



European Works Councils in practice: Key research findings

Background paper

[Click for contents](#)

Contents

Context	1
EWCs in practice	4
EWCs in the New Member States	6
EWCs and transnational restructuring	9
EWCs and International Framework Agreements	15
Conclusion	17
References	18

Context

‘European Works Councils have a key role to play in anticipating and managing the social dimension of change in large enterprises Europe-wide. They also contribute to improving corporate governance – a key factor in sustaining competitiveness.’

Vladimir Špidla, European Commissioner for Employment, Social Affairs and Equal Opportunities,
Brussels, February 2008

European Works Councils (EWCs) are highly significant in terms of European industrial relations. They represent the first genuinely European institution of worker interest representation at enterprise level. They reflect the growing recognition of the need to respond to the ‘Europeanisation’ of business emerging from the Single European Market with the Europeanisation of worker representation, by supplementing existing national channels of information and consultation.

Change in corporate structures in a rapidly evolving business environment, the liberalisation of world trade and the globalisation of the economies were the main drivers behind the proposal and adoption of the EU directive on EWCs in 1994.¹ The purpose of this directive is to improve the right to information and to consultation of employees in:

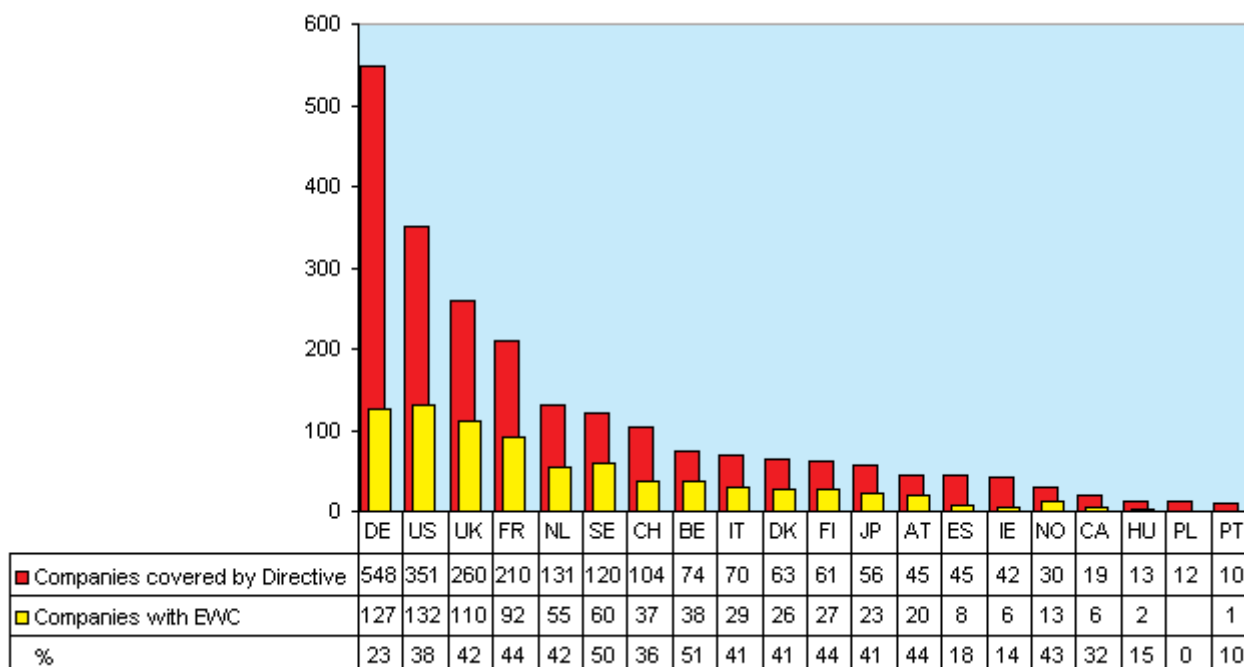
- a) Community-scale undertakings employing in total more than 1,000 employees within the Member States and at least 150 employees in each of at least two Member States;
- b) Community-scale groups of undertakings employing at least 1,000 employees within the Member States and at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State.

Since the coming into force of the EWC directive in 1996, 833 companies have established an active EWC covering up to 14,5 million workers.² Due to the fact that a number of companies have established more than one EWC, due to their structure for example, the total number of active EWCs is even higher. However, 64% of multinational companies (MNCs) covered by the directive have still to set up EWCs. This is because the introduction of EWCs in a company is not an automatic process but requires either an initiative from central management or ‘the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States’ (article 5(1) of the directive).

¹ Council Directive 94/45/EC of 22 September 1994 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 (<http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:31994L0045:EN:HTML>).

² ETUI-REHS Database on EWCs agreements (<http://www.ewcdb.org/>). There are no official EU – or national – level data on the number of MNCs which have established EWCs. The most authoritative figures remain those compiled by ETUI-RESH.

Figure 1: Number of companies covered by EWC Directive compared to actual number of EWCs (by nationality of company, exc countries with <10 EWCs covered by directive)



Note: MNCs = multinational companies.

Source: European Works Councils database, ETUI-REHS, March 2008

Two developments occurring in 2004 had major implications for the operation of EWCs: EU enlargement in May 2004 which extended the geographical reach of the Directive, and the European Commission's April 2004 communication which initiated formal consultations with the EU-level employer and trade union bodies on measures to enhance the effectiveness of EWCs, including a possible revision of the Directive.³

Within the framework of the European social dialogue process, the social partners (CEEP, ETUC and BUSINESSEUROPE/UEAPME) looked at the issue of EWCs and enlargement as part of their joint 2003-2005 work programme and issued a joint text, *Lessons learned on European Work Councils* in April 2005.⁴ In this document, the EWC is recognised as a 'useful tool to organise transnational information and consultation' in fast-evolving companies or groups confronted with continuous and rapid changes in work organisation and production in the context of globalisation and ongoing technical innovation.

In order to encourage the promotion of best practice in the way that European works councils operate, to make them 'more effective, more especially as regards their role as "agent for change"', the European Commission's April 2005 communication initiated second-stage consultations with the EU-level social partners about both restructuring and EWCs.⁵

³ European Works Councils: fully realising their potential for employee involvement for the benefit of enterprises and their employees (http://ec.europa.eu/employment_social/social_dialogue/docs/restruct_ewc_1_en.pdf).

⁴ Lessons learned on European Work Councils (http://ec.europa.eu/employment_social/social_dialogue/docs/300_20050407_ewc_en.pdf).

⁵ Restructuring and employment – Anticipating and accompanying restructuring in order to develop employment: the role of the European Union (http://ec.europa.eu/employment_social/news/2005/apr/com_restruct_en.pdf)

A revision of the EWC directive, as supported by ETUC and opposed by BUSINESSEUROPE and CEEP, was, however, not mentioned in the Commission communication. Although ETUC and BusinessEurope responded to it formally in July 2005, stating their availability for further talks on both issues, they differed as to whether and how the directive should be revised.

ETUC criticised the merger of what they viewed as two separate issues: European Works Councils and restructuring. Consequently, ETUC accused the Commission of being in breach of European social dialogue under article 138 (3) EC, since the second phase of the consultation (on the content of the proposal) did not match the first step of the procedure (on the direction of the proposal). For ETUC, the second consultation was equivalent to an entirely new proposal and, henceforth, the trade unions did not consider the second Commission consultation on the revision of the EWC directive as conforming to article 138 EC, since ‘... the requirement of a “proposal” in Article 138(3) EC is not satisfied’.

BUSINESSEUROPE, on the contrary, welcomed the Commission’s approach, because it also tackled the issues of restructuring and change management. To date, the basic positions of the employers and the trade unions have not moved. BUSINESSEUROPE still favours non-legislative Community action in the fields of restructuring and EWCs. For that reason, the employers support the idea of gathering and monitoring cases of good practice and of promoting the texts earlier concluded with ETUC. ETUC is diametrically opposed to such an approach and has serious doubts as to whether the procedural requirements of a second consultation under articles 138 (3) EC have formally been met. ETUC’s strategic objective still remains the same: to achieve a fully fledged revision of the 1994 EWC directive, while BUSINESSEUROPE favours a purely voluntary approach.

A new development regarding the revision of the EWC directive occurred on 13 September 2006, when the European Economic and Social Committee (EESC) adopted by a vast majority its own-initiative opinion. In its opinion, EESC claimed that ‘... following a reasonable period of integration of the New Member States and in the light of whatever the social partners highlight from the lessons learned on EWCs ... the directive should be subject to a review ...’ (EESC, 2006). The EESC considers the EWCs to be an integral part of the European social model and of social dialogue.

In March 2007, Commissioner Špidla announced that the Commission could consider some changes in the Community’s legal framework. The new Commission work programme for 2008 confirmed the planned revision of the 1994 EWC directive ‘... to make it more coherent and efficient ... in particular in anticipating and accompanying restructuring’. The revised directive would potentially cater for better and more timely information and consultation rights for EWCs in the case of company restructuring, considered by Commissioner Špidla as one of the Commission priorities for 2008.

On 20 February 2008, the second consultation of the Commission launched a new phase between European social partners on EWCs.⁶ In particular, the Commission invited the European social partners:

- to forward to it an opinion or, where appropriate, a recommendation concerning the objectives and content of the envisaged proposal, in accordance with Article 138(3) of the EC Treaty; and
- where appropriate, to inform it of their wish to initiate the negotiation procedure on the basis of the proposals contained in this document, in accordance with Articles 138(4) and 139 of the EC Treaty.” (CEC, 2008:10)

⁶ European Works Councils: Consultation of the European social partners on the revision of Council Directive, 94/45/EC of 22 September 1994, http://ec.europa.eu/employment_social/labour_law/docs/2008/ewc_consultation2_en.pdf

Research by the European Foundation for the Improvement of Living and Working Conditions (Eurofound) has, from the outset, provided relevant information to the European social partners by analysing the EWCs agreements signed under the Directive (1994-2000) and by reporting, since 1997 via the European Industrial Relations Observatory (EIRO), on key developments in the EWCS. Case studies have been carried out in order to examine how EWCs function in practice and to what extent they are involved in transnational business decisions. Eurofound has published reports on the impact of EWCs on industrial relations, both within multinational companies and in Member States' national systems.

This paper summarises the main findings from recent research by Eurofound on the main developments and experiences associated with EWCs, which should provide a useful contribution to the on-going debate on the revision of the 1994 EWC Directive.

EWCs in practice

The Eurofound report (Weiler, 2004) analysing the practical operation of EWCs draws together findings from case studies commissioned by Eurofound on 41 EWCs in companies with headquarters in five different countries: France, Germany, Italy, Sweden and the UK. The report reveals considerable diversity in the practice of the EWCs concerned, ranging from 'symbolic' EWCs whose role is limited to annual meetings to more 'proactive' EWCs, which maintain regular liaison with management and even go as far as negotiating agreements or joint texts with management.

Operation of EWCs – Key points

- Some EWCs have frequent contact between management representatives and employee representatives, whereas in others contact takes place only at the annual plenary meeting.
- Human resources (HR) directors generally represent management in dealings with employee representatives; they are sometimes joined by the CEO and/or other board members.
- The more centralised HR management is at European level, and the greater the coordination of management practices and industrial relations, the greater is the involvement of management in the EWC. In companies with decentralised management structures, the management of subsidiaries is often not involved in the EWC.
- In many cases, EWCs have smaller select committees, with an executive function, that can meet at short notice. Frequently, management is more willing to involve the select committee in business processes, rather than the EWC as a whole.
- In some EWCs, joint working groups, comprising both management and employee representatives, have been set up to address specific thematic issues. The presence of such groups can result in a greater acceptance and support of the EWC by management.

Informing the EWC

On the provision of information, the cases ranged from instances where management was said to provide the minimum required to fulfil its obligations to those where employee representatives were provided with comprehensive information aimed at facilitating understanding of the rationale for transnational business decisions, acceptance of this rationale and thereby legitimisation. In the majority of cases, information provided by management was deemed by employee representatives to be sufficient, good or very good. Variation was evident in the timeframe of the information provided: in some cases, it was largely retrospective, in others, it was current as well as retrospective, and in further cases, it also covered future plans.

Consulting the EWC

According to employee representatives, the majority of EWCs tend to be informed either at the point at which decisions on transnational business issues are taken by management or afterwards. Although dialogue does occur, the report concludes that consultation in good time is rare. At best, the consultative process concerns the implementation of transnational business decisions. It is also more likely to involve the EWC's select committee (if such exists) than the full EWC.

In the few cases where employee representatives exercised influence over transnational business decisions, it was over the implementation and not the framing and content of the original decision itself. Such influence can, for example, involve shaping the direction of the national and local-level negotiations, which accompany a major transnational restructuring.

Factors determining the degree of influence

A number of factors affect the degree of influence that EWCs are able to exert upon business decisions. These include:

- the business strategy and the structure of the company;
- national industrial relations practices in the company's home country;
- the resources the EWC has at its disposal;
- the degree of cohesion between employee representatives in the headquarters and in the subsidiaries.

The latter point is of key importance. Some worker representatives believe that they are expected to represent primarily the interest of their national colleagues, and only secondarily the interests of the wider European workforce. It is clear that for EWCs to function effectively, representatives from different countries must develop a functioning working relationship. A number of factors make this objective difficult to achieve:

- the different industrial relations cultures from which representatives come;
- different approaches to employee representation;
- particular experiences of restructuring, such as situations where national subsidiaries have competed against one another for investment;
- language barriers;
- lack of continuity of membership;
- infrequent contacts.

Management views

From a management perspective, the EWC process was not generally seen to slow or impede the decision-making processes and, in some cases, EWC intervention was seen to result in improved implementation outcomes.

The case of **Volkswagen** illustrates how far some companies have gone with regard to the involvement of employees in decision-making processes through the EWC. It shows, as R. Hayman (2000) pointed out, that EWC evolve and develop their achievement through a process of mutual learning, shared confidences and shared support. The Volkswagen EWC is a specific case for several reasons, including its position within the company's national and international structure of interest representation.

Good practice example: Volkswagen

The EWC (and World Works Council) at Volkswagen emerged after processes of interaction between group management and company works council and employee representatives in the supervisory board in the context of globalisation of the company. The actions and practices of EWC and WWC are closely interwoven. This is also reflected in the representation of Volkswagen's eastern European plants in the EWC from the very beginning.

The agreement on the EWC was concluded in 1992 before the coming into force of the directive and was revised afterwards in the light of subsequent group restructurings and acquisitions. Case study research showed that both the group and subsidiary management and the employee representatives were satisfied with the EWC and emphasised the benefits for both sides and for the company. The advantages and the potential of the EWC were highlighted:

- The management representatives from Volkswagen considered the EWC as a very useful instrument to involve employee representation in the policies of the group of companies.
- The management representative from Volkswagen UK subsidiary described the involvement with EWC as an excellent way to understand how the group operates and what is going on in different countries.
- From the perspective of the employee representatives, the Volkswagen case shows that an EWC that manages to create internal cohesion and is based on a strategic vision can become an influential factor in the transnational expansion of a group of companies.

The procedures described in the Volkswagen case differ considerably from most of the other case studies. Employee representatives are involved in the process of decision-making at a very early stage, and they are involved in the final decisions in several committees. The procedure is described as a permanent process of communication and dialogue.

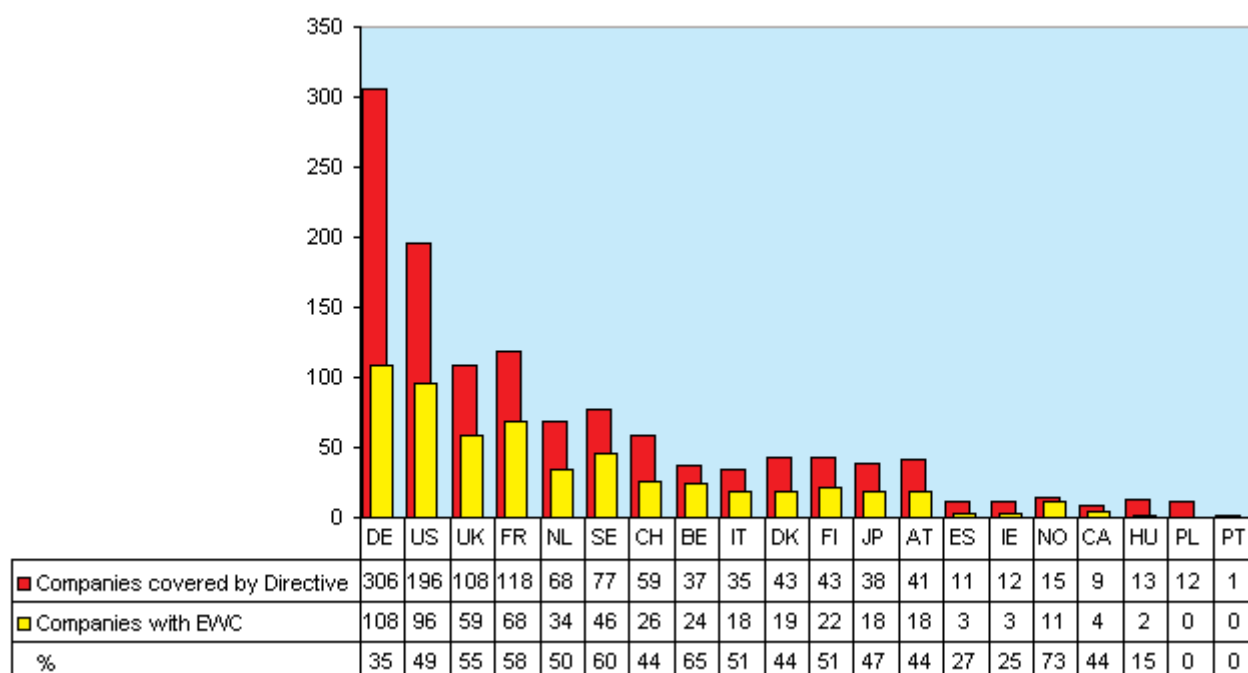
For example, in the case of a plant layout study, the personnel department is involved. The personnel department informs the personnel directors of the locations, who discuss the matter with their employee representatives. Other members of the board of directors, such as the finance director and the production director, are also involved. At the EWC meetings, the results achieved through the involvement of employee representatives are presented and finally adopted.

The approach of group management to involve employee representatives in the consultation process at a very early stage – going beyond what is required by national or European regulation – paid off in the acceptance and support by the employee representatives.

EWCs in the new Member States

EU enlargement is one of the most important landmarks and the greatest challenge in the 20 year history of European Works Councils. It extended the geographical reach of the EWCs Directive as companies with operations in the new Member States (NMSs) now fall under its scope. EU enlargement has become in many respects the testing ground for the functioning, efficiency and strength of EWCs. The integration of representatives from the new Member States – a challenging task for nearly two thirds of existing EWCs – already highlights existing weaknesses, problems and structural deficits. Enlargement of EWC structures has added a new quality of regime competition, cultural diversity, differences in tradition and language barriers. The findings of Eurofound research on the functioning of EWCs in the new Member States therefore reflects mainstream research carried out earlier in the former EU15 and supports its results.

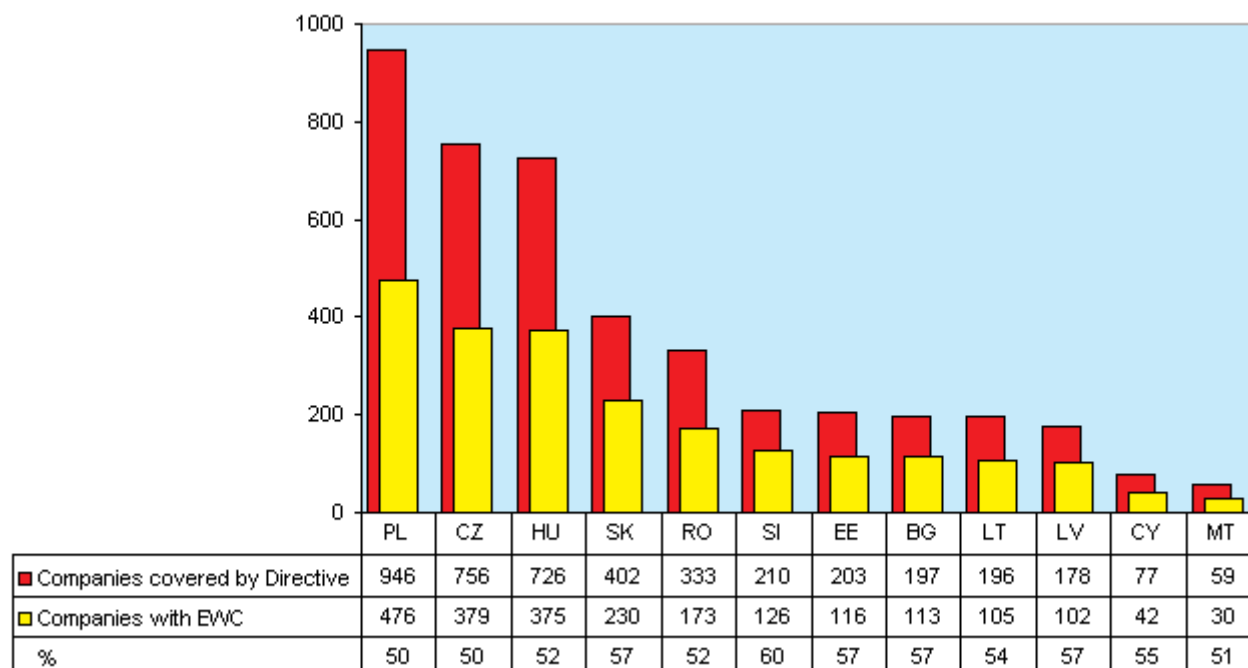
Figure 2: Companies affected by EWC Directive with operations in NMS (by country of ownership)



Note: MNCs = multinational companies.

Source: European Works Councils database, ETUI-REHS, March 2008

Figure 3: Multinational enterprises under EWC Directive with subsidiary companies in NMS (by country of establishment)



Note: MNCs = multinational companies.

Source: European Works Councils database, ETUI-REHS, March 2008

Between January and July 2006, Eurofound carried out a series of 10 case studies in four of the NMS: the Czech Republic, Hungary, Poland and Slovakia. Analysis of the case studies reveals that most EWCs are not equipped to deal with the new challenges arising from the growing 'regime competition' in economic and social systems and in the field of labour relations. The biggest challenge is the growing significance of Europe-wide intracompany competition, relocation and restructuring. However, how such challenges impact on EWC practice depends substantially upon how the EWC functions: EWCs which have developed a clear, proactive strategy, or at least a clear understanding of necessary tasks, common interests and broad objectives (termed earlier the 'proactive' EWCs) are generally better equipped to deal with these challenges at group and local level than the more passive, 'symbolic' EWCs.

The table below summarises some of the main differences in practice.

Areas of impact	'Symbolic' EWCs	'Proactive' EWCs
Information and consultation	Information and consultation, as well as social dialogue, is seen as a formal practice with no real impact.	Employees are better informed, illustrating the added value of information, consultation and representation of interests.
Industrial relations	EWC members face a legitimacy problem: it is unclear who they exist to serve. EWC may end up undermining the concept of employee involvement and social dialogue. EWC practice might be seen to be determined by management interests.	EWC activity enables learning from good practice and solutions in other company areas, and facilitates skills and competency development in employee representatives. It strengthens the legitimacy of both employee and management representatives and hence the position of the local company within the multinational group.
Corporate cultures	EWC practice simply reproduces the existing balance of power and influence within the company.	EWC practice illustrates the practical benefits of social dialogue and a cooperative company culture.
Company development	Lack of activity restricts any development of joint aims, concepts and strategies at the multinational level.	EWC action enables a better understanding of structural change, and facilitating a joint search for solutions with regard to restructuring and structural change.

Source: Eurofound, *The experience of European Works Councils in new EU Member States*, 2007.

Key findings with regard to the functioning of EWCs in the NMS

- The structures and institutions of shop-floor interest representation, as well as the cultures of social dialogue and employee participation are quite weak in NMS; however, there is a clear trend towards works-council type models of interest representation.
- A strong correlation was observed between strong labour relations and stable institutions of employee-interest representation on the one hand, and EWC participation and good practice on the other.
- There is a clear correlation between early involvement of NMS representatives in EWCs (either as observers or full members) and proactive EWC practice at the headquarters level.
- All cases of early and intensive involvement in the NMS (e.g. in steering functions) are characterised by relatively strong trade union membership structures and fairly well developed international cooperation between trade unions.
- A positive management attitude with regard to EWC issues and involvement has a very strong, positive impact on employee representation, social dialogue and labour relations in general.

- Delegates who have been involved in EWC business for a considerable period of time, during the EWC's early enlargement or as observers, tend to be competent, high-ranking representatives with a strong trade union background and strong local support. Such trade union-based EWC delegates communicate and coordinate better, as their practices are embedded in already established structures and institutions.
- Independent delegates, with no background in trade unions or works councils, have difficulties with active communication and coordination with employee representation institutions at the shop-floor level. Furthermore, independent delegates have very limited time made available to them for their EWC work; by contrast, trade union-based EWC delegates enjoy more favourable regulations regarding time off, as well being better resourced in general.

Key indicators of good practice

Through the case studies, four key indicators of good EWC practice, in terms of information and consultation as well as the involvement and integration of new EWC members, were identified:

- a strong labour relations culture and active trade union involvement in EWC business and practice, which also includes support from sectoral trade union organisations and their involvement in the development of concepts and strategies regarding EWC agenda and policy;
- active support from the EWC headquarters for representatives from the NMS and for measures of active involvement, which should include language training, special training programmes, joint workshops, manuals and EU-funded projects;
- the integration and embedding of EWC practice in local industrial relations structures and institutions, namely company-wide information, consultation and negotiation processes, integration in other forms of employee interest representation, participation and social dialogue, reporting and communication processes;
- a participative management culture and active involvement of management representatives in EWC practice, for example through joint preparation and feedback meetings.

The most important challenge in the context of EU enlargement for the functioning of EWCs is the growing significance of European wide intra-company competition for jobs and investment. The potential conflict of interest between different employee groups has to be addressed by European Works Councils which are even more diverse and culturally heterogeneous than before.

Intensified company re-organisation, cross-border relocation and accelerated processes of mergers and acquisition are providing the European Works Councils with new challenges and tests unknown at the time the directive was drafted.

EWCs and transnational restructuring

As an institution, EWCs were born out of the controversy caused by cases of cross-border restructuring which demonstrated that the information and consultation rights of workers stopped at national borders and were thus ineffectual in these cases.⁷

⁷ High profile cases like the 1993 decision of US domestic appliances manufacturer **Hoover** to relocate production from France to Scotland, leading to the closure of the French site, highlighted this controversy (EIRR, 1993).

It can therefore be argued that how European Works Councils deal with the issue of transnational restructuring is the real test of whether or not they are achieving their stated purpose ‘to improve the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings’ (article 1.1 of the directive).

Evidence from Eurofound research on restructuring suggests that there is enormous variation in EWC practice in this area, but that relatively few bodies have influenced transnational corporate restructuring in an appreciable way through the exercise of their information and consultation function.

The issue of restructuring in EWC agreements

According to the agreements establishing them, it appears that:

- the great majority of EWCs (around 80%) should receive regular information and consultation on general topics (e.g. employment matters, business/production or company structure) that may be relevant to transnational company restructuring;
- a smaller majority (around 60%) should be informed and consulted on specific restructuring-related topics (e.g. transfers of production, mergers, cutbacks and closures).

Thus, while restructuring should clearly be on the agenda at normal meetings of most EWCs, it is also true that clear, specific provisions on this point are by no means commonplace. Furthermore, an extraordinary information and consultation procedure is provided for by most EWC agreements (over 80%), if exceptional circumstances – which essentially mean transnational company restructuring – occur between regular meetings.

Most EWCs, therefore, seem in a good position to be informed and consulted regularly on restructuring-related issues. However, it appears to be relatively rare for agreements to state that the information and consultation should occur at such a time as to allow for meaningful consultation, or for the EWC’s position to be taken into account. In addition to this, a specific provision enabling the EWC to produce an opinion at a particular stage of the procedure seems even rarer.

Furthermore, few EWC agreements depart from the very general definition of ‘consultation’ in the directive (and the national legislative measures implementing it): ‘the exchange of views and establishment of dialogue’ between employee representatives and management. Only a small minority of agreements (one in 10) contain additional provisions on a more in-depth consultation (e.g. a right for employee representatives to respond formally to management proposals and to receive a considered response from management before it acts) or allow for a negotiating role.

It is also important to note that EWCs are not competent in matters falling into the scope of national-level consultation or negotiating processes and are restricted to dealing with matters that correspond to a particular definition of ‘transnational’.

Restructuring in EWC practice

As has been argued (Müller/Platzter, 2003), a lack of rigorous regulatory specification in the directive, and in EWC agreements, does not imply that a EWC as a company-level forum for social dialogue and an instrument of workers’ participation is necessarily weak. The effectiveness of a EWC has to be judged in the light of its practical operation. However, the empirical information on the involvement of EWCs in transnational restructuring presents a similar picture to the one sketched from the contents of agreements.

It appears that the majority of EWCs deal with transnational corporate restructuring (both information and consultation) at the annual regular meetings as well as at extraordinary meetings (in various formats) called to discuss specific restructuring exercises. In most cases, the role of EWCs seems to be essentially one of communication, or ‘consultation’

in the sense of the directive, with management providing information and employee representatives asking questions or voicing their views and concerns. The evidence suggests that only a minority of EWCs have gone beyond this level of impact and have exerted an effective influence on company restructuring.

Influence of EWC on company decision-making: The case of Group4Falck

The EWC at **Group4Falck** (Denmark, security services) reportedly had an impact on the company's merger with the UK-based **Securicor**. At an ordinary meeting of the Group4Falck EWC and senior management in April 2004, the main issue was the approaching merger with Securicor. Employee representatives called on management to meet certain conditions in the merger process. According to a Danish EWC representative, the meeting proved beneficial for the employee side as management agreed to its main demands. One of these was that the employee representatives in the two companies' headquarter countries (Denmark and UK) should be involved in more specific negotiations over the merger.

There are no known cases where an EWC has materially influenced a strategic business decision leading to restructuring. Arguably, there is no reason to expect that EWCs should do so, as they are not conceived as decision-making bodies or as substitutes for a board of directors. However, there are cases where EWCs have been involved in and have influenced the implementation of the decision to restructure.

Influence of EWC on company decision-making: The case of Ford

The EWC at **Ford** of Europe was a pioneer in developing a bargaining role with management, and has concluded three known agreements, two of which deal with restructuring initiatives (the third, signed in 2003, covered 'principles of social rights and social responsibility'). In 2000, it signed an agreement on the consequences for employees' status (including pay and conditions), employee representation and sourcing of Ford's spin-off of its Visteon components division (EWCB, 2000a). In 2004, it concluded an accord relating to job security in the context of a company plan aimed at achieving 'international operations synergies' (IOS) in various areas, notably product development and purchasing (EWCB, 2005c).

A number of EWCs have in fact been able to help ensure that employment and social aspects are taken into account to varying extents in restructuring (examples include those at **Aventis**, **Bayer**, **Electrolux**, **Group4Falck**, **Henkel** and **Whirlpool**). This often occurs in an informal and hard-to-measure way, and as a process, but there are a small number of known cases (at least 19) where management and the EWC have concluded some type of written agreement on restructuring matters.

These accords may take the form of references to how to deal with restructuring in a wider accord on corporate social responsibility (as at **EADS**, **PSA Peugeot Citroën**, **Renault** and **Suez**), or, rules and guidelines to apply generally when restructuring occurs (as at **Axa**, **Danone**, **Deutsche Bank**, **Dexia**, **Diageo** and **Total**), or negotiated responses to a specific Europe-wide restructuring exercise (as at **Danone**, **Ford**, **GM** and **Unilever**). The latter two types of agreement – which make up about a quarter of all joint texts signed by EWCs – are probably the European-level joint texts which to some extent resemble collective agreements in the national sense, in that they often deal with concrete pay, conditions and employment issues. They usually lay down a set of guarantees for the employees affected by the restructuring (e.g. job security, the avoidance of compulsory redundancies or maintenance of current pay and conditions) and/or set out accompanying measures such as retraining or redeployment. They also often include procedural rules on information, consultation and negotiation.

The EWC joint texts generally require implementation through national-level bargaining and usually lay down a procedure whereby their application is followed up by the EWC. Such joint texts can be seen as the clearest and most advanced expression of EWC involvement in company restructuring, underlining that EWCs can be used as a forum for the negotiation of mutually beneficial solutions to the problems raised by restructuring, especially in terms of handling or avoiding job losses, and dealing with the consequences of the changes for employment conditions. Fears that the process of consultation would slow down the decision-making process were not confirmed for the companies studied.

However, it is not only as negotiators of agreements with management that some EWCs have been able to function as genuine industrial relations ‘actors’ in restructuring situations. Less consensually, a few EWCs (or the employee side of joint EWCs) have brought court cases or organised Europe-wide protest action against both the fact of a restructuring exercise and/or perceived failings in the information and consultation process regarding it.

Litigation over restructuring

When EWCs challenge company restructuring initiatives in the courts, this is almost invariably on the grounds that information and consultation procedures have not been followed correctly, with reference to the terms of the agreement establishing the EWC or to the law.

The pioneer in this area was the **Renault** EWC, which in 1997 brought a case in the French courts, claiming that management’s announcement of the closure of the Vilvoorde plant in Belgium without prior information or consultation of the EWC was unlawful. The ruling of the court of first instance, upheld on appeal, was that management had acted unlawfully, even though the Renault EWC agreement did not at that time explicitly provide for prior information and consultation on closures. The French court based its judgment on an interpretation of the agreement that went beyond its actual content and referred to the objectives of the EWCs Directive and of the 1989 Community Charter of the Fundamental Social Rights of Workers – an approach that was seen as highly significant, at least in the French context (EWCB, 1997a). The court fined Renault and suspended the closure of Vilvoorde until correct information and consultation procedures had been followed with the EWC. However, the plant was subsequently closed as planned. The Renault EWC agreement was later amended in 1998 to ensure prior information and consultation in circumstances such as closures.

It would not appear that the Renault court case, and the relative success for the EWC, opened the floodgates of litigation over alleged shortcomings in information and consultation over restructuring by management. The 2004 EIRO survey of EWC developments (Hall and Marginson, 2004) found evidence of only limited use of the courts by EWCs, restricted to relatively few countries (though a number of the cases uncovered did relate to restructuring). There seems to be a general reluctance to go to law as a means of addressing disagreements between management and employee representatives over EWCs’ role in restructuring, except in some extreme circumstances. Even where EWCs seek legal advice or raise the threat of a court case – as, for example, over lack of EWC consultation about **BA**’s sale of its Air Liberté subsidiary in 2000 (EWCB, 2000b), or whether consultation had occurred about **Diageo**’s plans to cut jobs in Irish operations in the same year (EWCB, 2000c) – this rarely seems to materialise.

As with Renault, the three other most high-profile cases in this area were taken to French courts, with mixed outcomes:

- when **Panasonic** (Japan, electronics) announced the closure of a plant in France in 1997-98, the EWC (and French employee representatives) brought a case in the French courts seeking suspension of the measure until the necessary information and consultation procedures had been completed. It obtained an injunction in the court of first instance but lost the case on appeal, as the court found that the representative bringing the case did not have the necessary authority to pursue the case on behalf of the EWC (EWCB, 2003a);

- in 1997, **Otis** (USA, lifts) announced a global reorganisation plan, including closure of its European headquarters. EWC members (and French employee representatives) brought a case to the French courts over how the plan had been handled at a EWC meeting. The court found that management's approach to raising the issue, without notice or documentation, was inconsistent with the Otis EWC agreement, and ordered a further meeting to discuss the matter more fully. The meeting was held and the company subsequently went ahead with the plan (EWCB, 2003a); and
- **Alstom** (France, engineering) announced major Europe-wide restructuring, involving the sale of its shipbuilding division and cuts, sell-offs and job losses in other divisions, in spring 2003. The EWC steering committee was told of the plan, but claimed that the information and consultation was inadequate and not in line with the Alstom EWC agreement. The EWC brought a case in the French courts, calling for suspension of plan until proper information and consultation had occurred, but the case was dismissed. In a similar way to the Panasonic case, the grounds were that the EWC agreement did not grant its secretary a permanent mandate to take legal action on its behalf (EWCB, 2003b).

Still in France, the 2004 EIRO study reported case law concerning the relationship between consultation at EWC level and consultation with national works councils – a point that can be contentious in restructuring cases. Two court rulings, concerning events at **Alstom** and **Altadis** (France, tobacco), reportedly supported the view that consultation with the EWC should be given priority, whereas in another case, involving **STMicroelectronics** (France, electronics), the court held that consultation at the two levels should take place concurrently.

Outside France, there seems to be an almost total absence of EWC-initiated litigation over restructuring (one exception being a 2004 Dutch ruling over the status of EWCs following a company merger). At EU level, none of the few cases referred to the European Court of Justice on EWC issues have dealt with restructuring matters. However, in 2002 the EWC at **Legrand** (France, electrical fittings) sought and was granted leave by the Court of First Instance of the European Communities to intervene in a competition law case (T-310/01) related to the company's takeover by **Schneider Electric**, which the European Commission had sought to block under its merger control procedure. With regard to this latter process, which seeks to establish if concentrations of companies with a Community dimension are compatible with competition rules, recognised worker representatives have the right to request consultation by the Commission, and trade unions have long called for this right to be both strengthened and used by EWCs. However, there is no evidence that this has occurred to any appreciable extent, and reports of such intervention are rare – a recent case being that the **Axel Springer** EWC is reported to have sought intervention in the control process over a merger with **Arvato**, another German printing company, in 2005 (EWCB, 2006b).

Litigation: The case of British Airways

The decision of the Brussels labour court in December 2006, which stopped the UK airline **British Airways** from transferring its Customer Service Department at Vienna airport to the ground handling company Fraport, marks a milestone in European and Belgium labour law. Ten years after the implementation of the European Works Council Directive, employee rights on transnational information and consultation were confirmed for the first time ever by a Belgium court.

According to an emergency decision (injunction) the companies' management was forced to open the information and consultation procedure with the European Works Council within 24 hours. The lawsuit was presented to the Brussels court, as British Airways had chosen to register their initial European Works Council agreement in Belgium in 1996, as by that time the United Kingdom was not covered by the EWC Directive yet.

Factors affecting the role of EWCs in restructuring processes

With many multinationals with EWCs facing restructuring, the obvious question is why most EWCs seem not to become closely involved in handling the process, in anything other than a communication capacity. Only a few EWCs do have a clear input, and this may go as far as negotiating agreements on how the restructuring is to be dealt with.

The involvement of EWCs in transnational business decisions is the most disputed area of their operation. Management tends to seek the involvement of the EWC in implementing the decision, and ensuring that the decision is accepted. Employee representatives interpret the text of the directive to mean that the EWC needs to be informed and consulted before a decision and the details of its implementation have been finalised, arguing that only involvement at such a stage can constitute meaningful consultation. Earlier involvement, at a stage when at least some issues are still open, seems to depend on a variety of issues, such as the provisions of the agreement establishing the EWC, management attitudes and the constraints imposed by confidentiality requirements and stock-exchange rules.

Key factors

- A facility for extraordinary meetings, or especially for some form of ongoing communication between management and employee representatives between full EWC meetings, usually through an active and regularly meeting select committee, is the prerequisite for involving EWCs in restructuring in a timely fashion.
- To become involved meaningfully in restructuring depends on the relationship of the EWC with national/local levels of employee involvement and representation and its place within the overall flow of information and influence in the multinational (for example, national structures and processes, especially in the company's home country, may remain the most important channel for communication and representation, despite the existence of an EWC).
- The type of restructuring has an impact on EWC involvement. Negative effects on the company, notably the loss or transfer of jobs, are more likely to attract the interest of employee representatives and prompt them to seek influence. However, as the multinational's various operations are likely to be in competition with each other, this can weaken the ability of the employee side to reach consensus and influence the restructuring process. Notwithstanding this last point, restructuring first needs to manifest itself in a clearly 'transnational' way before it can be brought on to the EWCs agenda.
- A highly significant factor is the degree of organisation and coordination of the employee side outside the framework of the EWC itself. Stronger EWC involvement in restructuring seems more likely where there are strong trade unions and/or works councils in the multinational's home country and elsewhere, cross-border networks of trade unions, (often organised by international or European trade union organisations), and/or other ongoing contact and liaison between employee representatives on the EWC (as at **Danone, Ford, GM** and **Unilever**). Some international or European trade union organisations have developed policies on EWC involvement in restructuring, a notable example being EMF, which agreed a set of principles for common responses to restructuring plans, including seeking negotiations and considering cross-border action (EWCB, 2006e; EMF, 2005).
- On the other side of the meeting table, it also appears that management views, attitudes and experiences play an important part. EWCs are more likely to become actively involved in restructuring in companies that see such engagement as having advantages, notably in gaining acceptance for change.
- A final issue to be mentioned is the nature of the company concerned and how it is organised. It is notable that many of the EWCs which had the most visible input into restructuring are in companies in sectors such as automotive, food/drink and finance, which are characterised by internationally integrated operations.

There is relatively little specific previous research into the influence of EWCs on restructuring, but the findings from a review of the available documentary and empirical evidence show that the meaningful involvement of EWCs in transnational company restructuring, and how EWCs deal with this issue, cannot be separated from their overall nature and activity.

However, because restructuring may in some senses be the most important issue with which EWC deals – in terms of impact on the jobs of the workforce – it may have a higher profile than other matters and its treatment may highlight the strengths and weaknesses of the EWC. In other words, from this perspective, influential and active EWCs will tend to be particularly influential and active in restructuring situations, while symbolic and ineffective EWCs will tend to be particularly symbolic and ineffective. However, there is also some evidence that dealing with restructuring can help build a EWC's coherence and effectiveness. For example, it was reported in Eurofound's case study of Deutsche Bank that permanent restructuring had led to a higher frequency of EWC meetings, which meant an 'increase in the status' of the EWC and a greater density of interaction, both among EWC employee representatives and with their counterparts on the management side.

EWCs and international framework agreements

Over the past few decades, the rapid process of globalisation has been accompanied by a growing political debate on international working and production standards. As the liberalisation of trade and capital movements starts to challenge established national forms of social dialogue and industrial regulation, there is a growing and controversial debate on the need for supra-national structures and regulation of labour standards and industrial relations.

From European level to global involvement

Eurofound's recent research on codes of conduct and international framework agreements shows that the role of European Works Councils in the process of developing, negotiating and implementing international framework agreements (IFAs) is generally important. In **Securitas**, for example, the EWC was regularly informed and consulted on the issues at stake. The structure of the EWC was used during negotiations. But according to the statutes, the role of the EWC is as a forum for information and consultation in matters relating to more than one country. The EWC is not a forum for negotiations and should not deal with matters regarding wages and conditions in an individual country. In this respect, the EWC was not directly part of the negotiation rounds. Its structure provides logistical support for the follow-up of the agreement: as specified in the agreement, the meeting of the implementation group is held in conjunction with the annual meeting of the EWC. In this respect, the EWC works as a contact forum between the management and the trade unions in the Securitas group.

However, in two of the cases analysed, **Leoni** and **Bosch**, the EWC did actually sign the agreement. This fact reflects a dilemma: in many cases, EWCs are initiators of international frameworks agreements, but at the same time they are legally not in a position to play a role in the issues of concern since these are global issues. This can lead to the possible EWC transformation into a World Works Council. The **PSA Peugeot-Citroën** Agreement makes this clear: 'With regard to global changes in the corporation's business, the parties of this agreement feel that the creation, in due time, of a Global Council is beneficial. Initially, the current PSA Peugeot Citroën European Works Council will be expanded to include labour union representatives from the countries that meet the staffing level requirements set forth in the European Works Council agreement (such as Argentina and Brazil). These representatives will be invited to plenary sessions as observers (Chapter 7).'

The Securitas case reflects a general feature of IFAs: less than one in four agreements signed so far in total was co-signed by European Works Councils and global union federations, most of them (11 out of 13) in the metalworking sector. It should also be mentioned here that the majority of agreements co-signed by EWCs were concluded in companies with German headquarters and thus reflect the important role of works councils in the dual system of interest representation.

Table 1: *Employee-side signatory parties of International Framework Agreements in 2007*

Global Union Federation	Number of IFAs signed	Number of IFAs co-signed by national unions	Number of IFAs co-signed by the EWC
International Metalworkers' Federation (IMF)	15	3	11
Building and Wood Workers' International (BWI)	12	6	1
International Federation of Chemical, Energy, and Mining Workers (ICEM)	11	8	1
Union Network International (UNI)	11	7	0
International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers (IUF)	4	1	0
TOTAL	53*	25	13

* One (Lafarge) of the 52 IFAs was signed jointly by two Global Union Federations (BWI and ICEM).

Source: Eurofound, *The impact of codes of conduct and International Framework Agreements on social regulation at company level, 2008*.

Concerning the impact of international framework agreements on the daily activities of EWCs, the following features emerge from Eurofound's research:

- senior EWC members (in particular the chairpersons) are actively involved in the implementation process of international framework agreements in most cases;
- in most cases, there is a division of tasks: while formally the EWC deals with European issues only, issues regarding countries outside Europe are dealt with by global trade union federations;
- if a management reporting system is provided for in the operational provisions of the international framework agreement or the corporate code of conduct in the field of labour relations, this will normally be carried out in the context of EWC plenary sessions.

Conclusion

According to Eurofound research, the main factors influencing the practical functioning of EWCs include:

- the business strategy and structures of companies (whether the company's products and services are diversified or not across borders and the extent to which operations are internationally integrated and there is competition for investment between sites);
- industrial relations practice and traditions in the home country and company-specific industrial relations considerations, including structures and forms of employee representation and participation;
- the resources available to the EWC;
- the degree of cohesion of the employee side. Cohesion is impeded by prioritisation of local interests by representatives, differences of perception between 'home' country and 'foreign subsidiary' representatives and practical considerations of communication, language, and infrequency of contact.

Active involvement in transnational corporate restructuring, with influence on the employment and social aspects of the implementation of restructuring decisions, seems to be very much a minority practice in EWCs. It is determined by the combined presence of a number of factors relating to the company concerned, its management, the organisation and coordination of the employee side, as well as the EWC's constitution and operation.

It remains an open question whether more EWCs can in future take on this more active role. This, it seems, would require some external impetus, such as legislative change or the dissemination of 'best practice', or – perhaps more likely, given deepening economic globalisation – the spread to more companies of the combination of conditions that enable an active role to develop. It is also the case that EWCs are arguably still at a relatively early stage of development, having existed in significant numbers only for a decade or so, and it may be that the achievement of greater influence, over restructuring and other issues, is something that occurs over a longer time scale, as experience is gained on all sides.

Finally, the active involvement of some EWCs in voluntary international framework agreements and their impact on EWC practice raises the question of whether the legal framework of European Works Councils should reflect these features of industrial relations in European-based multinational companies. As other studies on the growing negotiating role of EWCs in corporate practice have shown (see Carley and Hall, 2006; Pichot, 2006), the actual role of a number of European Works Councils has entered – on a voluntary basis – a stage which is beyond the current legal provisions of the EWC Directive: a '*saut qualitatif*' from information/consultation to negotiation can be observed in a number of cases.

However, it remains to be seen whether the European Commission's second consultation will receive a positive social partners' response and lead to a 'conference which would involve all the companies concerned in a suitable way' (European Commission, 2008) and to a revision of the directive.

Marina Patriarka and Christian Welz

References

- Carley, M. and Hall, M., *European Works Councils and transnational restructuring*, European Foundation for the Improvement of Living and Working Conditions, Dublin, 2006.
- CEEP, ETUC and BUSINESSEUROPE/UEAPME, Lessons learned on European Work Councils, 2005 (http://ec.europa.eu/employment_social/social_dialogue/docs/300_20050407_ewc_en.pdf).
- EIRO, 'EU-level social partners negotiate joint text on restructuring', Dublin, 2003 (<http://www.eiro.eurofound.eu.int/2003/07/feature/eu0307203f.html>).
- EIRO, Hall and Marginson, Comparative study: Developments in European Works Councils, Dublin, 2004 (<http://www.eiro.eurofound.eu.int/2004/11/study/index.html>).
- EIRO, 2005, 'Transnational employee involvement Act adopted' (Estonia), Dublin (<http://www.eiro.eurofound.eu.int/2005/02/inbrief/ee0502101n.html>).
- EIRO, 'EU social partners issue joint statement on EWCs', Dublin, 2005 (<http://www.eiro.eurofound.eu.int/2005/05/feature/eu0505204f.html>).
- EIRO, Social partners reply to European Commission on restructuring and EWCs, Dublin, 2005 (<http://www.eiro.eurofound.eu.int/2005/08/feature/eu0508204f.html>).
- ETUI-REHS Database on EWCs agreements (<http://www.ewcdb.org/>).
- European Commission, 'European Works Councils: Consultation of the European social partners on the revision of Council Directive 94/45/EC of 22 September 1994 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', Brussels, 2008. (http://ec.europa.eu/employment_social/labour_law/docs/2008/ewc_consultation2_en.pdf)
- European Economic and Social Committee, Opinion of the European Economic and Social Committee on European Works Councils: a new role in promoting European integration, SOC/220, Brussels, 13 September 2006 (http://eescopinions.eesc.europa.eu/viewdoc.aspx?doc=\\esppub1\\esp_public\\ces\\soc\\soc220\\en\\ces1170-2006_ac_en.doc).
- Eurofound, Negotiating European Works Councils: an analysis of agreements under Article 13, Luxembourg, Office for Official Publications of the European Communities, 1997.
- Eurofound, Negotiating European Works Councils: a comparative study of Article 6 and Article 13 agreements, Luxembourg, Office for Official Publications of the European Communities, 2000.
- Eurofound, Bargaining at European level? Joint texts negotiated by European Works Councils, Luxembourg, Office for Official Publications of the European Communities, 2001.

Eurofound, European Industrial Relations Dictionary, Dublin, 2005
(<http://www.eurofound.eu.int/industrialrelations/dictionary>).

Eurofound, European Works Councils and transnational restructuring, Luxembourg, Office for Official Publications of the European Communities, 2007 (<http://www.eurofound.europa.eu/pubdocs/2006/83/en/1/ef0683en.pdf>).

Eurofound, The experience of European Works Councils in new EU Member States, Luxembourg, Office for Official Publications of the European Communities, 2007
(<http://www.eurofound.europa.eu/pubdocs/2006/65/en/1/ef0665en.pdf>).

Eurofound, New structures, forms and processes of governance in European industrial relations, Luxembourg, Office for Official Publications of the European Communities, 2007.
(<http://www.eurofound.europa.eu/publications/htmlfiles/ef0694.htm>)

Eurofound, The impact of Codes of Conduct and International Framework Agreements on social regulation at company level, Luxembourg, Office for Official Publications of the European Communities, 2008.

European Commission, Restructuring and employment – Anticipating and accompanying restructuring in order to develop employment: the role of the European Union, 2005
(http://ec.europa.eu/employment_social/news/2005/apr/com_restruct_en.pdf)

European Commission, European Works Councils: fully realising their potential for employee involvement for the benefit of enterprises and their employees, 2004
(http://ec.europa.eu/employment_social/social_dialogue/docs/restruct_ewc_1_en.pdf).

European Council, Council Directive 94/45/EC of 22 September 1994 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
(<http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:31994L0045:EN:HTML>).

European Industrial Relations Review no. 275, December 1993, pp.26-30.

European Trade Union Institute, EWC facts and figures, Brussels, ETUI, 2004.

European Trade Union Institute for Research, Education and Health and Safety, Benchmarking Working Europe Brussels, ETUI-REHS, 2007.

European Works Councils bulletin, 1997a, 2000a/b/c, 2003a, 2005c, 2006b/e.

Müller, T. and Platzer H-W, 'European Works councils' in Keller, B. and Platzer H-W *Industrial relations and European integration*, Aldershot, Ashgate, 2003, pp. 53-84.

Pichot, E, Transnational Texts negotiated at company level. Facts and Figures, Working Document, Study Seminar on Transnational Agreements, 17 May 2006.

Ramsay, H. 'Fool's gold? European Works Councils and workplace democracy', *Industrial Relations Journal* 28 (4), 1997.

UNICE/UEAPME/CEEP/ETUC, *Orientations for reference in managing change and its social consequences*, Brussels, 19 October 2003.

UNICE, First-Stage Consultation of the European Social Partners on the European Works Council Directive - UNICE Answer, Brussels, 1 June 2004.