good flow of information from the workforce in different countries directly to top management? These are all functions which EWCs can fulfil.

In welfare economics terms, the message from the research findings is clear: when an institution has no negative welfare effect for one group, and positive welfare effects for other groups, then there is a clear welfare benefit for society as a whole.

Development of a collective identity in European Works Councils

Experiences of working together in EWCs continuously and over years demonstrate the capacity of EWC members to develop a sense of common European labour identity.

It is estimated that 12,000 EWC delegates currently represent around 14 million workers. Undoubtedly these figures amount to a huge success in the development of employee representation at the European level. However, the number of existing EWCs says very little about the quality of such a body, and, particularly, whether this unique institution can overcome the Achilles heel of organised labour – a nationally embedded mind-set. The ultimate challenge facing EWCs involves developing a collective identity, which in itself is no mean feat. Existing research demonstrates that very few **EWCs have been able to develop a common sense of purpose that stretches beyond national borders**: that is the Europeanisation of employee representatives' work.

The **emergence of a collective identity within EWCs** entails certain pre-conditions. Specifically, measures are required that provide for intensified communication in excess of the yearly meeting. The intensification of communication is a prerequisite to ensure that the EWC is characterised by a high degree of transparency, a key variable underpinning the emergence of trust relations between delegates. Clearly, any eventual reform of the EWC directive should consider how the legal basis for informing and consulting employees at a European level can better assist intensified relations between delegates. Certainly, an increase in the number of yearly meetings and employee-only pre-meetings would greatly help improve the profile of the EWC. Equally, measures need to be considered which improve EWC delegates' access to resources to assist them in their tasks. In particular, improved training and time resources are necessary if the EWC is to develop

into a European collective actor. Research evidence shows that EWCs in possession of a collective identity have put in place a team of highly committed officers/representatives who not only have the necessary skills sets (specifically foreign languages skills, knowledge of different industrial relations practices) required to undertake EWC work, but also are very mobile within their EWC network.

POLICY IMPLICATION

FOSTER EUROPEANIZATION FOR THE BETTER FUNCTIONING OF EWCs

Any reform of the EWC directive should consider how the legal basis for informing and consulting employees at a European level can better assist intensified relations between delegates. Provisions have to be improved on all measures with a view to fostering closer internal relations.

Policy implications

IT IS HIGH TIME TO UPDATE THE DIRECTIVE AND ADAPT IT TO THE NEW REALITIES

Revision of the EWC directive is another step in promoting employee rights in Europe. After the initial political struggle, adoption and gradual extension of the EWC directive, including enlargement and the consequent promotion of these bodies to 12 new EU member states, it is high time to revise the directive in the light of current experience. A revised EWC directive should help to ensure that the measure benefits millions of workers in multinational companies in Europe.

EFFECTIVELY IMPLEMENT THE NEW FUNDAMENTAL SOCIAL RIGHT ON INFORMATION AND CONSULTATION

Information and consultation of employees has to be regarded as a *fundamental social right within Europe*. This indicates that it has to do primarily with the appreciation of human dignity (see Article 1 of the EU Charter).

Having demonstrated their importance in practice, EWCs will become more significant within the framework of the new EU Treaty. By reference to provisions of the Charter of Fundamental Rights, EWCs will become the institution through which workers will be able to achieve their fundamental right of being informed and consulted by management on decisions that substantially affect their working lives. This is a strong reason for strengthening the terms of the EWC directive.

Under European law and according to the terms of the EWC directive, the fundamental right on information and consultation is applicable by means of collective interest representation. It includes the concept of social rights and the political objective of fostering democratisation of economy.

PROPORTIONATE, EFFECTIVE AND DISSUASIVE SANCTIONS – THE MISSING LINK IN THE EWC DIRECTIVE

National and European court judgments demonstrate the need for a revision of the directive. The findings and decisions of courts must be included in refinements to the directive in order to ensure that EWCs are not exposed to the same problems that have already appeared in numerous courtrooms. There is, however, one more aspect to this issue: namely, the capacity to go to court. The revised directive must remedy this shortcoming, and guarantee untrammelled access to courts for all EWCs, irrespective of material status. Justice should not be confined to those who can afford it. It is not enough to further strengthen the position of the EWCs and to facilitate their participative functions (experts, training, separate meetings with interpreters, etc.). In the absence of adequate dissuasive, effective and proportionate sanctions to safeguard employee rights to information and consultation, these rights will be weak and vulnerable and will continue to be ignored by many managements.

INCREASE THE RATE OF COMPLIANCE BY ADOPTING A MORE COMPREHENSIVE APPROACH TO THE APPLICATION OF THE DIRECTIVE

Any revision of the EWC directive needs to consider the fragmented nature of some EWC structures. A suitable measure will be to establish a register that obliges companies to report the number of employees they employ within the European Economic Area. In this way greater transparency could be assured. Of course, the viability of such a system of registration would require some form of sanction against employers who continued not to comply with the legislation.

REMEDY THE INSUFFICIENT SUPPLY OF INFORMATION

EWC representatives unequivocally state that EWCs need better resources for their work: in particular, a strengthening of the definitions of information and consultation would ensure that restructuring takes place after employee participation as was intended by the directive. Only by defining information and consultation in a manner that addresses issues such as the form in which information is provided, the timeliness of the information provision and consultation, and the capacity of employee representatives to influence the outcome of the process, will the objectives set by the European Commission for the directive be met.

IMPROVED RIGHTS FOR EWCs ARE EFFECTIVE ELEMENTS OF CORPORATE GOVERNANCE

EWCs (and SE WCs) can, when treated as partners, agree upon arrangements that enable advanced practices in companies. Such provisions not only satisfy employees' fundamental rights, as guaranteed by the Charter of Fundamental Rights, but also, importantly, support companies in making socially responsible decisions in situations of restructuring.

EWCs WORK ONLY IF THEY CAN ANTICIPATE CHANGE - EQUIP EWCs WITH FACILITATING TOOLS

Best practices in dealing with restructuring start with consolidation of the rights and role of EWCs and can develop where interest representation is adequately equipped for the task. Thus, a more robust definition of 'transnational' will assist in developing a wider range of employee participation.

Despite a redefinition of information and consultation rights, a revised EWC directive should specify that central management has to present the broader restructuring and investment strategies in the mid-term in order to facilitate the identification of the connections between the single steps in the overall restructuring strategy.

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MAKING THE LEGAL BASIS MORE ROBUST HELPS TO DEVELOP MORE STABLE SOCIAL DIALOGUE AT COMPANY LEVEL IN THE NEW MEMBER STATES

There is a clear and simple lesson to be drawn from the experience of 'EWCs going East': a stronger and improved EWC directive is needed urgently as the Central and Eastern European Member States are becoming more and more integrated in transnational restructuring and divisions of labour and production requires more efficient and effective instruments of transnational dialogue and employee participation. At the moment, the overwhelming majority of EWCs is not able to play this role, not to mention all those multinational companies operating in the New Member States which have not even started to establish EWCs or integrate delegates from Central and Eastern Europe. Providing a more efficient instrument to support the establishment of more EWCs and dismantle existing barriers to starting and completing negotiations on the setting up of EWCs is urgently needed.

ADAPT LEGISLATION TO THE EWC REALITIES OF TODAY

The active involvement of EWCs in international framework agreements, and their significant impact on CSR practice raise the question: does the existing European legal framework reflect current industrial relations practices in multinational companies that operate in Europe? It is clear that the directive does not provide a satisfactory legal underpinning for such activities. Any revision should, therefore, extend the legal underpinning for EWC activities in these areas to bring the legislation in line with emergent practices. The legal capacities of EWCs to negotiate and sign agreements are limited. Thus,

they are not in a position to play a major role in global issues. At the same time, today more than ever, the role of EWCs in the process of developing, negotiating and implementing global agreements is generally important, albeit in no way systematic.

STRENGTHENING THE ROLE OF TRADE UNIONS in EWCs

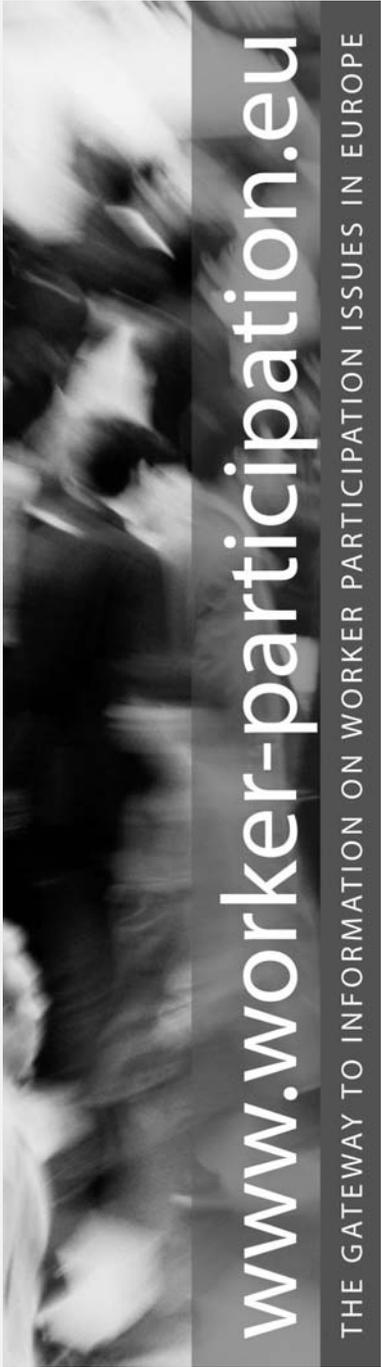
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www.worker-participation.eu

THE GATEWAY TO INFORMATION ON WORKER PARTICIPATION ISSUES IN EUROPE

worker-participation.eu

Statutory worker involvement in company decision-making strengthens a democratic, social and competitive Europe. Involving workers in company decision-making represents an important part of the European Social Model and makes economic sense in modern economies. The European Union has committed itself to the aim of promoting strong workers' rights to information, consultation and participation at all levels of a company.

The website worker-participation.eu is a new resource that provides users with information on national systems of industrial relations within the EU-27 and on worker participation issues at European level such as European Works Councils, European Companies, corporate governance and EU social dialogue. It also brings together information from the former SEEurope website and the newly revamped EWC website (www.ewcdb.eu). A common framework is provided for compiling information, expertise, training activities and networks.

EWcdb.eu

The on-line European Works Councils Database contains information on multinationals that have concluded (or are in the process of negotiating) an EWC agreement. The database is the most up-to-date source containing EWC agreements in both the original language and English. It can be searched using several different criteria. A number of substantive agreements concluded by EWCs and management are also available.