



European Foundation for the Improvement of Living and Working Conditions

European Works Councils and transnational restructuring



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Foreword

The 1994 European Works Council Directive paved the way for the development of transnational industrial relations structures. The aim of the Directive was to promote voluntary agreements on the constitution and operation of European Works Councils (EWCs). These EWCs would bring together employee representatives from each European country in which a multinational company had operations, in order to facilitate information disclosure and consultation with group-level management.

Since the adoption of the Directive, the Foundation has been monitoring and assessing developments in EWCs. Foundation research has supported the European social partners in establishing EWCs by analysing the EWC agreements signed under the Directive. Over the past decade, the Foundation's European Industrial Relations Observatory (EIRO) has reported on the progress made in transposing the Directive. Case studies have examined how EWCs function and earlier research explored negotiations within EWCs.

This study, *European Works Councils and transnational restructuring*, focuses on the role that EWCs play in influencing the handling of transnational restructuring. It analyses EWC agreements and relevant joint texts to assess how well equipped EWCs are to address the issue of restructuring. It looks at the kind of input EWCs make in practice and highlights the factors that appear to play an important role in favouring or hindering their involvement in transnational restructuring.

Social dialogue has played a central role in European industrial relations. In light of this, and the growing pace and significance of restructuring, we hope that this up-to-date analysis of the current and potential role of EWCs in transnational restructuring will be of benefit to European social partners and policymakers.

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Introduction

A strong case can be made that transnational company restructuring is the core purpose of European Works Councils (EWCs) – that dealing with such restructuring is the essential business of EWCs.

Change in corporate structures in a rapidly evolving business environment was clearly one of the main drivers behind the proposal and adoption of the EU Directive on EWCs (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). As the European Commission stated in the explanatory memorandum accompanying its 1994 draft, the principal justification for proposing a Directive was the impact of the EU internal market: ‘The accelerating pace of transfrontier economic restructuring associated with this process, involving an increase in mergers, takeovers, transfers and joint ventures, will result in more and more employees being subject to key corporate decisions taken outside the country where their establishment or undertaking is located. As a result of changes in the structure of undertakings, the procedures for consulting and disclosing information to employees are often no longer consistent with these new structures’ (European Commission, 1994).

Further, the economic situation of the time was leading to firms taking ‘restructuring measures which, in the case of complex undertakings and groups of undertakings with establishments or subsidiaries in various Member States, are decided on centrally by the undertaking or the group and which concern one or more of the establishments and have an effect on workers’ interests. It is essential, then, for such restructuring measures to take place in socially acceptable conditions and for the workers concerned to at least be informed and consulted in advance’.

Finally, ‘The liberalisation of world trade and the globalisation of the economy are creating conditions which are more favourable to the restructuring of undertakings and groups of undertakings, which are thus acquiring more and more room for manoeuvre, especially in terms of the transfer of production units from one Member State to another and even to non-Community countries. Here too, the prior information and consultation of workers is a minimum condition if decisions are to be adopted and implemented in acceptable social context’.

The Commission’s response to these emerging developments was to propose a Directive providing for the establishment of a new structure (or procedure) for the information and consultation of workers on transnational issues in multinationals operating in Europe. Its restructuring-related rationale was reflected in the Directive that was adopted by the Council in September 1994. For example, the Directive states in its recitals that: ‘Whereas the functioning of the internal market involves a process of concentrations of undertakings, cross-border mergers, takeovers, joint ventures and, consequently, a transnationalisation of undertakings and groups of undertakings; whereas, if economic activities are to develop in a harmonious fashion, undertakings and groups of undertakings operating in two or more Member States must inform and consult the representatives of those of their employees that are affected by their decisions.’ Furthermore, the fall-back ‘statutory’ EWC set out in the Directive’s subsidiary requirements – which essentially apply where management and employee representatives cannot reach agreement – must be informed and consulted each year on a range of transnational restructuring issues and in between annual meetings where major restructuring is planned.

EWCs, then, were largely inspired by cross-border restructuring and conceived as bodies that would enable employees, via their representatives, to be informed and consulted about such organisational change and its consequences. However, during most of the decade since the Directive came into force, the extent to which EWCs are actually informed and consulted in any meaningful way about restructuring has been a perennial source of high-profile controversy. There have been a number of documented cases involving major closures, relocations and job losses, in which it has been alleged that the EWC of the company concerned was not properly informed and consulted. Examples include Renault in 1997 (see below under ‘EU-level debate on restructuring’), Levi Strauss in 1998, Diageo in 2000, Marks & Spencer in 2001, ABB in 2001, Quebecor in 2004 and Alstom in 2005.

The changing pace of restructuring

EWCs, of which there are now thought to be 800 or more, have grown up in a period during which – it seems to be widely accepted – corporate restructuring has become more extensive and pervasive, and its pace has quickened. While companies have always adapted their structures as they seek to survive and prosper, there is evidence that for many firms change has now become more radical and almost continuous in a context marked by changing technologies, rapidly developing markets for many goods and services, and increasing economic integration and competition on a global (and European) scale. Globalisation and Europeanisation (with the creation of the internal market and the recent EU enlargement to the east) has brought an increased cross-border dimension to much restructuring.

Corporate restructuring takes many forms, but the events and processes generally considered to fall under this heading include: openings and closures of locations; increases or reductions of operations at locations; transfers of production/service provision from one location to another within the same company (in the same country or another); transfers of production/service provision outside a company to an external party (‘outsourcing’); mergers; takeovers; joint ventures; divestments; and bankruptcies. From the industrial relations perspective, the key aspect of all these developments is their effect on employment. In many quarters, not least in the media, restructuring has become almost synonymous with job losses. This view receives considerable support from the evidence available, even though such restructuring also involves job creation elsewhere, often outside the EU. A valuable source of information on this point is the European Restructuring Monitor (ERM) run by the European Monitoring Centre on Change (EMCC) at the European Foundation for the Improvement of Living and Working Conditions (the Foundation).

Since 2002 ERM has recorded, on the basis of newspaper reports, restructuring cases across the 25 EU Member States and two acceding countries (Bulgaria and Romania) that affect at least one EU country; entail an announced or actual reduction of at least 100 jobs; or involve sites employing more than 250 people and that affect at least 10% of workforce; or create at least 100 jobs. Although the method of data collection has obvious limitations (e.g. it is dependent on the editorial priorities of particular newspapers and is likely to overlook many cases involving smaller firms), the ERM data provide a useful indication of the scale and nature of company restructuring in Europe and its employment effects.

As shown in Table 1, from the beginning of 2002 up until March 2006, ERM recorded over 4,000 cases of European-scale restructuring, resulting in the planned reduction of nearly 1,730,000 jobs and the creation of some 580,000 – a prospective net loss of 1,145,000 jobs over a period of a little more than four years. Internal restructuring accounted for three-quarters of the planned job losses and

bankruptcy/closure for around a seventh. The sectors most affected by planned employment reductions were posts and telecommunications (18% of the total), financial services (12%), transport and storage (10%), the public sector (10%), metal and machinery (8%) and motor (7%). The countries most affected were the UK (28% of planned job losses), Germany (18%), France (11%), Poland (6%), the Netherlands (5%), Romania (5%), Italy (4%) and Sweden (4%).

Table 1 Employment effect of restructuring cases recorded by ERM, by type (2002 – March 2006)

Type of restructuring	Planned job reduction	% of all planned job reductions	Planned job creation	% of all planned job creation	No. of cases	% of all cases
Internal restructuring	1,295,578	75.02%	21,847	3.75%	1,832	44.95%
Business expansion	950	0.06%	552,914	95%	1,011	24.8%
Bankruptcy/closure	235,186	13.62%	837	0.14%	726	17.81%
Offshoring/delocalisation	79,024	4.58%	21	0%	240	5.89%
Merger/acquisition	66,478	3.85%	3,985	0.68%	145	3.56%
Relocation	25,202	1.46%	1,225	0.21%	81	1.99%
Outsourcing	20,035	1.16%	0	0%	24	0.59%
Other	4,477	0.26%	1,210	0.21%	17	0.42%
Total	1,726,930	100%	582,039	100%	4,076	100%

Source: ERM database of restructuring fact sheets at www.emcc.euroworld.eu.int/erm/, accessed 29 March 2006.

In this context it is unsurprising that the employment and social effects of company restructuring have become a major preoccupation of governments, policy-makers, the social partners, researchers and the public across Europe. In the debate that has arisen over the issue at national and European level, the question of information and consultation of the workforce has been prominent and the role of EWCs has featured to varying extents in a series of EU-level initiatives.

EU-level debate

At European level, restructuring and its transnational aspects arguably took centre stage in the aftermath of the controversy over the closure of the Renault plant at Vilvoorde in Belgium, which was announced in February 1997. The furore over the French automotive multinational's decision to shut Vilvoorde, and over the lack of proper prior workforce information and consultation (as found by both Belgian and French courts), kick-started an EU-wide debate over the social and employment effects of transnational restructuring that has continued since. As well as contributing to the adoption of the Directive (2002/14/EC) establishing a general framework for informing and consulting employees, this EU-level debate has seen a series of reports, consultations and other initiatives from the Commission, Council, European Parliament (EP) and social partner organisations. Highlights have included:

- *Managing change*, the 1998 report of the high level group on the economic and social implications of industrial change (the 'Gyllenhammar group'), which stressed the advance information and consultation of workers' representatives (European Commission, 1998);
- several EP resolutions on the social consequences of industrial restructuring and mergers;
- the establishment of EMCC;

- a package of measures designed to reduce the social impact of large-scale job cuts issued by the Commission in May 2001;
- a July 2001 Commission Green Paper on promoting a European framework for corporate social responsibility, which included the idea that responsible restructuring must include the involvement and participation of the workers affected, by means including information and consultation (European Commission, 2001);
- the establishment by the Commission in June 2005 of a Restructuring Forum, made up of representatives of all major stakeholders in restructuring, which meets regularly to discuss ways to manage restructuring so that it has as little detrimental impact as possible on the employees involved, the wider community and the environment.

Notably, in January 2002, the Commission launched formal consultations with the EU-level social partner organisations with the aim of stimulating dialogue about establishing the principles governing ‘socially intelligent’ restructuring. This led eventually to agreement among the cross-industry social partners in October 2003 on a text, entitled *Orientations for reference in managing change and its social consequences*, based on a number of case studies of company practice. This contained a number of references to information and consultation, including the following: ‘The obligations arising from the legislative and contractual framework on worker information and consultation as well as on confidentiality must be met. Good information and consultation of the workers and/or their representatives throughout the process of change may involve a different relevant level depending on the time and subject under consideration. Existing European bodies are the appropriate level when changes concern the strategy of a group and affect sites in several EU countries.’

Review of the EWCs Directive

In parallel with the EU restructuring debate, the EWCs Directive has been under review in a process that began in 1999 (Article 15 required the Commission, in consultation with the Member States and management and labour at European level, to review the Directive’s operation after five years). The first formal stage in this process came in April 2000, when the Commission published a report on the implementation of the Directive (European Commission, 2000). The report listed a number of ‘legal and practical problems’ relating to the application of the Directive, which included several of relevance to the role of EWCs in restructuring situations, such as a ‘very low level’ of transnational information and consultation provided by some agreements; and questions as to whether the present Directive is sufficiently clear on the timing of information and consultation, i.e. before a decision is taken.

The EU-level debate over revision of the Directive has subsequently developed in tandem with that on company restructuring, with the two converging to an increasing degree. Trade unions and the EP have called for revisions to the Directive to strengthen the rights of EWCs in restructuring situations as part of the Community-level response to the restructuring issue. For example, in September 2001 the EP adopted a Resolution (A5-0282/2001 PE 308.750/28) which, while acknowledging the positive impact of the EWCs Directive, identified a number of perceived weaknesses and called on the Commission to submit a proposal to revise the Directive to address them. It highlighted, in particular, the challenges posed by industrial restructuring and the positive contribution that employee involvement through the EWC can make in smoothing the adjustment process.

In April 2004 the Commission initiated formal consultations with the EU-level cross-industry and sectoral social partners, seeking their views on *European Works Councils: Fully realising their potential for employee involvement for the benefit of enterprises and their employees*, including the possible revision of the Directive (European Commission, 2004). The consultation document referred to the role of EWCs in restructuring at several points, for instance:

- ‘Where both sides have shown a willingness to embrace the potential of EWCs there have been cases where management and employee representatives have reached agreement on the general principles of how large-scale transnational restructuring should be implemented. Conversely, it is instances where the information and consultation process has been seen to be absent or ineffective in restructuring situations that have given rise to the greatest concern and anger among employees.’
- ‘It is clear that the primary concern of the criticisms levelled at the operation of the Directive has been to ensure the effectiveness of information and consultation procedures. A particular concern has been the way in which information and consultation functions in restructuring situations. It is in such situations that employees feel most at risk and most in need of the security provided by being genuinely involved in the process. There is an anxiety to ensure that the real advantages for both sides stemming from genuine engagement are realised in all situations. Much of the concern and criticism derives from instances where this has clearly, and sometimes dramatically, not been the case.’
- ‘This process of dynamic development within European Works Councils has reached its fullest expression to date with the emergence of a negotiating role within some EWCs. This has led to the conclusion of agreements on joint texts that go far beyond the basic information and consultation requirements of the Directive. In addition to agreements in the areas mentioned above, the issues addressed in such joint texts include the consequences of restructuring, trade union rights and fundamental social rights. As regards restructuring, the EWC has functioned, in some instances, as a forum in which management and employees have reached agreement on how the restructuring of their European operations should be implemented.’
- ‘Restructuring situations have been a very particular focus for the concerns of employees regarding the functioning of information and consultation mechanisms.’

In its response to the consultation (EWCB, 2004a), the European Trade Union Confederation (ETUC) agreed with the Commission that ‘the greatest challenge facing transnational enterprises and their employees over the last two to three years has been the issue of large-scale corporate restructuring’ and argued that in some cases the required information and consultation had not been carried out: ‘For this reason it is imperative that improvements to the Directive are made, so as to better ensure that information and consultation takes place in a serious and timely manner in all EWCs.’ To ‘resolve these weaknesses’, the ETUC argued notably that:

- the ‘improved definitions of information and consultation’ in the more recent information and consultation Directive (2002/14/EC) and the employee involvement Directives linked to the European Company Statute (2001/86/EC) and the European Cooperative Society Statute (2003/72/EC) should be ‘reflected in a revised EWCs Directive’;
- information and consultation must take place in good time, i.e. ‘before any decisions are taken’, and EWCs ‘must have the right ... to draw up their own proposals in time for them, potentially, to be taken on board before the end of the decision-making process’.

For its part (EWCB, 2004a) the Union of Industrial and Employers' Confederations of Europe (UNICE) was 'strongly opposed to a revision of the EWCs Directive ... European employers are convinced that the best way to develop worker information and consultation in Community-scale undertakings is through dialogue at the level of the companies concerned'. UNICE said that it 'fully agrees that ... EWCs or equivalent procedures are beginning to demonstrate their value in informing and consulting workers at transnational level ... and have generally helped companies in communicating change'. However, at the same time, 'enquiries among companies from different EU countries also highlight the complexity of organising good communication flows and discussions at transnational company level; and finding the right articulation and division of tasks between EWCs or equivalent procedures and information and consultation processes at national or establishment level in a way which respects the variety of legislative and collectively agreed obligations in this field'.

In September and October 2004 the social partners held two seminars to discuss case studies of how EWCs operate, with a view to identifying best practice. This took place within the framework of the EU-level social dialogue process and arose from the partners' commitment to look at the issue of EWCs and enlargement as part of their joint 2003–05 work programme, and not as a direct response to the Commission's April 2004 consultation on ways of enhancing the effectiveness of EWCs. The social partners subsequently drew up a detailed report describing the experience of each of the EWCs concerned (CEEP, ETUC and UNICE/UEAPME, 2005a). Following the seminars, the Social Dialogue Committee appointed a drafting group to draw lessons from the case studies examined. The result of the work done by this group was a joint text, *Lessons learned on European Works Councils*, which was formally approved on 7 April 2005 (CEEP, ETUC and UNICE/UEAPME, 2005b). Several of the lessons are of some relevance to the restructuring issue (see Box 1).

Box 1 Excerpts from *Lessons learned on European Works Councils*, agreed by UNICE/UEAPME, CEEP and ETUC on 7 April 2005

1. EWC: A useful tool to organise transnational information and consultation

Practice shows that EWCs can help management and workers to build a corporate culture and adapt to change in fast-evolving transnational companies or groups when changes concern the group's strategy and affect sites in several countries.

In a context of globalisation and ongoing technological innovation, companies and workers in all European countries are confronted with continuous and rapid change in the organisation of work and production. The existence of a good social dialogue climate of confidence and a constructive attitude to change are key factors which may contribute to ease the management of change in companies and to prevent or limit possible negative social consequences when more far-reaching restructuring is necessary.

2. Mutual trust

[...] Openness on the side of management to release information at an early stage and a constructive attitude in the search for solutions on the workers' side are also important.

7. Managing multiple layers of information and consultation

A complexity encountered by both management and worker representatives is to organise meaningful information and/or consultation without creating undue delays and uncertainties. The necessary respect of obligations arising from the legislative and contractual framework on worker information and consultation as well as confidentiality requirements influence the information and consultation process. Tensions can also arise from the fact that even if some decisions on the strategy of the group are taken at European level, managing its social consequences remains local and governed by national rules.

Second-stage consultation on EWCs and restructuring

The debates on restructuring and EWCs came together formally in March 2005, when the Commission issued a Communication entitled *Restructuring and employment. Anticipating and accompanying restructuring in order to develop employment: The role of the European Union* (European Commission, 2005a). The Communication outlined a package of proposals, including enhanced coordination between key strands of EU policy, new and refocused financial support, adaptation of the regulatory framework and the greater involvement of the social partners. The Communication also initiated second-stage consultations with the EU-level social partners about both restructuring and EWCs. The Commission took the view that there was ‘a need for more European social dialogue input on these two closely linked questions, as part of the partnership for growth and jobs which lies at the heart of the reinvigorated Lisbon strategy’. The Commission therefore encouraged the European social partners to intensify ongoing work and to start negotiations with a view to reaching an agreement among themselves on the requisite ways and means for:

- implementing mechanisms for applying and monitoring existing guidelines on restructuring, and a discussion on the way forward;
- encouraging adoption of the best practices set out in the existing guidelines on restructuring;
- promoting best practice in the way that EWCs operate, with a view to making them more effective, more especially as regards their role as ‘agents for change’.

The Commission’s attempt to prompt negotiations between the social partners over promoting good practice on handling restructuring and the operation of EWCs met with a somewhat cautious response from the social partners (EWCB, 2005a). ETUC criticised the Commission for launching a joint consultation on two separate issues and questioned whether the procedural requirements for second-phase consultations with the social partners had been met. It called for the Commission to adopt a more interventionist strategy for involving workers in managing restructuring, and in particular to propose a strengthening of the EWCs Directive along the lines demanded by trade unions. UNICE was still opposed to any further legal regulation of the process of restructuring and to the revision of the Directive, preferring a voluntary approach on the basis of the existing joint social partner texts. Both organisations indicated their openness to further talks, but clearly with very different objectives.

At the time of writing (Summer 2006), it is uncertain what will result from the second-stage consultations on restructuring and EWCs (EWCB, 2006a). The social partners’ views on the issues differ sharply and there is little sign that they are actively discussing a joint response to the Commission’s call, though the partners’ 2006–08 joint work programme, adopted in March 2006, contains a commitment to complete a set of national studies on economic and social change in the new EU Member States, enlarge them to cover the EU15 and ‘on that basis promote and assess the orientations for reference on managing change and its social consequences and the joint lessons learned on EWCs’. ETUC continues to campaign for the revision of the EWCs Directive, while UNICE strongly opposes a strengthening of the Directive, and the Commission is thought unlikely to propose extensive amendments at present and seems to favour a non-legislative approach to the whole restructuring issue.

As seen above, EWCs and restructuring are inextricably linked in practical and policy terms, as well as being highly topical in current EU debate. Against this background, the aim of the current report is to assess the existing evidence on the role of EWCs in transnational corporate restructuring.

We first look at the content of the agreements establishing EWCs to assess the extent to which they are, in formal terms, equipped to deal with company restructuring and what the nature of their input is in such circumstances (*Chapter 1*). We then turn to the other main source of documentary evidence on the matter, which is the agreements or other joint texts signed by EWCs and management in a number of companies, looking for texts that deal directly or indirectly with restructuring (*Chapter 2*).

The next chapter reviews the academic literature on the role of EWCs in restructuring (*Chapter 3*), before we proceed to examine the evidence in practice from a number of case studies conducted as part of other research projects (principally for the Foundation) and from reporting of relevant developments, mainly in the *European Works Councils Bulletin* (*Chapter 4*). Finally we draw a number of conclusions, highlighting the factors that appear to play an important role in favouring or hindering the meaningful involvement of EWCs in transnational corporate restructuring (*Chapter 5*).

A draft of this report was discussed at a seminar on 'European Works Councils in practice' organised by the Foundation in Warsaw on 19–20 June 2006. Debate at this seminar and a number of specific comments on the draft by participants have contributed to this final version, and the authors would like to express their gratitude for this assistance.

EWC agreements and restructuring

1

Formally, at least, the potential role of an EWC in the event of company restructuring is based principally on the relevant provisions of the agreement establishing that EWC. In this chapter we review the contents of EWC agreements in this area. This examination is based largely on two major analyses of agreements carried out on behalf of the Foundation (Marginson *et al*, 1998; Carley and Marginson, 2000); the Social Development Agency's EWCs database (available online at www.sda-asbl.org/), which when consulted in mid-March 2006 contained details of 710 agreements, plus a booklet based on this database (Cox, 2005); and an in-depth specific review of EWC agreements' provisions in this field, published in *European Works Councils Bulletin* (EWCB, 2002a). Our review is illustrated with examples of relevant clauses in EWC agreements (as far as possible, relatively recent agreements), selected from the EWCs database compiled by the European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS) (CD-ROM version, 2004 edition) and from the authors' own collection.

Box 2 The role of statutory EWCs in restructuring

The role and rights of individual EWCs in the event of corporate restructuring are governed essentially by the terms of the agreement establishing that EWC (*see also p. 59*). However, the Directive's annex lays down a number of subsidiary requirements in this area that apply to 'statutory' EWCs – i.e. those established in the absence of an agreement. While the number of statutory EWCs actually established is very low, the Directive's subsidiary requirements are important as they are widely acknowledged to have had an influence on EWC agreements, often acting as a reference point and 'bottom line' in negotiations.

The subsidiary requirements provide (in Point 2 of the Directive's annex) that, at their annual meetings with central management, statutory EWCs are to be informed and consulted on a list of issues that includes 'transfers of production, mergers, cutbacks or closures of undertakings, establishments or important parts thereof, and collective redundancies', where these concern the multinational as a whole or at least two of its operations in different EEA member states. As well as these items clearly linked specifically to restructuring, statutory EWCs are also entitled to be informed and consulted at these meetings on more general matters that might relate to restructuring, such as the progress and prospects of the company's business; its structure, economic and financial situation; the probable development of the business and of production and sales; the situation and probable trend of employment; investments; and substantial changes concerning organisation.

In addition to this regular information and consultation process, the subsidiary requirements provide (in Point 3 of the annex) that the statutory EWC's select committee or, where there is no such committee, the EWC itself has the right to be informed in 'exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies'. The committee/EWC has the right to meet, at its request, central management (or any other more appropriate level of management within the multinational with its own powers of decision), so as to be informed and consulted on measures significantly affecting employees' interests. EWC members representing the establishments and/or undertakings directly concerned by the measures in question have the right to participate in the meeting organised with the select committee. The information and consultation meeting must take place as soon as possible on the basis of a report drawn up by central management (or any other appropriate level of management), on which an opinion may be delivered at the end of the meeting or within a reasonable time. This meeting 'shall not affect the prerogatives of the central management'.

Issues for information and consultation

Almost all EWC agreements set out a list (illustrative or exhaustive) of issues that fall within the EWC's remit and on which it should be informed and consulted (we refer here to issues for general information and consultation at regular meetings, rather than information and consultation in exceptional circumstances, which is dealt with separately below).

In the Foundation's analyses of agreements, the groups of issues used include one that is specifically and clearly related to corporate restructuring: 'transfers of production, mergers, cutbacks and closures'. According to the research, these are specified as issues for information and consultation in 52% of Article 13 EWC agreements (i.e. those signed before 22 September 1996) and 76% of Article 6 agreements (those signed after 22 September 1996). This increasing tendency to consider such issues in more recent agreements arguably suggests a growing interest in and awareness of the restructuring issue.

The SDA database uses a different categorisation of information and consultation topics, and four of these are particularly and directly relevant to restructuring:

- 'delocalisation' features in 58.2% of agreements (413 out of 710);
- 'merger' is listed in 56.2% of agreements (399 out of 710);
- 'closures' are mentioned in 53.0% of agreements (376 out of 710);
- 'mass redundancies' appear in 44.9% of agreements (319 out of 710).

Restructuring may also fall within broader and more general EWC agenda items. Likely categories of this type used in the Foundation research are 'structure', 'employment and social issues', 'business, production and sales', 'organisation' and 'investment'. The incidence of these themes is as follows:

- 'employment and social issues' – 86% of Article 6 agreements and over 85% of Article 13 agreements (87% of those signed after the adoption of the EWCs Directive in September 1994 and 89% of those concluded before this date);
- 'business, production and sales' – 82% of Article 6 agreements and over 75% of Article 13 agreements (80% of 'post-Directive' agreements and 46% of 'pre-Directive' agreements);
- 'structure' – 82% of Article 6 agreements and over 60% of Article 13 agreements (61% of post-Directive agreements and 46% of pre-Directive agreements);
- 'investment' – 75% of Article 6 agreements and over 65% of Article 13 agreements (70% of post-Directive agreements and 39% of pre-Directive agreements);
- 'organisation' – 68% of Article 6 agreements and just under 60% of Article 13 agreements (61% of post-Directive agreements and 35% of pre-Directive agreements).

Potentially relevant broader categories in the SDA database are:

- 'employment' – 88.7% of agreements (630 out of 710);
- 'production' – 80.4% of agreements (571 out of 710);
- 'investment' – 75.8% of agreements (538 out of 710);
- 'field of activity' – 66.5% of agreements (472 out of 710).

The overall picture is thus that the kind of restructuring event or process that is at the centre of this report's concerns is definitely a matter for information and consultation in somewhere between 50% and 60% of EWC agreements (and the Foundation research indicates that relevant provisions have become more common in EWC agreements over time). Broader and more catch-all themes that could include restructuring of various types are more commonly listed in agreements, with issues such as employment or production featuring in over 80% of cases. Indeed it has been argued, for example in the Foundation and EWCB research, that the issues for information and consultation set out in EWC agreements have increasingly become standardised on the basis of the list laid down in the Directive's subsidiary requirements, which includes both the specific 'transfers of production, mergers, cutbacks or closures of undertakings, establishments or important parts thereof, and collective redundancies' and general subjects such as 'structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments' (see Boxes 2 and 3).

Box 3 Examples of EWC agreements' provisions on regular information and consultation over restructuring-related themes

Many EWC agreements repeat, word-for-word or with slight variations, the statement in the Directive's subsidiary requirements of the specific restructuring-related matters on which the EWC should be informed and consulted. To give a typical example: '... rights to information and consultation shall apply, in particular, to the following matters: structure of the group of undertakings and its economic and financial situation; likely development of business, and of production and sales; employment situation and its anticipated development; investments (investment programmes); fundamental changes to the organisation; introduction of new working and production procedures; relocation of undertakings, establishments or major parts thereof, and relocation of production; merging or splitting of undertakings or establishments; cut-back or closure of undertakings, establishments or significant parts thereof; mass redundancies.' (**Deutsche Telekom**, 3 March 2004, Article 7.1).

In some cases, the issues listed are less specific or comprehensive, for example: 'structural and strategic changes in the group of companies ... fundamental changes in the organisation' (**Forbo**, 21 November 2003, Article 5.2); 'significant changes in organisation; HR issues including employment trends and collective redundancies' (**Vodafone**, 28 February 2003, Article 7.1); or '(a) the probable development of the business/investment/financial/employment trends within Intel in the EU and (b) business changes that affect two or more countries and the existence or location of more than 3% of a country's workforce (minimum five employees) in the EU' (**Intel**, May 2004, Article 5.2).

Some agreements go into more detail on the specific restructuring measures covered, for instance: 'significant changes in the structure of the group, mergers, acquisitions and sales of activities and/or businesses ... reduction or closure of factories or production units with transnational repercussions; transfer of production to other countries of the European Union or to countries outside the Union' (**Eni**, 22 June 2001, Article 6); or 'changes of organisation affecting two or more European countries resulting from, for example, mergers, acquisitions, spin-offs, reductions or closure or outsourcing of Syngenta companies' (**Syngenta**, 12 April 2001, Article 5).

Scope of issues

Another point that may be germane to EWCs' information and consultation rights in restructuring situations is the scope of the issues that fall within their remit. While the Foundation research and

SDA database do not cover this point specifically, many (and probably most) EWC agreements follow the Directive in providing that the EWC is to be informed and consulted only on matters with a transnational aspect, rather than solely a national one. As the Directive's subsidiary requirements put it: 'The competence of the European Works Council shall be limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States.'

To look at this issue from another angle, many agreements (two-thirds of those in the SDA database and nearly half of those examined in the Foundation research) specifically exclude the EWC from considering certain issues; in most of these cases, the matters excluded are those that are solely national in scope and/or dealt with by information and consultation or other industrial relations processes at national or local level. In the words of the SDA booklet: 'The most common situation here is to exclude items that only concern one country ... The idea of a "transnational criterion" excluding issues that only affect workers in one country appears in various forms in many EWC agreements ...'

The question of whether or not a particular restructuring event or process is transnational in scope, and thus within the EWC's competence, is vital to any potential input by the EWC and may be a contentious point (see Box 4). Furthermore, the exclusion of issues that are subject to national/local information and consultation may potentially have an effect on the EWC's role, as restructuring and related development such as collective redundancies are commonly subject to information and consultation under national legislation and practice.

Box 4 Examples of 'transnational criteria' in EWC agreements

Most agreements limit the EWC's scope to dealing with transnational matters. Some typical formulations are: 'The competence of the European Works Council shall be limited to information and consultation on transnational matters, which concern the company as a whole or at least two of its establishments situated in different Member States' (**Scottish & Newcastle**, 5 April 2004); 'The European Works Council has a remit to assure information and consultation of the staff representatives on economic, financial and social questions which, because of their all-inclusive character and transnational impact, need to be examined at this level. The questions therefore concern either all companies falling within the scope of the current agreement or at least two units or companies located in two different Member States' (**France Télécom**, 14 April 2004, Article 2.2); or 'The management of KPN Mobile ... and members of the EWC will discuss matters of a strategic and general character, concerning KPN Mobile as a whole at transnational level ... The information and consultation mainly concerns transnational matters on financial and social development, which are relevant for all employees of KPN Mobile or for the employees of at least two different countries within the scope of the agreement' (**KPN Mobile**, 25 April 2003, Article 1).

Some agreements have a more specific (and in some cases restrictive) definition of what constitutes a transnational matter: 'For the purposes of this agreement, "information" means information relating to Radisson SAS Hotels and Resorts operational matters as a whole at a pan European level ... "operational matters as a whole at a pan European level" means matters directly and adversely affecting employees simultaneously in at least: four EU/EEA countries if there are more than 10 countries represented at the EWC; five EU/EEA countries if there are more than 15 countries represented at the EWC; six EU/EEA countries if there are more than 20 countries represented at the EWC. The working committee and RSH can agree that a significant pan European issue which affects less than these numbers of countries can be put before the EWC' (**Radisson SAS Hotels and Resorts [RSH]**, 2 March 2004, Article 2).

Occasionally, agreements may clarify that 'transnationality' applies where a matter affects only one country, but results from a decision taken in another. For instance: 'In addition to subjects concerning two establishments or companies situated in two different countries, subjects will also be considered transnational which concern a subsidiary situated outside France the restructuring of which derives from a decision of the dominant company, or is a direct consequence of one of the policy decisions taken by the group' (**EDF**, May 2005, Article 1).

With regard to clauses explicitly precluding the EWC from dealing with national/local issues, these generally involve statements such as: 'The agenda will not cover and the Forum will not discuss ... local or national issues' (**Glen Dimplex**, 18 November 2003); 'Matters which exclusively concern the companies of the group and their workforces in one country shall not be the business of the EWC and shall be subject to the sole competence of the national employee representative body according to the valid statutory provisions in that country' (**Schmitz Cargobull**, 1 September 2003, Article 4.2); or 'The following matters remain outside the competence of the CCCF ... National or local issues concerning the group's business operations in only one country' (**Coca-Cola**, 27 March 1998, Article IV). Rarely, such clauses do not appear to exclude entirely all national issues, e.g. 'Generally speaking, the TotalFinaElf EWC will not concern itself with questions concerning the national level alone, and a fortiori one company or one establishment of the group' (**TotalFinaElf**, 2001, Article 2).

Role of the EWC

The potential role of EWCs in restructuring will naturally be influenced by the general role ascribed to a particular EWC in the agreement establishing it. Almost without exception, agreements define the EWC's purpose as the transnational information and consultation of employees. According to the Foundation research, consultation is almost always defined essentially as it is in the EWCs Directive, i.e. 'dialogue' or 'an exchange of views'.

However, more than one in 10 EWC agreements analysed (14% of Article 13 agreements and 11% of Article 6 agreements) contain more extensive provisions on consultation and in some cases negotiation. These cover:

- the right of employee representatives to comment formally and give opinions on management proposals (7% of Article 13 agreements, 3% of Article 6 agreements);
- provisions for 'formal' consultation on some issues (1% of Article 13 agreements, 4% of Article 6 agreements);
- scope for employee representatives to make recommendations (4% of Article 13 agreements, no Article 6 agreements);
- the negotiation of joint texts (2% of Article 13 agreements, 6% of Article 6 agreements).

On the last point, it may be worth noting that 10% of the Article 6 agreements examined (this issue was not covered in the analysis of Article 13 agreements) specifically preclude the EWC from having any negotiating role.

Some EWCs might thus, in theory, be better equipped than most to have a more substantial input into restructuring than only being informed and engaging in a dialogue or exchange of views.

Also of relevance here is the timeliness of information and consultation for EWCs. Only 28% of the Article 6 agreements in the Foundation research make explicit reference to the provision of general

information and consultation in good time. No comparable figures are available for Article 13 agreements, but the Foundation thought it 'likely that the proportion was rather lower'.

Exceptional circumstances

The nature of much company restructuring means that it is not likely to occur in such a way that the EWC can be informed and consulted in a meaningful way at (usually) annual meetings at pre-arranged times. The Directive thus provides in its subsidiary requirements that there should be some form of extraordinary meeting in 'exceptional circumstances' – particularly relocations, closures and collective redundancies (see Box 2, p. 9). Indeed, the basic idea of extraordinary meetings is clearly to deal with restructuring of various kinds. In practice, according to the Foundation research, some form of extraordinary meeting in exceptional circumstances is provided for in 81% of Article 13 EWC agreements and 97% of Article 6 agreements. The SDA database finds an explicit facility for such extraordinary meetings in 79.1% of cases (562 out of 710 agreements).

Definition of exceptional circumstances

Many agreements specify the circumstances in which an extraordinary meeting might be held, or a process possibly leading to such a meeting initiated (see Box 5). The EWCB research (the matter is not dealt with in the Foundation work or the SDA database) found that most agreements analysed follow (with some variations) the approach taken in the Directive's subsidiary requirements, which refer generally to exceptional circumstances affecting employees' interests to a considerable extent, adding the particular cases of relocations, closures of establishments or undertakings, or collective redundancies. A few include the Directive's general criterion of exceptional circumstances affecting employees' interests to a considerable extent, but without adding the particular cases of relocations, closures and redundancies. A minority are not even this specific, referring only to extraordinary decisions or issues, or some similar general formulation. It is common for agreements to add that the circumstances in question must affect employees or operations in at least two countries covered by the agreement.

Box 5 Examples of EWC agreements' definitions of the exceptional circumstances leading to extraordinary meeting procedures

The most common approach to defining exceptional circumstances appears to be essentially that of the Directive's subsidiary requirements, with some variations, e.g. 'all particular circumstances or planned decisions affecting the employees' interests to a considerable extent in at least two undertakings or establishments in different states which are covered by this agreement, particularly as regards the relocation or closure of undertakings or establishments, or collective redundancies' (**Invensys**, 29 May 2001, Article 1.4); or 'lasting changes, which materially affect the interests of the employees of at least two establishments of the LSG Sky Chefs group in Europe in different EU Member States ... Such extraordinary circumstances include in particular the relocation or the closing down of undertakings, establishments, or material parts thereof as well as intended mass dismissals' (**LSG Sky Chefs**, 24 May 2005, Article 2).

Some agreements are less specific or more general, e.g. by dropping particular cases from this formulation. For example: 'A business plan or decision which are of significant importance and which directly affect the interests of employees and concerns in two or more countries' (**Textron**, 8 June 2004, Appendix 1); or '... changes that have considerable effects on the employees' position in more than one country' (**Paroc**, 21 January 2004, Article 3).

Conversely, other agreements are more specific, stipulating the extent of the circumstances that might result in an extraordinary meeting. Examples include: 'An extraordinary meeting shall only be called in an exceptional circumstance which directly and adversely affects employees within a particular company sector to a significant extent, in at least two Member States. Such circumstances would involve as a minimum the closure of facilities or parts of facilities or collective redundancies which directly and adversely involve at least 100 employees, and which affect those employees' interests to a considerable extent' (**McCain Foods**, 1 February 2004, Article 6.6); and '... the occurrence of international events with the same economic justification and liable to result in significant long-term repercussions in at least two different Member States and on the interests of at least 150 employees in each' (**Rhodia**, 10 October 2001, Article 9).

Extraordinary procedure

The Directive's subsidiary requirements provide that the select committee or, where no such committee exists, the EWC has the right to be informed when exceptional circumstances arise, thus placing the onus for triggering the extraordinary procedure on management. The EWCB research found that over three-quarters of the agreements examined make it clear that management should initiate an information and consultation process when the relevant exceptional circumstances arise. However, a minority of agreements seem less clear on this point, not specifying that management is responsible for identifying that the exceptional circumstances have arisen.

According to the Foundation research, relevant EWC agreements usually provide for one or more of the following meeting formats once exceptional circumstances are acknowledged as having arisen:

- a meeting of the full EWC is provided for in 64% of Article 6 agreements with clear provisions in this area, and 65% of Article 13 agreements;
- a meeting involving the select committee, plus the EWC members representing the companies/countries affected by the exceptional circumstance in question, is specified in 52% of relevant Article 6 agreements and 20% of Article 13 agreements;
- a meeting of the select committee is stipulated in 36% of Article 6 agreements and 20% of Article 13 agreements.

The fact that more Article 6 agreements than Article 13 agreements give the select committee the primary role in extraordinary meetings (often with the participation of EWC members representing the companies/countries affected) might, the researchers suggested, be ascribed to the influence of the Directive's subsidiary requirements, which refer to this format. It may be noted that around two-thirds of the EWC agreements examined in the Foundation research have select committees (62% of Article 13 agreements and 83% of Article 6 agreements), with the SDA database also putting the figure at two-thirds.

It is quite often the case that more than one meeting format is specified by EWC agreements – this is true of 40% of Article 6 agreements examined in the Foundation research and around a quarter of Article 13 agreements. Of the agreements examined in the EWCB research, around two-thirds provide for two or more meeting formats. Some stipulate a straight choice between options (e.g. between a meeting of the full EWC or of the select committee) and others a staged procedure, typically starting with information provision to the select committee and then potentially proceeding, usually by

agreement, to a wider meeting, either of the full EWC or of the select committee plus representatives of the companies/countries affected.

In the Directive's subsidiary requirements, it is the select committee or EWC that has the right to request a meeting in exceptional circumstances. As with so many of the requirements, this would appear to have had an effect (increasing since the Directive came into force) on the content of agreements. Where agreements deal with this point (as the great majority do), the most common provision is still for a joint management-employee side approach to decisions on calling such meetings – this is laid down in half of Article 6 agreements examined by the Foundation, though this is down from 62% in Article 13 agreements (*see Box 6*).

Management has the right to call meetings in 34% of Article 6 cases, compared with 36% of Article 13 agreements, while employees have the right in 40% of Article 6 agreements, a substantial increase on the 27% found in Article 13 agreements. A choice between processes for calling meetings, or a combination of different processes, is found in 21% of Article 6 agreements and a quarter of Article 13 agreements. The later EWCB research found that it is most common for the employee side to be able to request initial or subsequent meetings, though in a substantial minority of cases meetings may be called by agreement or in consultation between management and employee representatives. Furthermore, in some cases the employee-side request must receive a certain amount of support (e.g. from two-thirds of employee representatives) for a meeting to be held.

Box 6 Examples of EWC agreements' procedures triggered in exceptional circumstances

The processes and meeting formats that come into play when exceptional circumstances arise vary considerably between EWC agreements, from a single prescribed route to choices between formats (select committee, extended select committee or full EWC) or staged procedures. There are also various approaches to the role of employee and management in the process.

The following are examples of simpler and more concise procedures:

'In the case of exceptional national or transnational events (as defined in Article 1) having implications likely to have a serious effect on the interests of the group's employees (for example relocation, sales, mergers or closing-down of companies or plants, collective redundancies ...), the EWC shall meet for an extraordinary session at the request of the secretary. On such occasions it shall be consulted in due time and with useful effect so that the elements of the debate or the opinion of the EWC can be integrated into the decision-making process. The opinion of the EWC also calls for an answer with reasons from the board' (**EDF**, May 2005, Article 4.3).

'If the European Works Council or the select committee so requests, it shall meet the central management in order to be further informed about and consulted on the circumstances referred to in subsection (4) on basis of a written report drawn up by the central management. This meeting shall be held at a time at which such information and consultation is still meaningful. The European Works Council or the select committee may issue an opinion on the report after the meeting. Those members of the European Works Council who have been co-elected by the employees of the undertaking or establishment directly affected by the measures shall be invited to such a meeting with the select committee' (**American Standard**, 29 May 2001, Article 1.5).

'In the event of a major change in our operation or companies, an extraordinary meeting of the LAEWC can be arranged by either Linpac Automotive or by 66% of the LAEWC delegates requesting such a meeting through the chair. As an alternative to a special meeting, other

forms of communication such as teleconferencing may be used at the discretion of the chair and the employee representative coordinator' (**Linpac Automotive**, 10 November 2003, Article 4.11).

Two examples of rather more complex or detailed procedures are those of, first, Air France-KLM and, second, IBM:

'5.1 Where there are exceptional and transnational circumstances, pursuant to article 1, affecting the interests of **Air France KLM** group employees, particularly in the field of employment involving relocations, the closure of undertakings or collective redundancies, the chairman of the AFKL EWC and the select committee of the AFKL EWC shall meet for an exchange of views at the initiative of the chairman of the AFKL EWC or of a majority of the members of the select committee.

5.2 The select committee and the chairman of the AFKL EWC may decide by mutual agreement whether or not to convene an extraordinary plenary meeting of the AFKL EWC, or a meeting of the select committee plus the AFKL EWC's members, deputies and/or observer(s) from the countries affected by the said exceptional circumstances.

5.3 Failing agreement with the chairman of AFKL EWC as to the necessity of convening the AFKL EWC, the select committee may request the opinion of members of the AFKL EWC by e-mail within a maximum period of five working days. In parallel, the AFKL EWC chairman shall also inform members of the AFKL EWC of his position.

5.4 If a two-thirds majority of members is in favour of a plenary meeting – with each e-mailed reply being copied to the Air France KLM group management – the said meeting shall be convened no later than seven calendar days thereafter.

5.5 To ensure that such consultation has a useful effect, the procedure to implement it shall take place: after the information and consultation procedure with the competent national representative bodies concerned (where they exist) has been initiated; before the plan is implemented, in order to allow the Air France KLM group management to include the elements of discussion or the recommendations of the AFKL EWC in the decision-making process and to take any opinions expressed during the extraordinary meeting into consideration.

5.6 The AFKL EWC may formulate a recommendation during the said plenary meeting or in writing no later than seven calendar days following the meeting.

5.7 The Air France KLM Group Management shall deliver a reasoned response no later than seven calendar days after receiving the recommendation' (**Air France-KLM**, 13 February 2006).

'If any one of the following exceptional situations arises:

1. Transfer of activities and related jobs across borders,
2. Transfer of manufacturing production across borders,
3. Transfer of undertaking out of **IBM**,
4. Closure or reduction in size of establishments,
5. Collective dismissals, having grave implications for the employment of – per each event – a total of more than 500 employees and of more than 100 employees (or more than 20% of the total country IBM population whichever is lower) in each of at least two countries covered by the agreement within a period of 12 months, the chairman will notify the secretary in writing.

If the secretary so requests within one week of the notification, the chairman will arrange for there to be a meeting for the purpose of an exchange of views and dialogue on the circumstances in question.

Within one week after the request from the secretary, a description of the main lines of the circumstances in question will be circulated by the chairman to the EWC.

The meeting will take place within two weeks after the request of the secretary has been received by the chairman. The participants will be the chairman, the select committee, an appropriate representative designated by the management responsible for the changes under discussion and in addition, the EWC representative(s) from each country significantly affected (i.e. in which arises an exceptional situation having grave implications for the employment of more than 100 employees or more than 20% of the total country IBM population within a period of 12 months).

The employee representatives may choose to deliver their opinion to IBM management by the end of the meeting. The employee representatives may deliver, through the secretary, written opinions to IBM management within one week after the meeting at the latest, at which point the consultation process will be complete.

The consultation process will in no way affect management's prerogatives and power to take appropriate decisions at the time required by the business. It will take place before the decision is implemented, unless significant circumstances did not permit to do so.

IBM internal communication tools will be used for the notification, the request and the description of the circumstances' (IBM, 29 October 2002, Article VIII).

Timing

The timing of information and consultation is likely to be a crucial issue in determining the nature and extent of an EWC's role in the event of restructuring. This is acknowledged by the Directive's subsidiary requirements, which provide that information and consultation meetings in exceptional circumstances should take place 'as soon as possible' on the basis of a report drawn up by management, on which the EWC or select committee may deliver an opinion at the end of the meeting 'or within a reasonable time'. Broadly speaking, the stages at which information and consultation might occur are: while management is still considering its decision; after the decision itself has been taken but while the details of its implementation are still open to debate; after the decision is taken and implementation decided but not yet put in place; and after the implementation is complete. The influence of EWCs in the process is likely to be greater the earlier and further 'upstream' they are involved.

The Foundation research and SDA database do not deal with the specific issue of the timing of information and consultation in exceptional circumstances (though the former looks at the general timing of information and consultation – see p. 13, 'Role of the EWC'). The EWCB research found that around half of the agreements examined include provisions of varying detail on the timing (and in some cases nature) of information and consultation in exceptional circumstances. Most of these state that it should be provided swiftly or as soon as possible or practicable (see Box 7). A reference to ensuring that this occurs at such a time as to allow for meaningful consultation, or for the EWC/select committee's position to be taken into account (or some similar formulation), is found only in under a third of the agreements analysed. An obligation on management to provide a written report and a specific provision enabling the EWC/select committee to produce an opinion at a particular stage of the procedure both appear in under a fifth of agreements.

Box 7 Examples of EWC agreements' provisions on the timing of information and consultation in exceptional circumstances

Many agreements state that information and consultation to the EWC/select committee where exceptional circumstances arise should occur 'in good time' (TUI, 18 October 2002, Article 3), 'promptly' (Fiat, 8 June 2001, Article 10) or even 'immediately' (Reckitt Benckiser, 25 April 2001, Article 5.2). When this leads to meetings of the EWC/select committee, the timing in relation to the decision-making process in question, and the capacity of the EWC/committee to have a meaningful input, or engage in a formal staged consultation process, appears to be stipulated in only a minority of agreements. Where relevant provisions are present in agreements, these vary in their detail (e.g. on timing), in the number of stages and in the nature of the input of the EWC/select committee. For example:

'In exceptional circumstances, a discussion between management and the select committee is organised "prior to the implementation of the decision" and in parallel with local information and consultation procedures, so that the select committee members may "express their point of view in order to make the management fully aware of the situation". The select committee has the right to meet management on request, so as to be informed and to carry out an exchange of views and an in-depth dialogue. EWC representatives affected by the circumstances in question have the right to participate in this select committee meeting, which must take place "as soon as possible" to consider a report drawn up by management "on which an opinion may be given at the end of the meeting or within a reasonable time"' (Cap Gemini Ernst & Young, 6 June 2001, Article 8.3).

'In the case of exceptional national or transnational events ... having implications likely to have a serious effect on the interests of the group's employees (for example, relocation, sales, mergers or closing-down of companies or plants, collective redundancies...), the EWC shall meet for an extraordinary session at the request of the secretary. On such occasions it shall be consulted in due time and with useful effect so that the elements of the debate or the opinion of the EWC can be integrated into the decision-making process. The opinion of the EWC also calls for an answer with reasons from the board' (EDF, May 2005, Article 4.3).

'In exceptional circumstances, having a considerable effect on workers' interests, in particular with regard to employment, the bureau and the chairman hereby agree to meet for an exchange of views. The parties hereby agree to qualify as exceptional circumstances "any important occurrence linked to a decision for which Schneider Electric management is competent, concerning: at least two countries in the Schneider Electric European Committee's scope of activity, and concerning a significant percentage of the employees of each entity concerned, where an employment issue is concerned; or one country, but only if the occurrence has transnational consequences". In this case the time limit for convening shall be eight days, and the agenda shall be set by the secretary and management. This meeting shall take place upstream from implementation of the project, after the national bodies concerned have been informed of said project. Information forwarded to the bureau for the purposes of the meeting shall be made up of the documents previously forwarded to the national bodies concerned. The members of the Schneider Electric European Committee representing the countries concerned shall be invited to participate in the exceptional meeting of the bureau. The bureau may decide, at the end of this meeting, at a majority of its members, to request the convening of an extraordinary session of the Schneider Electric European Committee. In this case, the time limit for convening shall also be eight days, and the file forwarded to the members of the Schneider Electric European Committee shall be the same as that forwarded to the bureau. The bureau or the Schneider Electric European Committee may formulate opinions during these exceptional meetings. These opinions shall not be accompanied by any deadline for examination or investigation, and shall not adversely affect the implementation of said project' (Schneider Electric, 20 January 2005, Article 13).

An interesting recent example, where the provisions of the EWC agreement appear to mirror the more extensive consultation rights for EWC-like 'representative bodies' under the employee involvement Directive accompanying the European Company Statute, is a revised agreement at British Airways. Here, following an EWC or select committee meeting for information and consultation over exceptional circumstances: 'Where BA management decides not to act in accordance with the opinion expressed by the EWC, the EWC shall have the right to a further meeting with BA management with a view to seeking agreement' (**British Airways**, 16 June 2005, Article 3.5).

See also Box 6 (pp. 16-18), which also contains a number of examples of provisions on timing.

On paper at least, it appears that most EWCs are in a good position to receive regular information and consultation on both general and specific restructuring issues, and to be informed and consulted when exceptional restructuring events occur between regular meetings.

The great majority of EWC agreements provide for information and consultation at regular meetings on general topics – such as employment matters, business/production, company structure, investment and organisation – that may be relevant to company restructuring, though approaching 20% of agreements are not clear on this point. Specific restructuring-related topics – notably transfers of production, mergers, cutbacks and closures – are also on the formal agendas of regular EWC meetings (though not always in a comprehensive manner) in a majority of cases, but this is not evident in 40% or more of agreements. The overall picture seems to be that restructuring is in most cases an important issue for normal EWC meetings, but that a fairly substantial minority of agreements either do not make this clear or have only very general provisions in this area.

When exceptional circumstances occur in between regular meetings, management is usually (over 80% of agreements make provisions in this area) obliged to inform the EWC or select committee, which can generally then request a meeting, either of the full EWC or, more commonly, of the select committee, plus EWC members representing the companies/countries affected by the circumstances in question. These exceptional circumstances refer essentially to transnational company restructuring, with many agreements more or less following the provisions of the Directive's subsidiary requirements on the definition of these circumstances – i.e. those affecting employees' interests to a considerable extent, particularly relocations, closures of establishments or undertakings, or collective redundancies (often affecting employees or operations in at least two countries). Some agreements are, however, less specific on the definition of exceptional circumstances.

Factors in EWC agreements that may complicate or render problematic information and consultation on restructuring include the common clauses defining the 'transnational' nature of matters falling within the EWC's remit and/or excluding matters dealt with by national-level processes from its competence, and an apparent frequent absence of a requirement for information and consultation to occur in good time. This latter point is particularly relevant where exceptional circumstances arise. Though the evidence is limited, by no means all agreements include provisions on the timing of information and consultation in such circumstances. Where they do, these provisions usually refer only to providing the information and consultation swiftly or as soon as possible/practicable. It

appears much less common 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/select committee's position to be taken into account, while a specific provision enabling the EWC/select committee to produce an opinion at a particular stage of the procedure seems even rarer.

The role ascribed by agreements to EWCs in transnational restructuring (and other issues) is in most cases information and consultation, defined as 'dialogue' or 'an exchange of views'. Only a small minority of agreements (one in 10 or so) contain more provisions on a more in-depth form of consultation or allow for a negotiating role.

EWC joint texts and restructuring

2

As seen in the previous chapter, the role ascribed to EWCs by the Directive and by the vast majority of establishing agreements is information and consultation. Formally at least, hardly any agreements allow for the possibility that an EWC might serve as the forum for some kind of European-level negotiations between management and employee representatives. Only one in 40 of the agreements in the Foundation database (on which Marginson *et al*, 1998, and Carley and Marginson, 2000, were based) explicitly provide for the EWC to be a forum for negotiating joint texts of any kind, while one in 10 Article 6 agreements (no data are available for Article 13 agreements on this point) explicitly rule out any negotiating role for the EWC.

Despite this generally unpromising formal context, in practice a number of EWCs have developed a negotiating role (Carley, 2001). What this number might be is a matter of conjecture. Where the negotiating activity leads to the conclusion of a written agreement or other joint text, there is a reasonable chance of this coming to light, if publicised by the EWC, the company or trade unions (though the emergence of some joint texts a number of years after their conclusion suggests that this is by no means a sure or speedy process). However, if negotiations do not lead to a formal written outcome, it is unlikely that this activity will ever be captured for research purposes, unless the EWCs in question happen to be the subject of a case study or involved in a survey. (In this area, as in others, there is a possibility that a concentration on certain sectors, notably metalworking, in EWC research and reporting may mean that developments in these sectors come to light more readily or receive more prominence than those in others, or it may be that relevant developments are genuinely more common in these higher profile sectors.)

We will examine in this chapter known examples of joint texts as an indicator of the extent and content of negotiating activity of EWCs and its link with transnational corporate restructuring. But it should be borne in mind that this excludes bargaining that does not lead to a written agreement or those joint texts that have not so far become known beyond the company concerned. Various surveys of practice indicate that negotiations involving EWCs are by no means uncommon. For instance, a 2002 study of 63 of Europe's largest listed companies with EWCs (Vitols, 2003) found that agreements had been signed in 21% of cases and joint statements in 11% of cases. A 2003–04 survey of 39 multinationals with EWCs (ORC Worldwide, 2004) found that 14 (36%) had concluded some form of framework agreement with their EWC (while employee representatives in five companies were pressing management to negotiate such agreements). A recent ETUI-REHS survey of employee representatives on EWCs produced reports of joint texts from well over 100 respondents.

Negotiations within EWCs – and especially those that relate to company restructuring – are attracting considerable interest at present from EU-level policy-makers. In its April 2004 consultation document on the possible revision of the EWCs Directive (European Commission, 2004), the European Commission notes that a 'process of dynamic development within European Works Councils has reached its fullest expression to date with the emergence of a negotiating role within some EWCs. This has led to the conclusion of agreements on joint texts that go far beyond the basic information and consultation requirements of the Directive. In addition to agreements in the areas mentioned above [e.g. health and safety, equal opportunities policy, training and mobility, and environmental policy], the issues addressed in such joint texts include the consequences of restructuring, trade union rights and fundamental social rights. As regards restructuring, the EWC has functioned, in some instances, as a forum in which management and employees have reached agreement on how the restructuring of their European operations should be implemented'.

The Commission wants to provide support for such European-level negotiations. In its February 2005 five-year 'social agenda' (European Commission, 2005b), it refers to 'providing an optional framework for transnational collective bargaining at either enterprise level or sectoral level', which could 'support companies and sectors to handle challenges dealing with issues such as work organisation, employment, working conditions, training'. This framework would 'give the social partners a basis for increasing their capacity to act at transnational level' and 'provide an innovative tool to adapt to changing circumstances, and provide cost-effective transnational responses'. The Commission therefore plans to adopt a 'proposal designed to make it possible for the social partners to formalise the nature and results of transnational collective bargaining. The existence of this resource is essential but its use will remain optional and will depend entirely on the will of the social partners'. At the time of writing (Summer 2006), an expert report on this issue has been delivered to the Commission, which has held a seminar to discuss it and is considering the next step.

Nature and extent of joint texts

A study conducted in 2005 by EWCB (EWCB, 2005b) sought examples of joint texts (on matters other than the EWC's constitution and functioning) concluded by the management of a multinational company and either an EWC (or the employee side of a joint management-employee EWC) or some other employee representatives in the context of an EWC (e.g. where the EWC was involved in the negotiations, but not a formal signatory). The research found 46 joint texts, signed at 26 companies. A similar exercise conducted in 2001 had identified 17 texts in nine multinationals. The practice thus appeared to have spread to new companies, while new joint texts had been signed by EWCs that had already concluded them in the past – indeed the study noted that some 'EWCs seem to have made the conclusion of joint texts a quite regular part of their activity', with nine EWCs accounting for 29 texts between them.

The multinationals involved were based mainly in France (over a third of cases), Germany (over a quarter) and the USA (just under a quarter). In sectoral terms engineering/metalworking accounted for nearly a third of the companies, chemicals (including petrochemicals) and services (including finance) for just under a sixth each, food/drink/tobacco for an eighth, and utilities/communications and textiles/clothing for a twelfth each.

The joint texts had a variety of names. Over a third were agreements or framework agreements, while three out of 10 were joint opinions, declarations, positions or similar, and there were a number of examples of charters, codes, principles and plans.

With regard to their content, the EWCB research broke down the joint texts into three very broad categories, with considerable overlap between them. These were corporate social responsibility (CSR), workers' rights and similar issues – accounting for 35% of the texts examined; restructuring and its effects – 25% of the texts; and company policies (other than in the two previously mentioned areas) – 40% of the texts. It is the second category that concerns us most here, though we will also look at joint texts in other categories that address restructuring-related matters.

Joint texts on restructuring

The 19 known EWC joint texts that deal with restructuring in any detail are listed in Table 2. These texts deal with corporate restructuring in a number of ways. They may:

- constitute negotiated responses to a specific Europe-wide restructuring exercise announced by management;

Table 2 Joint texts concluded by EWCs (or in the context of EWCs) that deal centrally with restructuring or make substantial references to it

Company	Home country	Sector	Date of joint text	Nature of joint text	Subject
Axa	France	Insurance	April 2005	Principles	Management of the social dialogue in Europe
Danone	France	Food and drink	April 1992	Framework agreement	Skills training
			May 1997	Joint understanding	Changes in business activities affecting employment or working conditions
			October 2001	Agreement	Social standards applicable in restructuring of biscuits division in Europe
Deutsche Bank	Germany	Banking	March 1999	Joint position	New structures, job security and employability
Dexia	Belgium/France	Finance	December 2002	Principles	Principles of social management
Diageo	UK	Food and drink	October 2002	Statement (appended to revised EWC agreement)	Best practice guidelines on redeployment, redundancy and outplacement
EADS	Netherlands	Aerospace	June 2005	International framework agreement	Minimum social standards
Ford	USA	Motor manufacturing	January 2000	Agreement	Consequences of Ford's spin-off of Visteon for employees' status, employee representation and sourcing
			2004	Framework agreement	Restructuring ('international operations synergies')
General Motors	USA	Motor manufacturing	July 2000	Framework	Consequences of alliance between GM and FIAT for employees' status and employee representation
			March 2001	Framework agreement	Current restructuring initiatives
			October 2001	Framework agreement	Restructuring of Opel division
			December 2004	Framework	European restructuring initiative
PSA Peugeot Citroën	France	Motor manufacturing	March 2006	Global framework agreement	Social responsibility
Renault	France	Motor manufacturing	October 2004	Declaration	Employees' fundamental rights
Suez Lyonnaise des Eaux	France	Utilities and communications	October 1998	International social charter	Fundamental rights and principles for human resources policy
Total	France	Petro-chemicals and energy	November 2004	Platform	Employee relations (joint text signed by unions, but in context of EWC and giving EWC enhanced role)
Unilever	Netherlands/UK	Household goods	October 2005	Joint statement	Framework for responsible restructuring in transition to 'shared services'

- lay down sets of rules and guidelines to apply generally when restructuring occurs; or
- touch on restructuring briefly or in general terms, as part of a wider initiative, notably on CSR.

Responses to specific restructuring exercises

The 2005 EWCB research and monitoring of developments since then finds eight examples of EWC joint texts that constitute negotiated responses to a specific Europe-wide corporate restructuring exercise announced by management. These are one case at Danone, one at Unilever, two at Ford and four at General Motors (GM).

Further details of these eight high-profile cases are given in Chapter 4. However, it is worth noting here that the basic approach of these joint texts is to lay down a set of guarantees for the employees affected by the restructuring (such as 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. This is often accompanied by procedural rules on information, consultation and negotiation. The European-level texts generally require implementation through national-level bargaining and usually lay down a procedure whereby their application is followed up by the EWC or its select committee.

General rules and guidelines for restructuring

Three joint texts specifically and solely set out rules and guidelines to apply generally when restructuring arises – those at Danone in 1997 (see Box 8), Deutsche Bank (see Box 9) and Diageo (see Box 10). A further three joint texts – at Axa, Total and Dexia (see Boxes 11, 12 and 13) – do not deal purely with restructuring but do include substantial sections on the issue. Indeed, the Total ‘employee relations platform’ and the Axa joint text devote considerable attention to restructuring and are at least as detailed as the single-issue Danone and Deutsche Bank texts.

Box 8 Danone joint understanding in the event of changes in business activities affecting employment or working conditions (1997)

The joint understanding seeks to put into effect the provisions of the 1996 agreement establishing the Danone EWC in the area of ‘questions affecting employment or working conditions’. It introduces additional provisions to apply in the event that ‘new techniques’ or organisational processes are implemented, or in cases of ‘substantial changes in production volume, transferral of substantial part of production, partial or full closings of facilities and, in general, in all situations whereby working conditions or the nature of employment contracts are significantly affected’. The joint understanding’s principles are to be translated into ‘practical provisions’ by local management and trade unions (or, in their absence, other employee representatives) in individual group companies. The principles are as follows.

Training. In the event of major changes in working conditions or in business activities causing the loss of jobs, the employees concerned are entitled to receive training for the purpose of helping them find employment, either within the companies of Danone group or elsewhere. The terms and conditions of training programmes (duration, cost, objectives) shall at least be communicated to the trade unions concerned (or, in their absence, to employee representatives). Management will ensure that employees are not required to bear expenses in connection with training, with all these to be underwritten by management.

Consultation. Respecting legal and statutory provisions in effect in the country concerned, management will consult with unions (or, in their absence, with employee representatives) in the event of relevant changes. Thus consultations should take place as early as possible, and not later than three months prior to the expected changes if a significant number of jobs are affected (through partial or total closures). The consultation should be accompanied by material supporting the management decision, stating the goals and reasons, and clearly indicating the consequences for employees in terms of changes in employment contracts or working conditions, or of job cuts.

The transfer of employees affected to other positions within the Danone group (as far as feasible, in the same vicinity) should be examined before any other measure is considered. Consultations should allow unions (or, in their absence, employee representatives) to submit proposals as alternatives to the management plans (e.g. redistribution and shortening of working hours, or reductions in overtime). Unions should have the option of obtaining assistance in this task. Management should examine and respond to proposals 'reasonably promptly' (within one month at most) and justify its decisions in the relevant forums. Permanent jobs should be considered the priority, and cut-backs should first be made among all other types of jobs (temporary or subcontracted work) in order to protect permanent positions.

Placement assistance. A specific structure must be set up whenever a management decision results in job losses, with the task of helping redundant employees find positions corresponding to their qualifications, skills, pay level, working conditions and place of residence. The structure must be set up at the time of the decision and may remain in existence after the implementation of the decision. Trade unions (or, in their absence, employees representatives) are entitled to participate in the monitoring of placement activities. Given the effect on the local economy of job losses, management will – if appropriate, jointly with local authorities – support efforts aimed at creating new jobs and stimulating economic development by promoting the development and growth of local businesses. The support may consist of measures such as consulting services, market or feasibility studies and possibly financial assistance.

Union rights. In the event of the partial or full closure of a facility, trade union representatives may be granted time off with pay in order to perform their duties, if applicable regulations or agreements do not already provide for this. Special paid time off will be negotiated with local management.

The approach of these six agreements is to lay down, with varying degrees of detail, a number of standards and principles to govern the handling of restructuring throughout the European operations of the multinational concerned (the Danone text specifies that its principles are to be implemented by lower level negotiations). As with the joint texts that respond to particular restructuring events, they contain both substantive provisions on mitigating or accompanying the employment effects, and procedural provisions on information, consultation and/or negotiations.

Box 9 Deutsche Bank joint position on new structures, job security and employability

The Euro Staff Council (ESC) and Deutsche Bank (DB) aim to establish a regular dialogue on the personnel changes worldwide resulting from strategic changes and the HR policy needed to support them. New structures require new job profiles, new working conditions and a new allocation of resources and services. These changes will be supported by 'HR tools to create

opportunities, to prevent and mitigate disadvantages for employees without impairing the company's competitiveness'. At the same time, strategic group-wide changes and related plans for staff changes and movements will be submitted beforehand to the ESC on a 'country-specific, comprehensive basis' and discussed with it so that the ESC's ideas and suggestions can be 'considered for incorporation into the implementation strategy'.

Whenever new structures are implemented, the respective national legislation, collective bargaining system, business environment and regulatory regime need to be considered. In addition to these factors, all HR policies are driven by a set of values, which include: a 'corporate culture of openness, commitment, trust, integrity and achievement' practised throughout the bank; the ability to provide open information and exchange views without bias; 'respect, consideration and responsibility for staff'; 'fairness and credible leadership'; and 'honesty, incorruptibility, reliability and social competence'. DB will continue its dialogue on these issues with the ESC. This will include an exchange of ideas on how to promote job security and employability. These will be converted into 'modules of equal rank'. Modules within the framework of this dialogue are:

- ensuring job security by means of 'HR policy tools' that are used when staff cuts are unavoidable; apart from 'natural wastage', these can include measures such as various forms of early retirement, shorter working hours, more flexible working hours or financial compensation for job loss;
- training aimed at securing further employment within DB group;
- opportunities for further qualification, to be identified and realised in the group;
- job offers and training facilities, to be accessible to all DB employees worldwide;
- employability aimed at improving staff members' employment prospects, to be enhanced by the availability of training facilities and advice throughout the group;
- job security and the use of local expertise for new business areas, to be considered when strategic and organisational decisions are taken.

Further modules may be drawn up and agreed by the bank and the ESC.

'Upstream' of particular restructuring events, most of the agreements refer to seeking to avoid future employment problems through forward-looking training, skills and employability policies. Once restructuring is to occur, the focus is in the first instance on reducing the negative employment consequences, with redeployment within the group and retraining the main methods specified – for example, at Dexia the group's HR departments will seek to redeploy in other business units as many of the workers affected as possible before instituting any dismissal procedure. Another approach to saving jobs, mentioned at Deutsche Bank, is using shorter and/or more flexible working hours.

At Diageo, redundancy is a last resort after all alternative options have been explored through an 'internal resourcing' process. Where jobs are to be lost, the joint texts generally seek to cut the number of compulsory redundancies, by promoting measures such as voluntary departures and early retirement, alongside 'natural wastage'. External redeployment or outplacement and retraining for new jobs elsewhere are also commonly mentioned and financial compensation packages feature in several cases. Beyond the company itself, measures to help local areas cope with effects of job losses or closures are mentioned in cases such as Total and Danone.

Box 10 Diageo statement of best practice guidelines on redeployment, redundancy and outplacement

The statement appended to the 2002 revision of the agreement establishing the Diageo EWC says that the company is committed to ensuring that its treatment of those affected by redundancy will be 'sensitive, fair and constructive'. Ideally, if the redundancy and outplacement process works well, each individual leaving the company will 'feel pride in having worked for Diageo, will feel they have been treated fairly and equitably and would want to rejoin the company if ever presented with a future opportunity to do so'. The statement sets out basic guidelines for managing the process, which need to be tailored for use within each business region or market, reflecting local legislation and practice.

The *decision* to make a job redundant is an 'unpleasant and difficult one' in any circumstances. For the employees concerned, the decision can be traumatic. It is therefore essential that the entire process is 'handled in the most professional and sensitive manner'. The process begins with the decision that a job is to be made redundant, resulting in a person being made redundant. This occurs only after 'all alternative options have been explored through the internal resourcing process'.

The individuals concerned should be *informed* as soon as possible following the decision that their job is redundant and that no other opportunities exist for them in the new structure.

Individuals should be informed as soon as possible of the *terms* of their departure, including information on: leaving dates; payments due; treatment of pension and other benefits; outplacement support; and who to ask for further clarification. This information should be confirmed in writing.

With regard to *outplacement*, the company aims to 'support each leaver in ways which help to equip individuals to address/achieve their personal goals'. The actual support will vary from individual to individual and between parts of the organisation.

On procedural issues, most of the joint texts concerned include commitments on timely and meaningful information and consultation over restructuring for workers' representatives at national/local level. These can be quite detailed and include, for example, specific deadlines at Danone, the use of a staged procedure at Axa (with employee representatives involved: before the decision is taken; in drawing up a plan of action; in establishing how the plan should be implemented; and in its follow-up), or a clear option for workers' representatives to make counter-proposals at Danone. Local negotiations over measures to accompany proposed job losses may also be guaranteed, as at Dexia. At Diageo the focus is on rapid information for the individual employees concerned.

Box 11 Axa agreement on management of the social dialogue in Europe

The joint text entitled 'Management of the social dialogue within the Axa group in Europe', signed by company management and the EWC, sets out a number of principles and commitments aimed at developing a 'mutually satisfactory industrial relations culture based on trust'. Alongside matters such as worker representation, health and safety, employee mobility, training and equality/non-discrimination, the agreement places considerable emphasis on the management of restructuring.

In the event of major structural changes that have an impact on jobs, Axa's European business units should take action to inform their workforce appropriately and to maintain a constructive social dialogue. Specifically, Axa businesses, pursuant to their local obligations, must inform their staff in the following staged process, within an 'appropriate timeframe': 1) a pre-decision-making review (general orientations); 2) preparation of a plan of action; 3) consultation on the plan's enactment and its local impact; and 4) implementation and follow-up. This process aims to 'help employees and their representatives to understand changes and to contribute to the transparency that each phase demands'.

The document lays down nine principles to guide Axa's European businesses, of which the following are of particular relevance to restructuring:

- When dealing with restructuring exercises that have an impact on jobs, Axa is committed to supplying relevant information and, in keeping with local cultures and obligations, to consulting employees and/or their representatives.
- During this information and dialogue process, the data and information provided by Axa will include, as appropriate, information on possible alternative solutions.
- Axa undertakes to seek to the greatest extent possible job deployment opportunities inside the company and, if necessary, outside the company, for all staff concerned by 'possible employment issues'.
- Axa will do its utmost to prevent collective redundancies and transfers by exploring other options. These include using 'natural downsizing' to facilitate the resolution of employment problems, going to significant lengths to support staff in reviewing their skills and career development and offer training/reassignment opportunities where necessary and possible, and preferring voluntary redundancies and redeployment to collective redundancies and transfers. These 'alternative social measures' should give the company leeway in making the desired changes and give staff a say in their future, even in a period of difficult restructuring. Axa will take into account the need to retain in-house skills and to seek profitability to sustain the company's future. To this end, it will encourage the workforce to be flexible and to consider accepting changes in their jobs.
- Axa undertakes to pursue a culture of continuous learning to enable its staff to develop their skills and, wherever possible, to satisfy their professional aspirations and to fulfil the company's needs. To this end each Axa company will offer access to appropriate training and development programmes, within the scope of available resources.

The EWC's select committee may at any time review and discuss at its monthly meetings the enactment of the commitments contained in the joint text.

With regard to the European level, several of the agreements add to or underline the entitlements of the EWC in this area. The Total agreement strengthens the EWC's rights in the event of major restructuring, in terms of the timing of information provision and meetings, and the relationship between consultation of the EWC and of national workers' representatives. The Dexia agreement guarantees the EWC information on the implementation of accompanying measures for employees affected by restructuring and enables employee-side EWC representatives to act as an arbitrator if negotiations over such measures break down at business unit level. The Deutsche Bank text underlines that the EWC will be informed and consulted over restructuring so that its ideas can be taken into consideration in implementation.

Box 12 Total European employee relations platform

An agreement on a 'platform for employee relations' (*plate-forme sociale*) signed by Total and three European-level trade union organisations (in the context of the Total EWC, but not signed by it, it should be noted) sets out a number of commitments on dialogue with trade unions and employee representatives, and on mitigating the effects of restructuring. A key principle of the agreement is management's stated intention to ensure for all employees affected by change a 'solution adapted to the consequences that may result for their job'.

Management commits itself to reinforcing information and consultation with the Total EWC on European development projects, consulting it as early as possible, while respecting the provisions of relevant national legislation. Specifically, the platform adds to the existing EWC agreement a statement that, in the event of exceptional circumstances that will change significantly the progress or structure of the group, there will be a meeting of the EWC's liaison committee (LC, an employee-side body) in the eight days following the relevant meeting of the company's board. Information useful for examining the situation will be provided to the LC by management. After the LC has considered the matter, an extraordinary meeting of the full EWC may be called, by either the LC or a majority of EWC members.

This may not occur before the beginning of national-level consultations on the restructuring in question, or interfere with such consultations and the issuing of an opinion by national workers' representatives. The information and consultation provided to the EWC may be brought to the attention of workers' representatives involved in national-level consultations. If the legislation in countries affected by restructuring provides for workers' representatives to call on external expertise to help them examine management's proposals, reports drawn up by such experts may be passed on to the LC. This may not delay the EWC's opinion on the restructuring or national consultation procedures. However, in such situations the employee-side secretary of the EWC may, by agreement with management, call an extraordinary meeting of the LC.

The agreement seeks to promote the forward-looking management of jobs and skills throughout employees' careers. This is seen as requiring: the identification and anticipation of skill and qualification needs; the recognition and validation of skills and qualifications; information, assistance and advice; and the mobilisation of resources. Total group management will thus encourage national businesses to establish systems for informing employee representatives in advance about these issues, in order to permit a 'dynamic social dialogue' on them. Businesses will also be encouraged to anticipate as far as possible technological, industrial and environmental changes by establishing, in consultation with local employee representative bodies, actions to adapt to these changes, notably in parts of the group that are facing difficulties. Group management will provide businesses faced by major structural changes with support (principally technical nature) in creating or improving joint vocational training and apprenticeship initiatives, using methods such as individual interviews and training plans for employees.

Where there are developments in the Total group that have consequences for employment levels, working conditions or the 'social protection' of employees, management guarantees that the information communicated to employee representatives will allow them, as far as possible, to intervene in advance, in line with the relevant national legislation. Where operations are closed down, the arrangements will take into account negotiated commitments on the consequences for employees. Where businesses are affected by restructuring, group management will encourage them to take measures that seek to tackle the employment consequences and promote internal or external redeployment. All employees affected by restructuring will be offered 'a solution to the employment problem that may result'. Group

management will assess and take into account the impact of restructuring or closures on companies' 'industrial environment' and provide technical support in examining or implementing specific actions to assist in creating jobs in the surrounding areas, such as help in setting up companies.

The agreement adds that the workers' representatives do not accept all restructuring exercises, reorganisations and closures, and that these remain the responsibility of group management.

The implementation of the agreement will be discussed twice a year at meetings of the LC. Actions taken in all the areas covered by the accord will be assessed and debated. The assessment will be provided in a brief annual report, which will also be sent to the various group businesses. If the parties identify difficulties in implementing the agreement in any group business, they may request a specific meeting on the issue.

These joint texts usually give the EWC or its select committee a clear role in following up and monitoring their implementation with, for example, regular reports on progress at EWC meetings.

Box 13 Dexia social management principles

An agreement on the 'principles of social management at the Dexia group', signed by management and employee representatives on the EWC, sets out a number of common values and rules to be followed in all group companies, under the headings of social dialogue, employment (skills, training, information on jobs and workforce reductions) and mobility. The following points are of particular relevance to restructuring.

Social dialogue. Where relevant 'venues' exist, each group business unit undertakes, prior to any decision and at the earliest opportunity, to keep employee representatives informed 'regularly and with the utmost transparency' on all matters relating to its economic and financial development as well as to 'the durability of its jobs' and to changes to its structure, respecting the rules in the agreement establishing the Dexia EWC.

Skills. The group will adopt a forward-looking approach to the management of jobs based on the key skills that each enterprise will need and do so using 'prospective development scenarios that are frequently updated'. 'Forward management' of skills and the individual management of mobility and careers are essential factors that must be taken into account in a genuine employment policy. The management of human resources thus 'provides the link between strategy and skills, and the means by which to ensure development and employability; it also offers professional guidance, the organisation of mobility and career management, and looks after the social interests of the workers'. Therefore, in order to 'meet the expectations of each person', there exists at group level and in each business unit a system for monitoring the technological developments expected within the group and the employment assumptions that flow from such changes.

Training. Dexia undertakes to ensure that each business unit draws up a training plan to provide workers with the best possible opportunity to adapt to the technological and technical developments affecting their area of business, as well as to forthcoming trends in employment. All workers within the group must have access to such training as will maintain their employability and help develop their career, whether in the business area in which they work or elsewhere.

Workforce reductions. In the event of redundancies, significant workforce reductions, redeployment and termination of activities, Dexia makes a number of commitments. Where a workforce reduction becomes inevitable in a subsidiary or business unit, the group undertakes to inform the EWC, while also setting up a structure in which the group's various HR departments will cooperate with a view to redeploying in other business units as many of the staff affected as possible. The group undertakes to do this before instituting any dismissal procedure. The group will ensure that companies concerned by workforce reductions open negotiations specifically regarding the measures to be adopted for 'looking after' the staff concerned. The measures adopted may be financial, but may also involve assistance in redeployment and help getting jobs through outplacement agencies, etc.

Dexia undertakes to ensure that everything is done to ensure the proper redeployment of the employees affected by workforce reductions. The management-side chair will guarantee to the EWC that the accompanying measures introduced for workers affected by job losses are implemented properly. The EWC's employee-side officers will thus be kept regularly informed about them. If negotiations over accompanying measures break down within a business unit, the EWC's employee-side officers may send a delegation to act as an 'outside arbitrator'. In order to monitor these provisions, the management-side chair will inform the EWC at least once a year about the present and foreseeable employment needs of the group's companies, and on the training and retraining that might be provided as a result.

References to restructuring in other joint texts

Over recent years a small but growing number of multinational companies – in excess of 50, according to the latest reports in EWCB – have signed 'global agreements', 'international framework agreements' or 'codes of conduct' with representatives of their employees in more than one country. These accords commit the company – and sometimes its suppliers and business partners – to observing certain standards and principles in its operations worldwide (or occasionally in a particular region, such as Europe) with regard to various aspects of workers' rights, employment and other areas related to CSR. The basic workers' rights content of these agreements typically involve bans on child and forced/prison labour, application of the principle of equality and non-discrimination, and rights to freedom of association and collective bargaining (plus protection of employees' representatives in many cases). Many agreements add commitments to observe health and safety (and sometimes environmental) standards and 'decent' working conditions, pay adequate wages and ensure that working hours are not illegal or unreasonable. A number of agreements go beyond these basic labour rights issues to cover topics that are more related to the companies' everyday employment, HR and industrial relations policies and procedures – and these sometimes including restructuring.

The most frequent employee-side signatories of such agreements are sectoral global union federations (GUFs), often in conjunction with trade unions in the multinational's home country. However, some agreements of this type have been signed by EWCs, with at least 17 known cases (plus several instances where the EWC was involved but not a signatory, or where a world works council is the signatory). EWCs are usually a joint signatory along with a GUF or European trade union organisation, being the sole signatory only in a very few cases (such as Suez Lyonnaise des Eaux).

Of the CSR-type agreements signed by EWCs, several make clear and relatively substantial references to restructuring. Most commonly, these are commitments to try to maintain employment and avoid or mitigate job losses, as follows:

- ‘**EADS** is committed to promoting the employment of its entire workforce and in the case of company reorientation or restructuring, will do all it can to protect employment by means of all possible measures, including training and mobility, whenever appropriate.’
- ‘**Renault** has a commitment to protect jobs. In the event of reorganisations or restructurings, it makes a commitment to train workers for other jobs or, wherever possible, to find other jobs for them within the group.’
- ‘**PSA Peugeot Citroën** agrees to support employees through any changes in business and employment conditions.’
- ‘**Suez** undertakes to seek continued employment within the group. Suez undertakes to favour resettlement and regrading within the group in the event of reorganisation or restructuring.’

Several of these agreements refer to information and consultation over restructuring, e.g. ‘PSA Peugeot Citroën agrees to inform and consult with employee representatives in a timely manner in the event of changes in the company’s business’; or ‘... Suez shall inform employee representatives about all major events affecting the firm’s activity or working conditions’.

Many other CSR agreements signed by EWCs contain commitments that might be of relevance when restructuring occurs, but without making a specific reference to such organisational changes. For example: numerous agreements refer to ensuring lifelong training for employees in order to ensure their continuing employability (e.g. ‘Ford of Europe promotes and supports appropriate education, training and development for its employees ... Continued dialogue in this area between employee representatives and management assists the early identification of employee adaptation needs, ensuring appropriate skills upgrading and improved employability, to meet long-term business requirements’, Ford of Europe social rights and social responsibility principles, 4 December 2003). Other agreements refer to guaranteeing information and consultation (ensuring ‘the possibility for employees and their representatives to influence decisions through consultation with the management’, SCA framework agreement, April 2004); and a few refer to prioritising the maintenance of employment levels (e.g. ‘Air France undertakes to ensure security and stability of employment’, Air France social charter and code of ethics, 25 June 2001).

Beyond CSR-type agreements, a final example of references to restructuring in texts focusing mainly on other matters is provided by Danone. Here a series of joint texts have been signed on various issues since 1989 and several have touched on restructuring. For example, an April 1992 framework agreement on skills training provided for the drawing up of ‘planning studies concerning modernisation, jobs and training needs’ in each unit of the group. It added that ‘in the case of restructuring, the planning studies and training programmes should take account of the local possibilities for skill conversion to avoid the economic decline’ and ‘faced with foreseeable changes, skills training should give particular priority to the least qualified personnel so that they will be employable’.

CSR joint texts essentially lay down a set of principles and standards for the company to follow. The implementation of these principles is usually subject to some form of monitoring or verification involving the EWC (sometimes alongside trade unions). Implementation may be placed as a standing item on the agenda of EWC meetings and/or the EWC’s select committee may be given a role in overseeing implementation. In some cases, the EWC appoints members (alongside trade union and management representatives) to a joint committee that oversees implementation of the agreement.

The information available indicates that the number of EWCs taking on a negotiating role is increasing, though the lack of comprehensive data makes the exact extent of the phenomenon impossible to assess. If we take the conclusion of formal joint texts as an indicator of such activity, at least 35 EWCs have been involved in signing 56 joint texts (based on EWCB reporting up until March/April 2006), thus exceeding the information and consultation role originally conceived for EWCs and engaging in a form of transnational bargaining. If, as seems rather unlikely, this is the full extent of the trend, it involves somewhere around 4% of all EWCs. In most cases, it appears that the development of a negotiating role in practice occurs irrespective of whether the agreement establishing the particular EWC envisages this possibility; for example, the two most active EWCs in negotiating joint texts on restructuring, those at Ford and GM, are given only information and consultation competencies in their founding agreements (like many EWCs that have signed joint texts – see Carley, 2001).

Where EWCs sign joint texts, restructuring is one of the most common themes. Of the known examples, around a third deal in some way with this topic. About one in seven of all joint texts represent negotiated responses to a specific Europe-wide restructuring exercise, while one in 10 lay down rules and guidelines to apply generally to future restructuring and a further one in 10 refer fairly substantially to restructuring, while not dealing with it as a central issue. The texts dealing with the consequences of particular restructuring events are arguably the most substantive and closest to what is regarded as collective bargaining in a national context (e.g. in that they deal with concrete issues related to employment conditions and have clear and relatively binding implementation mechanisms, if not formal legal status).

Looking at the companies whose EWCs are known to have concluded joint texts on restructuring matters, several points emerge. Two sectors are particularly prominent – motor manufacturing (four out of the 13 companies) and financial services (three). In terms of the companies' home country, France accounts for seven of the cases (eight if EADS, which is headquartered in the Netherlands but has a strong French presence, is included), especially those where the joint texts lay down guidelines for dealing with future restructuring. Some of the most notable cases of agreements to deal with particular restructuring exercises are in two USA-based companies (Ford and GM).

What research has been conducted on the factors leading to the conclusion of joint texts by EWCs (Carley, 2001; EWCB, 2005b; Marginson, 2006) indicates that a key issue is the emergence of an issue that it makes sense to the management and employee representatives to regulate at this level. This is likely to be a topic with a Europe-wide scope, whose handling at European level might provide extra legitimacy or reduce the 'transaction costs' of parallel negotiations in each country or site. A company restructuring programme that has consequences across its European operations, or a general approach to dealing with such programmes, might well fit the bill for such European-level treatment. However, such circumstances are likely to arise frequently, especially in a context where many multinationals operate in an increasingly integrated way across borders, but joint texts dealing with them still seem quite rare. The presence of an appropriate Europe-wide issue is thus not sufficient to lead to the development of a negotiating role for EWCs. Specific factors relating to the potential negotiating partners are also vital. This refers especially to the strength of existing cross-border cooperation among employee representatives and/or trade unions, and their ability and wish to demand European-level talks and, in some cases, to place pressure on management to negotiate at this level. On the employer side, important factors include the company's policies and practices on dialogue with employee representatives and/or unions.

Involvement in transnational restructuring: Evidence from research

There is a burgeoning academic literature on EWCs, extensively reviewed by Müller and Hoffmann (2001). Given the large number of academic publications on EWCs, it is perhaps surprising that few studies explicitly address the role of EWCs in restructuring. There is, however, a large body of both survey and case study based research dealing with the effectiveness of EWCs – whatever the various authors mean by effectiveness – and the factors that influence EWCs' capacity to act, as a prerequisite for EWCs to have an impact on management decisions. In the light of the close relationship between the development of EWCs' capacity to act and their involvement in management decisions more generally, and in restructuring in particular, analysis of the factors that influence EWCs' capacity to act provides important insights into the potential role of EWCs in restructuring.¹

One of the most systematic analyses, mapping and accounting for the considerable variety of EWC practice, is by Lecher and colleagues (Lecher *et al*, 1999 and 2000). Their comparative analysis of EWCs' role and functioning in 23 multinationals identifies four empirically distinctive types of EWC, differentiated according to their 'capacity to act' (Lecher *et al*, 2000):

- 'symbolic EWCs' (as suggested by Marginson *et al*, 1998), involving a low level of information provision and no formal consultation, and little or no contact between employee representatives, or with management, between annual meetings;
- 'service EWCs', in which EWC members exchange information but do not attempt to develop a common EWC policy;
- 'project-oriented EWCs', in which the employee side focuses on the systematic development of its internal capacities and structures, independently of management;
- 'participatory EWCs', which engage in formalised consultative procedures and negotiations with management.

In the three last-named 'active' types, to differing degrees there is ongoing contact and activity between employee representatives and regular liaison with management. Around half of the EWCs studied by Lecher *et al* (2000) fell under the 'symbolic' heading, but in a minority of more advanced cases the EWC had developed a formalised consultative role going beyond the relatively limited rights envisaged by the Directive. The strength of the analysis by Lecher *et al* is that it provides the first systematic account of the factors that influence EWCs' capacity to act.

According to the authors, the varying capacity to act of EWCs results from the dynamic interplay of four fields of interaction: interaction between EWC and management; interaction among EWC members; interaction between EWC and national levels of information and consultation; and interaction between EWC and trade unions (Lecher *et al*, 1999). As regards the involvement of EWCs in restructuring, the findings of Lecher *et al* underline the importance of interaction processes within EWCs – which can foster internal cohesion and the development of a common European identity – and the related actions of other actors such as management, national employee representation

¹ Additional material for this chapter was provided by Torsten Müller

structures and trade unions. In doing so, Lecher *et al* develop links between the isolated evidence provided by both survey and case study based analyses of EWCs.

Management views and attitudes

The views and attitudes of management towards the EWC play an important role in determining the extent of the latter's involvement in management decisions and restructuring initiatives, given its limited statutory rights (*see p. 62, 'Factors and issues'*). Against this background, a number of surveys of managerial opinion suggest that, in practice, EWCs have generally proved less of a 'threat' than many managers originally feared. Wills' (1999) survey of British managerial opinion of EWCs found that managers in companies that had established EWCs had a much more positive view about the role of EWCs than those in companies without them, but saw the benefits of EWCs primarily in terms of reinforcing corporate communications rather than their wider consultative or representative role.

Respondents regarded EWCs as playing a useful role in terms of two-way communication (88%), getting management views over to employees (63%), hearing the voice of employees (56%) and involving employees in the business (50%). But only a minority of respondents associated EWCs with the more concrete outcomes of 'aiding organisational change' (25%) and 'enhancing productivity through employee involvement' (6%). A UK Department of Trade and Industry survey (Weber *et al*, 2000), covering managers in 10 companies with EWCs, six of them UK-based, produced similar results. Eight of the 10 companies saw EWCs primarily as having 'symbolic value' and half the companies said that their EWCs had been beneficial in enabling them to exchange information with employee representatives and to involve employees more closely in the business. Again, few companies regarded EWCs as 'aiding organisational change' or 'increasing productivity'. In terms of the major drawbacks of EWCs, other than the financial costs involved, the principal managerial concerns highlighted by both surveys included 'raised employee expectations' and 'increased bureaucracy'.

Such findings were echoed in a survey of managers in 14 Japanese-based multinational companies with EWCs (Nakano, 1999), which found that a majority perceived them as providing a net benefit to the company through their role as a channel for information provision and/or fostering cooperation between management and employee representatives and/or developing a wider corporate identity amongst employee representatives. In addition to the financial costs involved, respondents were again concerned that EWCs might raise employee expectations and also at the potential mismatch with decentralised management structures.

A survey of 24 UK, US and Japanese multinationals by the American management consultants ORC Worldwide (ORC, 2003) found that, in the majority of cases, management perceptions of EWCs were reported to be 'positive'. Three-quarters of the companies said that EWCs had 'added value'. However, while 20 companies said that they had informed and consulted their EWC over instances of company restructuring, and most regarded this as beneficial, this was less for its impact on company decisions, which was 'low to non-existent' in the majority of cases, than for the positive influence it exerted in terms of enhanced management coordination. In 'only a few companies' had management accepted suggestions from the EWC and subsequently incorporated them into the company's final decisions, although two of the companies had negotiated framework agreements with their EWCs addressing specific aspects of restructuring.

A subsequent ORC survey (ORC, 2004) reported the views of 39 major multinational companies concerning the operation of their EWCs. The companies covered were predominantly headquartered in the USA, UK or Japan, but included two each from France, Germany and Switzerland. Asked about the timing of consultation in terms of company decision-making, 20 companies said that they tended to consult the EWC on some issues at an early stage in the decision-making process, whereas in 19 companies management made its decision prior to consulting the EWC. In response to the question 'Has management ever adjusted [a] business decision in the light of consultation with the EWC?', the majority of companies (24) stated that the EWC had 'not made specific recommendations'. In six other cases, management had 'declined to accept the EWC's views'. However, additional comments by respondents indicated that, in the light of discussions with the EWC, some companies (unquantified) had adjusted or altered a decision, or had adjusted its implementation or communication to staff.

In similar vein, a February 2004 survey of member companies' experiences of EWCs, by the Confederation of Danish Industries (Dansk Industri, DI) employers' organisation, found that management decisions were affected by discussion at EWCs only to a very slight degree. In answer to a question on whether consultation and dialogue within EWCs led management to consider employee proposals and modify management proposals as a result, several respondents said 'no' (Hall and Marginson, 2004).

A further survey by Vitols (2003) examined management attitudes towards EWCs in 63 European-based multinational companies. While 30% of respondents regarded their EWC as 'a necessary legal obligation', 19% saw it as 'a responsible partner for co-managing the company' and 44% chose 'other', with most responses indicating that the EWC was seen as 'an important or useful mechanism for information, exchange of viewpoints and dialogue within the company'. In terms of the 'effectiveness' of EWCs, respondents reported EWCs as having 'moderate positive effects' on the quality of communication with employees, the acceptance of management decisions by employees, the quality of management decision-making and, less than universally, the implementation of new business strategies, but as having a negative impact on the speed of decision-making within the company.

National employee representation structures

Perhaps the best-documented case illustrating the impact of close links between strong national representation structures and the EWC on the latter's involvement in restructuring is Volkswagen – which will be dealt with in more detail below. According to the various studies dealing with the role of international representation structures at Volkswagen (Uhl and Lavon, 1997; Helbig, 1999; Steiert, 2001; Widuckel, 2001; Müller *et al*, 2004), two main factors have contributed to the active role of the Volkswagen EWC in the handling of transnational restructuring initiatives: the strong position of the German EWC members in their national industrial relations context and the fact that the tried and tested principle in Volkswagen's German works councils of 'cooperative conflict resolution' had been extended to the European level. Since such a policy presupposes that the employee side speaks with one voice vis-à-vis management, the EWC plays an important role in balancing the interests of the various European production sites and in defining a common employee-side strategy, which the German employee representatives then pursue through their strong national channels (i.e. the central works council and supervisory board) vis-à-vis central management. As a consequence, the EWC

(and the world works council) at Volkswagen has become an integral part of a comprehensive system of employee interest representation in which national and international elements complement each other. According to the research, a crucial prerequisite for the active role of the EWC at Volkswagen is, however, the European orientation of the German EWC members and their willingness to utilise their strong national representation rights to pursue the interests of the European (and global) workforce as a whole.

However, Lecher (1998) finds that strong national employee representation structures can also be detrimental to the development of an active role for the EWC if the 'home country' delegation uses its national privileges to dominate the EWC and to stall any attempts to develop a genuinely European orientation. Thus, from this perspective, it is not only the specific structural industrial relations context into which the EWC is embedded that determines the role of the EWC. The expectations and attitudes of the EWC members and the national workforces also play an important role in the development of EWCs.

Other national factors

Surveys of employee opinion are rarer than of managerial opinion, but Waddington (2003) highlights widespread dissatisfaction amongst EWC representatives from six EU countries with the current practices of EWCs, particularly regarding the scope of the agenda and the quality of information and consultation. However, the extent of this dissatisfaction varies between EWC representatives from the UK and Ireland on the one hand and those from continental Europe on the other, and between EWC representatives in 'Anglo-Saxon' companies and those in companies based in continental European countries. EWC representatives from the UK and Ireland, where there are only limited domestic information and consultation procedures, were more likely to report 'useful information and consultation' at EWC level than their continental counterparts, who have experience of more regulated national information and consultation regimes. The research also found that the agenda was reported to be narrower and the quality of information lower in EWCs in Anglo-Saxon companies than in those based in continental European countries.

Support for this latter finding comes from case studies of EWCs in eight UK- and US-based companies carried out by Warwick University's Industrial Relations Research Unit (Marginson *et al*, 2004). This research found that headquarters management in the UK-based companies tended to maintain a minimalist or restrictive approach to the EWC – a reflection of Anglo-Saxon traditions in terms of industrial relations and corporate governance. In contrast, management policy towards the EWC tended to be more proactive in the US cases where the EWC was managed from a European-level management structure and the management EWC coordinators were European nationals with extensive experience of 'continental' works council systems (Hall *et al*, 2003). However, Vitols (2003) found that the strength of 'partnership' traditions in the companies' home country had no significant influence on managers' assessment of EWCs' effectiveness.

A further survey by Waddington of EWC members in the engineering sector found that EWCs were generally seen as ineffective as a means of influencing management decisions (Waddington, 2006). This finding supports the results of an earlier survey by Knudsen (2004) of the experience of Danish EWC representatives in Danish-based multinational companies. According to Knudsen, one main reason for the limited influence of EWCs on corporate management decisions is a lack of

interaction among the employee representatives and – as a consequence – a lack of EWC-internal cohesion.

Internal cohesion and ‘European identity’

For some commentators, if EWCs are to progress from only an information and consultation committee, as foreseen in the EWCs Directive, into a genuinely European actor capable of playing a role in restructuring initiatives, a crucial prerequisite is the development of internal cohesion that enables the EWC to aggregate differing interests and to formulate common positions vis-à-vis management. There is a wealth of literature illustrating different ways to overcome the difficulties in developing internal cohesion in the multilingual and multicultural context that EWCs represent. An indicator of the crucial importance attributed by some researchers to the development of a European identity for EWCs’ capacity to act can be seen in the fact that a new publication edited by Whittall *et al* (2006) is exclusively devoted to the investigation of various EWC-internal and EWC-external factors that may shape the development of a collective European identity among EWC delegates.

It would go far beyond the scope of this chapter to review all the research devoted to this issue; however, a common argument is the important role of training in overcoming obstacles to the development of a joint European identity and internal cohesion. The three obstacles most frequently mentioned in the literature (Lamers, 1998; Lecher *et al*, 2000; Wills, 2000; Stirling and Tully, 2004) are:

- language barriers;
- the differing national political and cultural backgrounds of EWC delegates and – linked to this – insufficient knowledge of different national industrial relations backgrounds and frames of reference, which can lead to misunderstandings, conflicts and factionalism within the EWC;
- power inequalities within the EWC that may lead to the dominance of one national delegation, with an intimidating effect on representatives from other countries.

Against this background, a Northumbria University-based research team has in particular emphasised a need to develop a new ‘pedagogy of transnationality’ (Miller, 1999) in the delivery of training, which is sensitive to linguistic and cultural diversity and which treats linguistic and cultural barriers not only as a problem of communication but also as power relationships that reinforce inclusiveness or exclusion (Miller and Stirling, 1998; Miller, 1999; Miller *et al*, 2000; Stirling and Tully, 2004).

The impact of EWCs on management decisions

Above we have primarily dealt with research that mainly concentrates on EWCs’ ‘capacity to act’ as a necessary prerequisite for EWCs to influence management decisions and to play a role in restructuring initiatives – without, however, explicitly making this link. Two recent comparative studies, by Kotthoff (2005) and by the above mentioned Warwick University-based research team (Marginson *et al*, 2004), explicitly address the impact of EWCs on management decisions.

Based on an analysis of the practice and effectiveness of EWCs in 12 multinational companies, Kotthoff (2005) identified five different categories of EWCs that illustrate different types of involvement in transnational restructuring initiatives. As regards the role of EWCs in restructuring,

the central indicators used for measuring the effectiveness of EWCs are whether they actively deal with the impact of transnational restructuring initiatives on production sites in the various countries concerned; are capable not only of developing a joint employee-side position but also of feeding this joint opinion into management's decision-making processes; are capable of organising joint action and demonstrations to put pressure on management; and play a mediating role in balancing the interests of different sites that are affected by transnational restructuring initiatives. On this basis Kotthoff groups the 12 EWCs into five different categories that partly overlap with the typology developed by Lecher *et al* (see p. 37). Kotthoff's types are:

1. 'the EWC as co-managing working body';
2. 'the head of the German works council as advocate of the diaspora';
3. 'the EWC as analyst of information: foil fencing';
4. 'the EWC as toothless tiger';
5. 'the marginalised EWC'.

As regards the involvement of EWCs in restructuring, the first two types of EWCs are of particular interest.

The first type, the EWC as 'co-managing working body' (a category that resembles Lecher *et al*'s participatory EWC), is characterised by a well-developed transnational identity and the involvement of representatives from all the European sites affected by transnational restructuring. On this basis the EWC develops joint employee-side positions and formulates alternative suggestions that it feeds into the management decision-making process. The clearest indicator of the EWC's active role and its cooperative and dialogue-oriented interaction with management is the fact that this type of EWC concludes informal agreements and codes of conduct with management on how to handle the implementation of restructuring initiatives (and in particular closures and transfers of production). Often these agreements with management are supplemented by EWC-internal codes of conduct on how the EWC delegates deal with restructuring initiatives amongst themselves. Despite the cooperative relationship with management, this type of EWC also organises direct action and demonstrations in order to mobilise political support for its position vis-à-vis management.

In the case of Kotthoff's second type of EWCs (which resemble Lecher *et al*'s service-oriented EWCs), their involvement in restructuring initiatives depends – as the 'advocate of the diaspora' title suggests – on the willingness of the head of the German works council to utilise his or her powerful position in the national industrial relations context for the benefit of the non-German sites. Rather than relying on the development of a strong transnational identity, the involvement of second-type EWCs in restructuring depends entirely on the privileged access of the (German) top level representatives to 'their' (German) central management.

As to the factors that account for the different patterns of involvement in transnational restructuring, according to Kotthoff the central structural factors that facilitate the emergence of 'co-managing' EWCs are: sites and employment evenly spread across Europe so that no single country is in a dominant position; the existence of a European management structure that acts as a direct counterpart of the EWC; and the existence of parallel and therefore competitive production structures across Europe. By contrast, the second type of EWCs ('advocate of the diaspora') is more frequently found in companies characterised by a combination of German dominance and the existence of parallel production structures (i.e. a high degree of transnational interdependency among the workforces from different countries).

Kotthoff's findings support the results of the Warwick research (Marginson *et al*, 2004), which investigated the impact of EWCs on management decision-making in eight UK- and US-based companies. This research found that the capacity of EWCs to influence the outcome of transnational management decision-making is fundamentally conditioned by the nature of companies' business operations and the degree to which they are internationalised.

The impact of the EWC on management decision-making was found to be greatest in single-business companies whose operations are spread across countries and where production and other activities are integrated across European borders. No EWC impact on management decision-making was evident in multi-business companies whose operations tended to be concentrated in one country and/or where there was little or no cross-border integration of production.

EWC practice in the eight EWCs was further shaped by a range of further, structure and 'agency' factors. Management structure and management policy are both important. How far EWCs are 'active' rather than 'symbolic' was facilitated or constrained by whether there was a European-level management structure that actually corresponded to the EWC. Where there was a close 'fit' between the management structure and the EWC, the latter was more likely to be active and more likely to have an impact on management decisions than where there was not. Moreover, EWCs were more likely to exercise influence where management's approach to the EWC was proactive, seeing it as a mechanism that could be utilised for management purposes – such as improving employee understanding of the rationale for business decisions and hence the legitimacy of management actions – than where management's approach was minimalist, primarily concerned with complying with its legal obligations but strictly circumscribing the role and remit of the EWC.

The nature of pre-existing structures of employee representation is also important in facilitating the development of employee-side organisation and activity, in particular the existence of representative structures at national group level in the main countries of operation and/or a pre-existing international network amongst employee representatives on which the EWC can build. In only one of the eight companies studied, a leading US-based automotive manufacturer, were all these factors present and in this case the EWC exercised the strongest influence of any of the eight we investigated, engaging both in formalised consultation and the negotiation of European-level agreements with central management on the handling of restructuring.

EWCs and restructuring

The findings of research focusing more specifically on the relationship between EWCs and company restructuring diverge widely (much of this work, it should be noted, focuses on the automotive industry). Observers such as Hancké (2000) and Tuckman and Whittall (2002) argue that restructuring initiatives and the frequently concomitant intensification of competitive relations between different sites undermine the EWC's capacity to develop a collective identity, since in such a competitive situation the EWC delegates use the EWC to pursue their national or even plant-centred interests in order to achieve the most for their national or local constituency. Accordingly, Hancké's account of developments at Renault and General Motors (GM) offers a rather pessimistic analysis of the potential of EWCs to develop an effective collective response to transnational restructuring decisions.

Reviewing the (early) experience of EWCs in the sector, Hancké argues that, contrary to most commentators' expectations, management had been able to use EWCs 'as a tool to facilitate restructuring' and as 'vehicles for international labour regime competition'. Employee and union representatives largely utilised the EWC to pursue local interests, primarily in terms of securing employment, rather than as a forum for international cooperation; in the face of the automotive companies' approach of fostering internal competition between sites, they experienced acute difficulties in forging common positions. Hancké concludes that 'Instead of combating competition over working conditions, the EWC has itself become one of the main institutional carriers of the new competitive regime in the European car industry' – an outcome that he recognised as 'perverse'.

However, more 'optimistic' observers such as Gohde (1995), Weston and Martinez-Lucio (1997) and Martinez-Lucio and Weston (2004) suggest that management use of benchmarking techniques and coercive comparisons in the context of restructuring initiatives is a 'contradictory process' that can also have the opposite effect by creating among the EWC delegates an increased interest in autonomous cross-border networking and cooperation in order to fend off local management pressures. In their earlier study, Weston and Martinez-Lucio (1997) found that restructuring initiatives trigger transnational contacts among the members of EWCs, especially when these involve the relocation of production from one country to another. They argued that transnational restructuring initiatives, which are often coupled with a management strategy of benchmarking and cross-referencing, contribute to the development of transnational employee networking structures (which in turn they view as a proxy for the likely interaction of employee delegates within an EWC) because such management strategies put the different plants across Europe into a competitive relationship.

A similar argument is put forward by Kädtler (2002) and Kädtler and Sperling (2001) in their analysis of global restructuring processes in the automobile industry. Based on an analysis of the role played by collective employee representation structures in 'transnationalisation' processes at Volkswagen, GM and DaimlerChrysler, the authors conclude that the use of cross-border benchmarking techniques and coercive comparisons do not necessarily erode the regulatory power of established national industrial relations arrangements. Moreover, the fact that transnational investment and business decisions are not exclusively determined by financial and economic considerations but – in particular in a complex industry such as the automobile industry – also rely on the collective competencies of the workforce and established cooperative relationships, leaves room for the emergence of new (transnational) industrial relations arenas such as EWCs. Thus, according to Kädtler (2002), the increasing transnationalisation of automobile companies does not lead to the erosion of established (national) industrial relations arrangements but to a differentiation of various levels and loci of negotiations, of which EWCs can be one among a whole range of other arenas at local, national and transnational level.

Further empirical support for a more optimistic assessment of the EWCs' potential role in restructuring is provided by contributions analysing the experience of EWCs in the automobile industry (Klebe and Roth, 2000; Zimmer, 2003; Bartmann, 2005a and 2005b). Many of the events and processes referred to are described in Chapters 2 and 4 (where detailed information can be found), with the focus in this chapter on researchers' interpretations.

Based on an analysis of the role of the EWC in restructuring at Ford and GM, Klebe and Roth (2000) describe how the employee representatives used the EWC as a tool not only to develop a joint European-wide strategy vis-à-vis management but also to negotiate an agreement with management

about the implementation of the restructuring. They argue that one of the main factors that contributed to the conclusion of an agreement in the case of Ford's spin-off of Visteon in 1999 was that the announcement by management triggered a process of close cooperation not only among the EWC delegates themselves but also between the EWC as a collective actor and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), representing the US workforce. As a consequence of this close transatlantic cooperation, the EWC and the UAW developed a joint negotiation strategy that reportedly took management by surprise. In Autumn 1999, the UAW concluded a collective agreement with Ford management which ensured that all Visteon workers would remain employed by Ford under the same terms and conditions, and in January 2000, the EWC reached a similar agreement with European Ford management. Klebe and Roth state that this successful example of transnational solidarity changed the internal dynamics of the Ford EWC because it strengthened mutual trust among the EWC delegates and convinced them that the EWC could play an important role that goes far beyond the information and consultation rights foreseen in the EWCs Directive. The authors furthermore report that this success established a precedent that facilitated the successful negotiation of another agreement in 2000 in the case of Ford's spin-off of its European transmission production sites into a joint venture with Getrag.

Another example that Klebe and Roth see as illustrating the potential of EWCs as negotiating bodies is the alliance between GM and Fiat, in relation to which the GM EWC organised Europe-wide action that eventually prompted the European management to negotiate a European framework agreement with the EWC in 2000. Since then three further European framework agreements have been concluded to deal with restructuring initiatives (see Box 18). According to an insider account by Herber and Schäfer-Klug (2002), the decisive factor that enabled the EWC at GM to progress from solely an information forum to a negotiating European-level actor was the development of mutual trust among the EWC members and trade union representatives from different countries, who were reportedly pitted against each other by GM management. The development of mutual trust was the crucial prerequisite for open and transparent processes of communication and exchange of information among the employee representatives, which in turn were the basis for the employee representatives' capacity to mobilise the workforce in the various countries for cross-border days of action.

The important mediating role that European-level trade union organisations can play is illustrated by the case of the European Metalworkers' Federation (EMF). Pulignano's (2005) analysis of EMF's company policy strategy found that the structures established by EMF in order to coordinate the activities of EWCs not only encourage the organisation of cross-border collective action but in doing so also create favourable framework conditions for negotiations at European company level. Pulignano's assessment also supports the findings of Rehfeldt's (2004) analysis of EWCs' role in transnational restructuring in the automobile industry; as Rehfeldt states, if EWCs are to assume a negotiating role in transnational restructuring, they will always need the support of (national and/or European) trade unions in aggregating different national interests and strategies. This in turn is an essential prerequisite for the employee side to speak with one voice vis-à-vis management.

A final example from the automotive industry is the Renault Vilvoorde case (Lorber, 1997; Rehfeldt, 1998), where for the first time an EWC took legal action (with important consequences for information and consultation rights) and organised a cross-border protest strike and demonstration. However, according to Rehfeldt (1998), the developments at Renault also highlighted that the

competitive relationship between plants in different countries, as well as the cultural and structural differences between national industrial relations systems and actors, present considerable obstacles to the development of a joint employee-side strategy. Rehfeldt argues that the decisive factor which enabled the organisation of cross-border protest action at Renault was the favourable political framework conditions in this specific case, since the support of the Belgian government and a newly elected left-wing government in France not only enabled the politicisation of the conflict but also ensured broad public support for the protests. In the light of the exceptional circumstances that enabled the Renault EWC to take legal action and to organise direct protest action, it should not come as a surprise that the events at Renault failed to trigger a wave of litigation on allegedly insufficient information and consultation procedures in other companies, nor did it lead to an upsurge in direct action against transnational restructuring plans.

Box 14 Foundation study of EWC practice

A Foundation report (Weiler, 2004) analysing the practical operation of EWCs draws together findings from Foundation-commissioned case studies of 41 EWCs in companies headquartered in five different countries: France, Germany, Italy, Sweden and the UK. The report finds considerable diversity in the practice of the EWCs concerned.

On the provision of information, the cases ranged across 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 said 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.

On consultation, according to employee representatives the majority of EWCs tend to be informed at the point at which, or after, decisions on transnational business issues are taken by management. 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 minority of 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. From management's perspective, at worst the EWC process was not generally seen to slow or impede the decision-making processes and, at best, EWC intervention was seen to result in improved implementation outcomes.

According to the Foundation study, the main factors conditioning the overall influence 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. Important too are the resources available to the EWC and 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 (in)frequency of contact. It can be developed through the 'double-edged' experience of restructuring, which may prompt the forging of a common position against a backdrop of competing local interests.

Involvement in transnational restructuring: Evidence from practice

There are no comprehensive data on the extent to which companies inform and consult EWCs on restructuring issues and the impact that this has on management decision-making. In this chapter, we attempt to build up a picture of what happens in practice by drawing on information from a number of sources. The issue of EWC involvement in restructuring is likely to ‘hit the headlines’ (in the specialist media, at least) only in cases where a perceived lack of information/consultation or influence proves controversial or where the EWC’s involvement is particularly successful in influencing decisions or their outcomes. Such cases of ‘worst’ or ‘best’ practice are of course highly interesting and potentially significant, but it might be assumed that the experience of most EWCs lies somewhere between these extremes. Here we attempt to cover both the ‘normal’ and the ‘exceptional’. For the former, we glean information on the EWC’s role in restructuring from a number of case studies (of varying quality and content) examining the general functioning of EWCs, carried out by other researchers or practitioners over recent years for purposes other than focusing specifically on the restructuring issue. These are:

- 41 company case studies carried out on behalf of the Foundation, completed in Summer 2003;
- 9 company case studies presented at two seminars organised in September–October 2004 by the European-level cross-industry social partner organisations;
- 10 company case studies published in *European Works Councils Bulletin* (EWCB) over 2000–06.

Details of the companies concerned (there is some overlap between the three groups) and references are provided in the Appendix. It should be noted that the type of information contained in the various groups of case studies differs considerably, with detailed data on restructuring specifically and consistently sought mainly in the Foundation studies. Furthermore, there is not necessarily any sectoral balance in the overall set of case studies and relevant developments have been identified and reported wherever they occur in the studies, without any attempt to produce a sectoral balance in this chapter (though, in practice, data are provided from a range of sectors).

With regard to the more exceptional and high-profile cases of EWC involvement in restructuring, we draw on reporting in EWCB, which has been covering key developments relating to EWCs since 1995, and in the European Industrial Relations Observatory (EIRO) – notably in the context of a November 2004 comparative study on *Developments in European Works Councils* (Hall and Marginson, 2004) and on the cases reported by Carley (2001). Again, all known relevant cases have been reported here, irrespective of sector, nationality of company concerned, etc.

Restructuring as an issue for EWCs

The evidence indicates that transnational corporate restructuring is a matter that appears on the agenda of most EWCs in some form or another. However, there are some case studies examined in which the matter is scarcely mentioned, if at all. For example, it seems from the Foundation research that restructuring was not discussed, or at least not outside the general business and employment topics usually on the agenda of regular meetings, at companies such as Eiffage, HSBC, Assa Abloy, ‘Italian food’ and Auchan.

Among the larger group of EWCs that do clearly deal with transnational restructuring issues, a wide range of relevant events and processes are reportedly discussed, including takeovers, mergers, divestments, outsourcing, site closures, reorganisations of functions (such as centralisation or decentralisation of services), job losses, site selection exercises and location/relocation decisions. There seems to be considerable variation in the extent to which restructuring is a prominent and regular topic on the agenda of EWCs, with at one extreme companies where management just provides information at annual regular meetings on restructuring events in the previous year, as part of a general report, and at the other extreme firms where restructuring has become a very central issue for the EWC and a permanent topic on its agenda.

Related to this point, the frequency of extraordinary meetings called in the event of restructuring varies considerably between EWCs. Such meetings had reportedly been relatively numerous in cases such as British American Tobacco (BAT) and Pirelli, but entirely absent (at the time of the relevant research) in cases such as Merloni and Südzucker. But a majority of case study companies would seem to have held at least one extraordinary meeting of some kind. As to the format of such meetings, the diversity of arrangements suggested by the contents of EWC agreements on this point is reflected in practice. Thus there are cases of full EWC meetings (e.g. at Carrefour, EDF or EDS), meetings only of the select committee (e.g. at GM, GlaxoSmithKline or Henkel) and meetings of the select committee plus representatives of the employees affected by the restructuring (e.g. at Aventis, Lafarge or Whirlpool), with some EWCs using more than one of these routes, depending on the particular circumstances.

While most EWCs deal with restructuring, the nature of their involvement differs. There seems to be a large group of EWCs where management provides information on restructuring initiatives at ordinary or extraordinary meetings, which is received by the employee representatives who may ask questions or offer their views, and subsequently disseminate the information further. The matter, for the EWC at least, essentially rests there and the exercise is basically one of communication. However, another group of EWCs – apparently a minority – seek or have some form of influence on the course of the restructuring.

EWC influence on restructuring

Where EWCs do exert some influence over company restructuring, all the evidence points to the fact that this almost never occurs at the stage where the decision on the basic issue in question is yet to be taken. Even in very rare cases where EWCs might receive some advance information that a restructuring decision is in the offing, there are no reported cases of an EWC having a significant influence on a major decision of this sort. The clear picture that emerges from case studies is that EWCs are almost universally not bodies that are seen as having a role in strategic decision-making itself.

It is at the stage after a restructuring decision is taken but while it still has to be implemented that it would appear that EWCs' chances of exerting some degree of influence are greatest. The evidence suggests that a number of EWCs do have an impact of some sort on how restructuring is carried out. To cite several examples reported from the Foundation studies:

- while management defended its prerogative over economic and financial corporate decision-making at Allianz, it sought to use the EWC as a 'partner' and a 'mediator' of strategic corporate decisions in the phase of implementation;

- the Bayer EWC was included in the implementation and translation process of decisions – ‘hard clashes over interests’ were avoided and instead the employee side tried successfully to achieve improvements gradually and to improve involvement in restructuring measures step by step;
- the tangible benefits of the Club Med EWC had included ‘effective joint action during restructuring programmes with an impact on employment’;
- at Boehringer the EWC’s influence in restructuring was on ‘the way such decisions are realised with regard to the interests of workforce’;
- at Aventis, in exceptional situations, the EWC could have a certain influence, allowing management restructuring proposals to take account of employment and social factors.

Where EWCs do have an influence, from the employee-side perspective this is often essentially by ensuring that employment and social aspects are taken into account to varying extents in the restructuring. Some concrete examples are given below (see Box 15). On occasions an EWC’s intervention has allowed for planned job losses to be reduced and/or for accompanying measures to be improved. For example, negotiations between management and the Robert Bosch EWC over the global reorganisation of sales regions reportedly allowed 120 planned job losses be cut to fewer than 30, while the EWC was also able to correct ‘deficient’ local social plans (as at a Belgian site).

Box 15 Examples of EWCs having an impact on the implementation of restructuring decisions

The merger between Hoechst and Rhône-Poulenc to form **Aventis** was announced in December 1998, a year before actual merger. Rhône-Poulenc management called on trade unions represented on the EWC to embrace change, rather than engage in confrontation. The unions accepted this approach and identified three work themes: employment, social welfare and representation of employees in the new group. In May 1999 three ‘focus groups’ were set up to discuss these themes, each made up of representatives of unions and HR management, and union representatives from Hoechst were added to these groups in July. Discussions on each of the themes were concluded in the first quarter of 2000 and an agreement setting up the new group’s EWC was drafted and signed in April.

When Aventis later sold off its crop science and animal nutrition divisions in 2001, two information and consultation meetings were held with the ‘extended’ select committee (the committee, plus employee representatives from the two divisions concerned). These were followed by an extraordinary full EWC meeting, at which the president of Bayer, the prospective purchaser of the crop science division, discussed the purchase and gave commitments on future employment and the integration of employee representatives onto the Bayer EWC. This approach ‘helped frame commitments with all the players concerned’. Another issue on which the EWC influenced projects with a sensitive impact on jobs was the selection of research centres, with an effect considered positive by French employee representatives in terms of the maintenance of two out of three research centres in France.

Information and consultation of the **Bayer** EWC over the centralisation of accounting in two European centres by and large worked reasonably well (except for the question of timeliness) in the view of the EWC employee-side vice-chair. A questionnaire presented by the EWC was answered by management in writing. Employee concerns and social consequences were debated with management as was implementation, including job descriptions and qualification requirements. Management guaranteed the continued payment of previous net salaries in case of transfer.

In 2001 extraordinary meetings to discuss a global restructuring plan leading to job losses in Europe resulted in a joint opinion from the **Henkel EWC**, specifying that the company should 'apply its values' in the event of restructuring. In 2002 an EWC meeting on the closure of a plant in Belgium led to an agreement with the workers concerned on the proposed social plan.

Whirlpool management usually tended to inform EWC members early on (immediately prior to making decisions public) over restructuring, through ordinary or extraordinary meetings, as in the case of reorganisations affecting Germany, Sweden and France. The EWC had at times influenced management decisions. An extraordinary meeting was called in 1997 to inform the select committee about the closure of a plant in Germany. Following the announcement the EWC 'acted as a voice for the German claims in Europe'.

It could be argued that the EWC had 'in some degree managed to develop a shared position on a case of restructuring': when the EWC became aware of upcoming employment cuts in France during a meeting of the EWC in 2002, the select committee called the French representatives to the European head office in Italy for an extraordinary meeting and asked them to 'advance all the requests that they would have wished to insert in an agreement with the company'. On the basis of this platform, negotiations were then articulated at national level with the company in France, and 150 redundancies were handled through early retirements and redeployments. The EWC was informed and consulted very early and could take on 'a significant supporting role' for the French employee representation bodies.

The establishment of the **Electrolux EWC** coincided with management plans to launch a large-scale restructuring programme. Management 'saw the possibility of using the EWC as an arena for information and the exchange of views on the change process – not negotiation but consultation'. When the restructuring plans were made public, they were first given to the EWC and subsequently locally and to the press. Overall issues and transnational relocations were discussed in the select committee and 'items of potential conflict dealt with', though negotiating procedures were handled throughout at local level. Meetings were sometimes arranged between top management and local employee representatives.

Though the process of restructuring was difficult for many of those involved, the overall experience was 'positive'. Openness and readiness for dialogue seemed to create a 'climate of understanding on the necessity of the actions taken', though there was some frustration at local level. The process gave those who lost their jobs 'a day in court' – the right to state their case – though not an opportunity actually to change the strategy. It was 'very well understood that the real negotiations were to be carried out at national level'. The restructuring process at Electrolux was seen as a 'successful one in terms of EU-level social dialogue'. The EWC's deep involvement meant that there were enhanced possibilities of informal influence on decisions made and actions taken, though this influence was difficult to measure and to define.

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. Another demand raised by the employees' side dealt with recognition of trade unions and it was agreed to follow the principle of the 'highest common denominator' in this area.

The most developed expression of this approach is arguably the conclusion of some form of agreement on how to handle the restructuring. Such agreements may be informal or tacit, but when they are formal joint texts they are most readily accessible to analysis. As seen in Chapter 2, the more substantive joint texts on restructuring issues take the form of either negotiated responses to a specific Europe-wide restructuring exercise announced by management, or rules and guidelines to apply generally when restructuring occurs. It should be noted that all the evidence suggests that such joint texts are rare, with only eight known cases of the specific type and six of the general type (see Table 2).

Joint texts applying generally to restructuring are dealt with more fully in Chapter 2 but, to recap, they essentially lay down standards and principles to govern the handling of restructuring throughout the European operations of the multinational concerned. They contain both substantive provisions on mitigating or accompanying the employment effects, and procedural provisions on information, consultation and/or negotiations.

Here we focus in more detail on the joint texts responding to particular restructuring exercises, which are known to have been signed by, or involving, the EWCs at Danone, Ford, GM and Unilever (see Boxes 16-19). These accords were negotiated by, or in the context of, the EWC and by management, following the announcement by the latter – often to the EWC – of some organisational change, such as a spin-off (Ford, 2000), a joint venture (GM, 2000), a programme of plant closures and jobs losses (Danone), a general capacity reduction programme (GM, 2001 and 2004), outsourcing (Unilever) and attempts to achieve international ‘synergies’ (Ford, 2004). It does not appear in any of these cases that the EWCs were actually involved in the decision-making itself, though it does seem that they were informed and consulted further upstream in some cases (e.g. Unilever) than others. The development of negotiations was not smooth in all cases, with the EWC (and unions) at GM, for example, organising several Europe-wide days of protest action to support its position.

Box 16 EWC joint texts responding to restructuring exercises – Danone

Since the late 1980s, Danone has signed a series of transnational agreements with the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF). While IUF is the signatory of the accords, they can be considered as EWC joint texts because of the heavy involvement of the Danone EWC and its close relationship with IUF (which organises the employee representation on the EWC). Earlier agreements covered basic principles and plans for joint work (1988); economic and social information for employees and their representatives (1989); promotion of equality for women and men (1989); skills training (1992); and trade union rights (1994). The two most recent agreements deal with restructuring. The first of these, concluded in 1997, set out rules for dealing generally with changes in business activities affecting employment or working conditions. The second, signed in 2001, was a specific response to Danone's industrial restructuring plan for its biscuit operations in Europe (EWCB, 2002b).

In March 2001, Danone announced a restructuring of its biscuits division to the EWC, involving the reorganisation of five plants, with ‘limited reductions of employees’, and the closure of six, with relocation of their production. The plan was to be accompanied by assistance to the employees affected (redeployment, training, outplacement, early retirement, etc) and implemented after consultation with employee representatives in each country and in line with the 1997 agreement on minimum provisions to apply in company restructuring involving

job losses. Discussions over the restructuring between management and IUF led in October to an agreement 'regarding social standards applicable to all entities affected by the industrial restructuring plan of 29 March 2001 for biscuit operations in Europe'.

The agreement's provisions represent 'standards that shall serve as a basis for negotiations between the unions or employee representatives concerned and the management of the affected entities', in conjunction with the restructuring plan. It set out very specific measures and rules to be implemented during the restructuring, with concrete and far-reaching guarantees on future employment for the workers affected; no compulsory redundancies; job security; and terms and conditions of employment with new employers or other Danone plants. For example, the agreement stated that:

- Danone will, if necessary, pay for or provide training to allow former employees to qualify for jobs with the new employer;
- employees will be entitled to a trial period of at least four weeks in their new job, during which employees will be on temporary assignment with their new employer but remain on the payroll of Danone;
- employees who decide not to take on a job with a new employer will have the option of another trial period with a different employer, under the same terms and conditions;
- Danone will ensure that employers who hire its former employees offer them permanent employment contracts in almost all circumstances;
- Danone will seek to find jobs for its employees at 'generally comparable' pay rates. If it is unable to do so, Danone will, for a minimum period of one year, make up all or part of any shortfall in earnings for the same working hours;
- where employees are transferred to another Danone facility, the company will offer permanent employment contracts, uninterrupted seniority and all training required. The employees' basic pay will remain unchanged and, whenever possible, the job to which they are transferred will be of the same category.

In order to ensure that the provisions of implementing agreements negotiated at the national or company level were duly applied, the parties undertook to establish joint union-management monitoring bodies – either already existing or specifically set up for this purpose – at all entities concerned. These joint bodies were to be responsible for monitoring developments while the restructuring plan was being carried out and up to 24 months after the departure of an employee. A labour-management structure was also to be created at the European level – apparently an extended version of the existing EWC steering group. It was to be provided with a consolidated report on the situation of each undertaking and its role also included the 'examination and conciliation of differing positions' in the event of conflicts arising at local level.

The basic approach of these specific joint texts is similar to that of the general restructuring frameworks. They lay down a set of guarantees for the employees affected by the restructuring (such as 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. This is often accompanied by procedural rules on information, consultation and negotiation. A number (such as both of those at Ford, and at GM in 2001) also contain provisions relating to the company's business strategy in areas not directly related to employment.

Box 17 EWC joint texts responding to restructuring exercises – 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).

Looking in more depth at the second example, management informed the EWC about the IOS plan in Spring 2004. Understanding the need for the programme in competitiveness terms, but concerned that it might be used mainly as a means of cutting the workforce, the EWC decided to act jointly and to adopt a cross-country approach in order to promote the good aspects of IOS and minimise its risks. In June the EWC submitted to management a draft European agreement dealing with core principles on the protection of jobs and the future of product development and purchasing. Following talks a European framework agreement on IOS was signed, which laid the basis for job security at Ford of Europe's product development operations. According to the EWC, the agreement reflected all the aspects of its first draft and established the following principles:

- IOS will not lead to job losses;
- 'efficiencies' from IOS will be reinvested;
- a fair balance will be maintained between engineering and development centres at Dunton (UK) and Merkenich (Germany);
- employees who need to be redeployed owing to IOS will be provided with the appropriate retraining.

These principles apply in particular to product development but also, to the greatest possible extent, to all other areas effected by IOS, such as purchasing. After the agreement was signed, the EWC sought to make progress on a detailed agreement on the realignment of engineering and development responsibilities between Dunton and Merkenich; a schedule showing how and when changes due to IOS would be implemented; and a training schedule in preparation for the restructuring in product development. It also focused on a continuing process of information for all employees affected.

In more detail, most of these agreements aim to limit the negative employment consequences of the restructuring, most frequently through redeployment within the group and/or to its business partners (as at Unilever) or other external parties (as at Danone), or through measures such as retraining (e.g. Ford, 2004) or using part-time work (e.g. GM, 2001). Some even include pledges to avoid (e.g. Danone), or avoid as far as possible (e.g. GM, 2004), compulsory redundancies, or indeed any redundancies in the case of Ford in 2004. Avoiding plant closures is a stated aim of several of the GM agreements. When employees are transferred internally or externally, agreements such as those at Danone, Ford in 2000 and Unilever provide very concrete guarantees on their future pay and conditions. Where jobs are to be lost, the texts generally favour measures such as voluntary departures and early retirement, plus 'natural wastage'.

Box 18 EWC joint texts responding to restructuring exercises – General Motors

The General Motors (GM) Europe European Employee Forum (EEF) has negotiated a series of five European-level agreements with management. One of these (signed in 2002) covered 'principles of social responsibility', while the other four dealt with specific restructuring exercises, providing frameworks for subsequent implementation by negotiations and consultations at national level. These covered:

- the effects on employment and employees of GM's alliance with Fiat (2000);
- handling restructuring at Vauxhall (2001);
- a restructuring programme at Opel (2001);
- a Europe-wide restructuring plan to cut costs and boost competitiveness (2004).

The negotiation of framework agreements on the implementation of Europe-wide restructuring seems to have become almost routine (though the accords are not necessarily achieved without employee-side pressure). The 2000 framework agreement, which was to be implemented at national level, regulated the effects for employees and employee representation of planned joint ventures with Fiat and included guarantees on the employment conditions of staff transferred to the joint ventures. The three subsequent framework agreements have dealt with company restructuring and cost reduction plans, and have been put into effect by bargaining at national level. Broadly speaking, these initiatives have not affected the essential restructuring itself, but provided guarantees for staff in terms of avoiding compulsory redundancies and plant closures, and ensuring a 'socially responsible' approach to implementation, along with information and consultation throughout the process.

To take the most recent example (EWCB, 2005d), in October 2004 GM Europe announced a restructuring plan aimed at cutting costs by €500 million a year in order to improve competitiveness, with a workforce reduction of 12,000 (approx. 20%) across Europe. The EEF and trade unions called for negotiations over the plans, demanding no plant closures and no compulsory redundancies, and organised a 'European day of action'. Talks opened between the EEF and management, leading to the conclusion of a 'restructuring framework' on 8 December. This provided that management and employee representatives would 'work together during the restructuring with continuing information and consultation and with the intention to reach mutually agreed solutions'. Progress and sustainability would be reviewed at meetings of the EEF steering committee.

The framework agreement did not seek to prevent the loss of 12,000 jobs at GM Europe but to manage the process in such a way that plant closures and compulsory redundancies were avoided – though with no apparent guarantees on these points. According to unions, the deal 'set conditions for changes to occur in a socially acceptable manner, minimising the consequences for workers, their families and communities'. As well as agreement on aspects of GM's business strategy, the framework covered competitiveness and staffing.

Competitiveness. Both parties intend to avoid a site closure in connection with the restructuring initiative. To this end, they will seek to improve the competitiveness of GM's European sites to enable their sustainable operation in future. Decisions on future volume allocation, capacity utilisation and site selection will be based on the principles of sales and marketing strategy, general demand situation, manufacturing strategy, financial effectiveness, competitiveness, and employment situation and 'separation cost'.

Staffing. Management and employee representatives will work together in good faith to find 'financially sustainable and socially responsible solutions for the necessary manpower adjustments'. This includes both parties examining potential business opportunities in order to lessen the impact on employees. Solutions may include 'voluntary separation' programmes, early retirement programmes, specific local programmes based on national legislation, and transfers to spin-offs, joint ventures, partnerships or other locations. If there are enough participants in these schemes, this will 'enable us to work towards results without forced redundancies'. Both parties acknowledge that these measures cannot be 'limitless in cost and timing'.

Implementation of the framework was to occur at national level, involving trade unions and/or employee representation bodies according to national legislation and practice, with the agreed provisions becoming legally binding. For example, in Germany, which was to bear most of the workforce cuts, a subsidiary agreement on how this reduction would be achieved was signed in March 2005 by national management and workers' representatives at Opel. It provided that departures would, in the first instance, be voluntary and would involve severance packages, retraining and job placement.

On procedural issues, most of these joint texts include commitments on information and consultation over implementation of their provisions for workers' representatives at national/local level. The Danone agreement goes so far as to establish joint union-management monitoring bodies at both national and European levels. These European-level joint texts in almost all cases require implementation through national-level bargaining.

Box 19 EWC joint texts responding to restructuring exercises – Unilever

In 2002 Unilever issued a brochure on 'responsible restructuring', setting out the way that the company seeks to handle the consequences of restructuring for employees. For example, it deals with the handling of training and outplacement issues and states that, where necessary, the sale of a production site should be given priority over closing it. This document was developed after consultations with the EWC and can arguably be seen as approaching the status of an EWC joint text on general restructuring principles. Unilever management and the EWC are known to have concluded at least two formal joint texts. The first, signed in January 2004, was a joint statement on the protection of personal data, while the second is a negotiated response to a particular restructuring exercise.

During 2005 management and EWC discussed a plan to introduce 'shared services' – notably finance and HR functions – on a regional basis, with outsourcing of major parts of these services. The EWC opposed the proposals, which management defended on competitiveness grounds, and both expressed concern for the employees affected. Despite the existing 'responsible restructuring' principles, it was agreed that the transition to shared services needed a specific framework, as it differed from previous restructuring in its scope, scale and timetable. Employees in finance and HR across Europe would be directly affected, in that some might transfer to the new external 'partner'; the roles and responsibilities of those remaining within Unilever would be very different; and some would have 'no future role in Unilever or with our partner'.

In October 2005 the parties thus concluded a joint statement entitled 'Transition to shared services – A framework for responsible restructuring'. It sets out a framework for transition that 'takes full account of the needs and interests of any employee affected by the change'. The statement sets out agreed principles in the following eight areas:

Continuity of employment. Unilever will make every effort to help people who will not have an 'ongoing role in the business' to find alternative employment before their current position ends. This might involve making efforts to offer alternative positions in the business if available and the individual is suitably qualified, working with the external service provider to identify opportunities for redeployment of Unilever employees into the new service organisation or elsewhere in the service provider's business, offering outplacement or other special support to help secure another suitable position in line, and offering training to increase employment opportunities.

Job opportunities with service provider. Some processes transferred to the external provider will be handled in a regional centre, but some will continue to be handled locally. In the latter case Unilever employees will be offered the chance to reskill and transfer/move into the supplier organisation (entitlements under the EU Directive on business transfers will be respected). As in many countries the provider will be servicing customers other than Unilever and looking for qualified employees. Unilever has agreed with the provider that it will offer appropriate vacancies to Unilever employees when recruiting externally. Unilever employees will have the first right of application.

Three-year total remuneration guarantee. Unilever will agree with the new owner that any Unilever employees that transfer in the same country will maintain a similar total remuneration (this also applies to pensions). If employees are made redundant within three years of the transfer, they will be eligible for the same package as if they had stayed with Unilever. Should a Unilever employee wish to move to an eastern European country where the provider is based, Unilever will support transfer expenses/costs and language training. The transferring employee will be eligible for a similar level of remuneration to an equivalent Unilever employee in that country for three years.

Retention bonus. Local management will use its discretion to make certain positions eligible for a retention bonus.

Early or pre-retirement. Eligible employees will have the possibility of early retirement when this option is available according to national/local legislation and/or practices.

Termination of contract. The termination date for the employment of individuals will be not less than six months after the date of announcement of the preparation for transition. Employees whose contract is terminated will receive a compensation payment according to the local social compensation plan.

In-country transfer. Where the contract of a 'work level 1' employee has to be terminated and that employee had been transferred and relocated recently, management will 'respond sympathetically' to any request to defray expenses for a retransfer to the region of origin.

Hardship clause. In those cases where application of the agreed principles would lead to 'unreasonable hardship', management will use its discretion.

In each country the national HR director will ensure a process of consultation of works councils at local or national level, where these exist, and the development of a social plan for the country concerned.

Employee-side actions

The previous section dealt with cases where EWCs and management (or the two sides of joint EWCs) have been able to deal with restructuring in an essentially consensual way. However, there are also a number of cases where restructuring has caused sharp divisions between management and employee representatives. It often occurs that an EWC (or employee representatives on a joint EWC) is opposed to some transnational restructuring announced or carried out by management, or it believes that there has not been proper information and consultation on the matter. In a number of such cases, the EWC has sought to take the matter further, outside the normal framework of EWC meetings and communication. In such circumstances, it would appear to have two main routes – recourse to the courts or to some form of protest action.

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 courts based their 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 courts 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 brought in the 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 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 in the French courts over how the plan had been handled at an 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).
- **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 the plan until proper information and consultation had occurred, but the case was dismissed. Rather similarly 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 recent case law concerning the relationship between consultation at EWC level and consultation with national works councils – a point which 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. This latter process seeks to establish if concentrations of companies with a Community dimension are compatible with competition rules; recognised workers' 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 concerned the **Axel Springer** EWC, which is reported to have sought intervention in the control process over a merger with Arvato, another German printing company, in 2005 (EWCB, 2006b).

European-scale protest action

As well as pioneering the use of the courts to enforce its rights, the **Renault** EWC was also the first known case of such a body organising European-scale protest actions to underline opposition to the substantive and/or procedural aspects of a restructuring exercise. During the row over the closure of

the Vilvoorde plant, the EWC – in conjunction with the European Metalworkers' Federation (EMF) – organised one-hour strikes at Renault's plants in Belgium, France and Spain on 7 March 1997, with support expressed by employees in other countries. It also contributed to a campaign of solidarity actions, which included demonstrations outside Renault headquarters near Paris and in Brussels. These protests, hailed in some quarters as the first 'Euro-strikes' (EWCB, 1997b), certainly contributed to the dispute's high profile and may, as part of the EWC's overall intervention, have led to an improved social plan for the redundant workers, though the closure still went ahead.

A number of other EWCs have followed this lead and called protest action across Europe over management restructuring plans or alleged information and consultation failures in relation to such plans – indeed several have taken this step more than once. However, it seems rare for EWCs to take such action on their own, and trade unions are often involved as well, with the contribution of the various parties difficult to distinguish. Examples of restructuring-linked Europe-wide action in which EWCs have been involved include the following:

- **Alcatel Alstom** (France, communications equipment) announced major workforce reductions, the sale of various divisions and the outsourcing of IT functions over 1996–98. The EWC select committee (in cooperation with trade unions) organised protest demonstrations at company headquarters and a European day of action (EWCB, 1998a).
- In Spring 2005 **Alstom** announced major Europe-wide restructuring, to which the EWC responded by organising a protest demonstration of employees from across Europe at the shareholders' annual general meeting (EWCB, 2003b).
- In December 2002 the **Fiat** EWC (and trade unions) called a Europe-wide day of protest action – involving meetings, demonstrations, etc – following the announcement of a major programme of restructuring and job losses (EWCB 2003c).
- Large-scale restructuring plans and jobs losses announced by **GM** Europe in 2000 and 2004 (see Box 18) prompted the EWC (along with trade unions) to organise Europe-wide days of action – including short stoppages, demonstrations and meetings – in January 2001 (EWCB, 2001a) and October 2004 (EWCB, 2004b).
- Following job losses in the UK and a plant closure in Sweden, announced in late 2004, employee representatives on the **Quebecor** (Canada, printing) EWC called for an emergency meeting to discuss these developments. No meeting was convened and the EWC (along with trade unions) organised a European day of action in March 2005 to press its claims (coinciding with a 'global solidarity day' held as part of a wider trade union campaign on workers' rights at Quebecor) (EWCB, 2005e).
- In response to a general process of job losses and restructuring, in February 1999 the **Unilever** EWC (along with trade unions) organised a European action day (along with a 'cybercampaign') against closures and workforce reductions, and alleged failures to provide proper and meaningful information and consultation over them (EWCB, 1999). In the light of a plan to outsource personnel and finance functions, plus most IT activities, to external companies, announced in October 2005, and a review of the future of its frozen foods business, the EWC (and unions) held a European day of action in December 2005 to inform employees about the issues (EWCB, 2006c).

These days of action usually involve activities in the various countries concerned – ranging from short work stoppages to rallies and information meetings – plus in some cases a demonstration involving workers from a number of countries. Only in very rare cases are actual strikes involved and then only brief ones. There is no evidence as to whether these actions have had any effect on outcomes, but they do often attract attention and in a few cases (notably GM) have been one stage on the path to a negotiated settlement.

In addition, there have been several cases of Europe-wide demonstrations and protests over restructuring and an alleged failure to inform and consult the EWC properly, but essentially organised by unions rather than the EWC. Examples include Levi Strauss (USA, garment manufacture) in 1998 (EWCB, 1998b) and Marks & Spencer (UK, retail) in 2001 (EWCB, 2001b).

Factors and issues

Above we have looked at the evidence available on how EWCs deal with transnational restructuring. There is clearly considerable variation in this area, with at one extreme EWCs that scarcely discuss the matter and at the other EWCs that conclude agreements to deal with the implementation of restructuring or even organise forms of industrial action over the issue. In this section we examine some of the factors that seem to influence EWCs' input into restructuring and the issues that arise in this area.

One obvious factor is the content of the agreement establishing the EWC. The relevant provisions of EWC agreements are reviewed in Chapter 1. The key clauses are those on: the issues listed for information and consultation; the procedure to be followed when exceptional circumstances arise (and how these circumstances are defined); the timing of information and consultation, especially in exceptional circumstances; the role of the EWC (information, consultation, etc); and the EWC's relationship with local/national information and consultation processes. These provisions are touched on in this chapter and are obviously significant to the input of EWCs in restructuring, but it appears that the relationship between agreements and practice is not always straightforward. There are a number of cases where the work of the EWC deviates from or exceeds the formal provisions of the agreement (sometimes leading to the latter's revision). For example, few of the EWCs that have concluded agreements are assigned a negotiating role by their founding agreement, while EWCs without formal provision for extraordinary meetings have held them.

The degree and nature of restructuring

It is an obvious point that the extent to which an EWC will deal with transnational restructuring will depend on whether such restructuring occurs and, if so, how extensive it is. Where EWCs reportedly do not discuss such matters, or do so only to a minor extent, this may be because no relevant restructuring has taken place. On the other hand, where restructuring is a permanent topic on the EWC's agenda – case study examples include **Deutsche Bank** and **Swedish Match** – this is largely because the companies concerned are undergoing continuous change and reorganisation.

However, it is not just the degree but also the type of restructuring that may be relevant. Where it is of the kind that involves major job losses, closures or location decisions between countries, it is likely to be of major concern to employee representatives on the EWC, with the potential to cause conflict and controversy. However, where the restructuring is more 'positive', it may be less of a hot issue.

So, for example, at the time of the **Allianz** case study, overall employee numbers had been increasing continuously, with no significant workforce reductions at any European location; the EWC had thus not been confronted with a far-reaching transnational conflict, so no ‘acid test’ of consultation had arisen. Similarly, throughout the existence of the **Securitas** EWC, the company had been in a period of rapid expansion, taking over a large number of other companies. Management had informed the EWC of this strategy and it had reportedly not been a controversial issue with workers’ representatives.

Another key issue related to the type of restructuring is whether or not it is ‘transnational’. As seen in Chapter 1, most EWC agreements provide for the EWC to be informed and consulted only on matters with a transnational aspect, rather than solely a national one, often defined as issues affecting the multinational as a whole or its operations in at least two countries. This can limit the extent to which an EWC discusses restructuring and can cause problems where, for example, management does not inform and consult the EWC about an event occurring in one country, but employee representatives argue that this is part of a transnational process and should be considered by the EWC (an example is the **Quebecor** case mentioned on p. 61, while case study examples include **Aventis**).

Timing and the meaning of consultation

The potential involvement of an EWC in a restructuring exercise depends closely on the stage at which it is informed and consulted. This is an issue of considerable debate and tension between management and employee representatives in many EWCs and has been the source of numerous disputes, including many of those highlighted above that have gone as far as the courts or protest actions (*see pp. 59-62*). The nub of the matter is that employee representatives often argue that in order for consultation to be genuine and ‘meaningful’, it must occur at a stage before the decision on the restructuring itself, or at least on how it is to be implemented, has been finalised. If the restructuring and its implementation are presented to the EWC as a *fait accompli* then, it is argued, consultation – in the sense that the parties can engage in a genuine dialogue on the issue and the views of the employee representatives can at least be heard by management at a time when this might have an effect – cannot occur. That such meaningful and timely consultation does not occur, or is not perceived as occurring by employee representatives, is reported from many EWCs. The following are examples of many such statements in the Foundation case studies:

- The friction between the EWC and the company arises from the fact that the EWC finds out about decisions only after they have been taken. The British representative says they do not tend to hear about issues ‘until it has happened or the process is well on the way’. There is a feeling that EWC discussions are not going to change things (**Pirelli**).
- The German delegate is more critical of the timing of the information. He says company decisions of a transnational nature, above all within the scope of company reorganisation, are communicated to the EWC only when decisions have already been taken, thus making a consultative function for the EWC improbable (**Riva**).
- The EWC gets the information after it has happened and in reality is not consulted before decisions are taken (**Assa Abloy**).
- The EWC has not been seen as a means for altering corporate decisions ... there are grounds for calling into question whether the EWC can really be considered a forum for consultation.

The view of the employee side is that key transnational decisions ... are made prior to EWC involvement. The consultation, accordingly, is a *fait accompli* (**Sandvik Speciality Steels**).

- 'From the management perspective the EWC has had little or no impact on the way managers have approached the decision-making process on transnational matters or indeed on the content of the decisions themselves' (**Swedish Match**).
- The [EWC] did not appear to have much meaningful influence over decision-making. While not a decision-making body, it was designed as a forum for consultation providing at least the potential for influence over decision-making. There was no evidence that such potential had been realised (**BAT**).

An important issue here is what the 'decision' in question is. With regard to the purely business aspects of restructuring and the fundamental restructuring decision itself, the picture that emerges from the evidence is that EWCs have no significant influence on these or other major strategic decisions. For example, this is a finding reported again and again in the Foundation studies. This is arguably unsurprising since EWCs were not conceived as decision-making bodies on company strategy and none are known to be ascribed this role by their founding agreements. A more realistic expectation is that EWCs might be able to influence decisions over how restructuring is to be effected, especially with regard to its employment and social impact. Giving the EWC the possibility of doing so could be seen as constituting meaningful and timely consultation on such matters. As seen above, some EWCs have played this role, but many have not been able to, for a variety of reasons, many related to timing.

The experience of an appreciable number of EWCs is that management informs employee representatives about restructuring measures at the same time as it makes the announcement public, or indeed afterwards. A relatively common complaint is that representatives first hear about such events through the media. The relationship between the timing of information and consultation to national/local structures and the EWC can also be contentious (*see p. 68, 'Management views'*). Another timing issue reported in some cases (e.g. **Lafarge**) is that there may be insufficient time between the announcement of restructuring to the EWC and its implementation, thus making it difficult for employee representatives to come to a viewpoint, formulate questions and draw up proposals for making the changes more socially acceptable.

Factors cited by management to explain why EWCs are involved only at a fairly late stage include legal/stock-market rules and the need to maintain confidentiality (e.g. at Allianz, Marazzi, Südzucker and Unilever). The case of **GKN** illustrates this problem well. Here the EWC agreement requires 'timely' information and consultation, but both management and workers' representatives highlight the difficulty of defining this. And in practice the timing of the information and consultation process varies depending on the issue concerned and the confidentiality obligations stemming from stock-market rules. For instance, in the case of an acquisition, management takes the view that, at the stage of planning and preparation ('concept', 'memorandum of understanding' and 'heads of agreement'), the process is stock-market-sensitive and there is no possibility of sharing information with the EWC. When the process moves to the 'due diligence' and then negotiating phase, an announcement to the EWC is possible, but there is limited information to share because of the requirements of this exercise, and furthermore the potential consequences for employment are difficult to assess. It is only when the decision is made and contracts exchanged that full disclosure of the project is possible.

Most EWCs hold ordinary full meetings only once a year. Given the pace of much corporate restructuring, information and consultation restricted to such fixed meetings is unlikely to permit EWCs much of an input into the process. To quote two of the Foundation case studies:

The management has ... informed the EWC about all the measures taken after decisions have been made. But the operative decisions have not been raised at the EWC before being taken. That is simply not possible due to the high speed of decisions on acquisitions ... The speed of business decisions has set clear limits to the function of the EWC in strategic decision-making (**Securitas**).

The EWC does not seem to play any significant role in influencing management's decisions. One obvious reason is the low frequency of meetings. There is only one meeting per year where management takes part, and considering the speed of managerial decision-making it is hard to time the EWC meeting to coincide with the right moment for important discussions (**SKF**).

The involvement of EWCs in restructuring thus often requires a facility for extraordinary meetings of the full EWC, select committee or extended select committee, or for some form of ongoing communication between management and employee representatives between full EWC meetings, usually through a select committee.

The importance of an active select committee, which meets regularly, in involving an EWC in restructuring in a timely fashion is underlined in a number of cases. For example, at **EADS** the 'economic committee', which meets senior management four times a year for information and discussion on economic issues, was described (in a Foundation case study) as 'vitaly important in crisis management'. The arrangement allowed the committee to examine issues in depth, avoided confidentiality problems and was 'favourable for establishing consensus and building a compromise'. At **Electrolux** the EWC 'steering group' has reportedly played an increasingly important part in the company's ongoing restructuring process and indeed started as a joint surveillance group for the process, enabling a continuing discussion between employee representatives and management. Employee representatives were reportedly also in continuous contact with other EWC representatives when issues arose that needed their joint attention.

Relationship with other levels of information and consultation

Many aspects of company restructuring and its consequences are subject to information, consultation and/or negotiation at national or local level. For example, works council-type bodies in many European countries are entitled to information, consultation and sometimes codetermination over matters such as job losses and reorganisation, while such issues may be subject to company/local level bargaining with trade unions. However much a decision to restructure may be transnational and affect several countries, it is always at national level that the concrete effects are felt.

There is thus often a tension between the national/local and European level of employee involvement/representation over transnational corporate restructuring, raising questions such as which representatives should be informed and consulted first, and what the nature of their input should be. Complaints by employee representatives on EWCs that they have not been notified of some restructuring event are often met by a management response that it is obliged to inform and/or consult local employee representatives first, or that it believes it more appropriate to do so. Many

EWC agreements also state clearly that the EWC is not to substitute for local/national representation structures and processes. The potential complications are illustrated by a few examples from the Foundation and social partner case studies (see Box 20).

Box 20 Examples of the complicated relationship between the national/local and European level of employee involvement/representation over transnational restructuring

At **Ericsson**, in the context of a programme aimed at reducing the number of R&D sites worldwide from 80 to 25, information that changes would occur in the coming 24 months was given to the EWC. However, 'detailed information could not be given at that stage as the inherent relationship between the products developed at different sites could mean that giving detailed information at EU level could lead to problems with local bodies'. To avoid this, communication on the downsizing had to be 'coordinated thoroughly'. Management gave broad information to the EWC at an early stage, so as to give it a global view of the issue, and further information was then given to the (joint) select committee every six-eight weeks. Furthermore, the EWC was given information at a full meeting by the group's chief executive and the project leader. An extra meeting was also organised on the effects that changes in the structure would have in Europe.

A 'critical moment' in the project came when the closure of sites in the USA, Australia and Denmark 'had to be communicated to all the people affected at the same time'. Danish local representatives claimed that management had to inform and consult local bodies before the EWC. Two extra meetings of the select committee, including local representatives, and discussions on the Danish and Swedish legislation implementing the EWCs Directive were held to resolve the problem. Similar difficulties were encountered in Norway, where legislation requires management to inform local units as soon as it is aware of any changes affecting them. This illustrated the difficulty of combining 'information/consultation processes and different legislative requirements at European and national levels, the national arena being the operational arena for restructuring processes'.

At **Pirelli**, managers were reported as arguing that, given the fact that each country has its own system of industrial relations, information procedures and legal restrictions, there was little opportunity for 'Europeanisation' in consultation procedures. The disclosure of information required by collective agreements and specific legislation had to be addressed to national trade unions. Only once this obligation was performed (and the board of directors had met) did the EWC receive the information. As bargaining power lies with national unions, it seemed 'inappropriate' to inform the EWC, which had no role in collective bargaining, rather than national organisations.

It was reported from **Swedish Match** that, even where major transnational decisions were involved, management saw it as 'the right thing to do' to inform those directly affected locally in the first instance. Management was seen as facing a real dilemma in fulfilling its obligations to the EWC on the one hand and the need for disclosure of bad news to those directly affected in the first instance on the other (as illustrated by the case of the closure of a French plant in 1997), and any prior disclosure to the EWC select committee thus had to remain confidential.

A related issue is that the information and consultation of the EWC over restructuring issues may be emptied of much content and meaning because precedence is given to strong and long-standing channels of communication, negotiation, etc. at national level, especially in a multinational's home country. For example, at **British Airways** it was reported that, because management was already

required to inform and consult via the UK 'national negotiating forum' (NNF), this remained the key channel and the established machinery had in most cases been considered most appropriate to handle company-wide issues in extraordinary circumstances. For example, the company chose to raise issues relating to the war in Iraq at a meeting of the NNF, to which the EWC's employee-side spokesperson was invited. It was reported that UK representatives tended to receive more information, and more quickly.

Eni is another case study company where strong involvement of trade unions in the home country seemed to deprive the EWC of an effective consultative role in restructuring, with different perceptions among employee representatives from different countries. According to the EWC's coordinator, an Italian trade union representative, and Italian management, despite a period of profound strategic and structural transformations in the group, the 'participatory climate' between Eni and Italian unions had avoided the emergence of critical issues that needed to be discussed at the EWC. The EWC was seen as a positive extension of the Italian system. However, employee representatives from other countries complained that the EWC had not been informed and consulted properly or at all on various developments, and saw the EWC's influence as low.

A similar phenomenon is that some multinationals have a dense web of relationships between management, trade unions and employee representatives, which are often very close in the home country (notably in countries with strong systems of board level employee representation, such as Germany). In such companies it can be hard to distinguish where real information and consultation goes on, while any real employee influence on decisions or negotiations may occur away from the EWC, often at national level, e.g. through employee representation on the German supervisory board at Robert Bosch or Südzucker. At a company such as SKE, assessing the specific importance of the EWC is made difficult by the fact that the chair of the EWC is also a board member and the leading union spokesperson at company headquarters.

Volkswagen is perhaps the most extreme example of a company where the EWC is just one part of a virtually seamless employee representation system (rooted in Germany) and not the main locus of employee influence over transnational restructuring (see Box 21). Such cases may raise the question of whether home-country employee representatives/trade unions use their influence – especially in restructuring situations – in ways that are of benefit to employees Europe-wide or whether it is used more to further or protect their national interests (or at least is perceived as such by employee representatives from other countries).

Another way in which the EWC may be sidelined in terms of real influence over restructuring is the distinctive case of **DaimlerChrysler**. Since the US-German merger that created the group in 1998, global labour relations have developed, while employee representation on the supervisory board is an important channel for influence. A world employee committee set up in 2002 is seen by German employee representatives and management as more important than the EWC in terms of information and consultation on strategically significant questions.

Box 21 Volkswagen – dealing with restructuring where the EWC is one part of an integrated structure of representation

The Volkswagen EWC, according to a Foundation case study, was seen as one element in an integrated structure of employee representation, which also involved national works councils and trade unions (especially in Germany), representatives on the supervisory board and a world works council, plus informal contacts and discussions at all levels. Employee representatives were involved in decision-making processes over matters such as restructuring at a very early stage, and management had a strong commitment to early information provision and consultation, and to seeking agreement. It aimed to put across a message that a particular change makes sense for both sides and achieves a 'win-win' situation. Employee representatives were involved in final decisions in various forums, often in a combination of functions (e.g. the chair of the EWC was on the supervisory board). Decisions and processes were not primarily directed towards the EWC. The supervisory board was the body that ultimately decided, and the EWC was not the location for decisions.

One effect was that there had been no extraordinary meetings of the EWC or select committee, as such developments were dealt with in bilateral discussions elsewhere. In cases of acquisitions and other restructuring, the two sides did not wait until the meeting of the EWC, and there were contacts with the locations concerned in advance. When the EWC met, the results achieved by the involvement of employee representatives were presented, and at the EWC meeting the results of these processes were endorsed. Essentially EWC meetings summarised the results of processes of discussion between management and employee representatives at several levels, which took place independently of the EWC.

Underlying this approach was a philosophy oriented towards surviving situations of crisis without mass redundancies or the closure of locations. Both the EWC and the world works council were seen as playing an important role in a complex process of balancing the interests of the various locations within the group. One reason why this functioned well was that employee representatives in Germany sought to develop all-embracing strategies instead of focusing on the interests of their own locations.

Management views

The attitudes of company management to the EWC and its role obviously play a part in the extent to which the EWC is meaningfully involved where restructuring occurs. Where managers see EWCs as essentially a means of disseminating information or as a formal procedure to be observed, they are unlikely to be open to it taking on a significant role in restructuring. A typical case of this sort is **BOC**, where it was reported (in a Foundation case study) that, from the management viewpoint, the EWC had very little impact on any corporate outcomes: 'It had not shaped management's approach to any decision, changed the implementation of a decision, or led to any rethinking on any decision.'

However, some companies see, or have come to appreciate, that involving the EWC in the implementation of restructuring may have advantages, notably in gaining acceptance for the changes. For example, **Bayer** management reportedly used the EWC to communicate the necessity of central decisions and, by so doing, to increase the acceptance of measures that involve negative consequences for staff, while **Electrolux** was said to be active in using its EWC in the change process.

Another useful aspect of EWC involvement for management in companies undergoing major restructuring may be that this helps to maintain and disseminate the firm's culture – as reported, for example, at Fortis, Lafarge, Carrefour and Bayer. In a few cases, there have been some very specific benefits of EWCs for management relating to restructuring. For example, the **Allianz** EWC reportedly improved its position in the eyes of management by playing a positive role in the integration of newly acquired companies (such as AGF), becoming useful to management as an 'intercultural conflict manager'. Another example is **Lafarge**, where, in company acquisitions in eastern Europe, trade union representatives on the EWC had acted as 'ambassadors' in working with local union members, helping Lafarge to improve its image in the acquisition: 'It was the employee representatives who were naturally the most credible in explaining Lafarge's investment policy, the policy for upgrading their technical facilities, the restructuring processes that we handle positively from a social point of view, the working and safety conditions and so on', according to a management representative. Finally, at **Marazzi** in 1998, group management explicitly requested the intervention of the EWC select committee to resolve a controversy that had arisen in France. This concerned restructuring that would either have cut the workforce or brought about the closure of the plant. The EWC did not have a negotiating role, but its intervention helped the French industrial relations actors to define the procedures to be followed.

Employee-side organisation and coordination

A clear feature of many of the cases of relatively strong EWC involvement in restructuring is that the employee side is well organised and coordinated outside the framework of the EWC itself, nationally and/or transnationally. At companies such as Aventis, Bayer, Danone, Electrolux, Ford, GM, Henkel, Unilever or Whirlpool, there is a combination of some or all of the following: strong trade unions and/or works councils in the home country and often other major countries; cross-border networks of trade unions and other workers' representatives, often organised by international trade union organisations; and other ongoing contact and liaison between employee representatives on the EWC. Unsurprisingly the same goes for those cases (e.g. Alstom, Fiat or Quebecor) where the employee side has taken some action in an attempt to obtain what it sees as proper information and consultation, or to influence the course of restructuring.

Conversely, there seems to be considerable overlap between the larger groups of EWCs that have relatively little influence over restructuring and EWCs where there is little real contact between representatives from different countries beyond that at EWC meetings.

Competition and 'playing off'

Transnational restructuring can often mean that a multinational's various operations are in competition with each other, sometimes involving specific site selection exercises, with potential winners and losers. Such situations may weaken the ability of the employee side to influence the restructuring process, as the representatives from the various locations will in a sense be in competition with each other and agreement cannot be reached on a joint approach. For example, such tensions and conflicts were reported from EWCs such as those at Boehringer and Robert Bosch, while difficulties in reaching common positions on restructuring and downsizing were reported from Electrolux. As a result, to take the example of SKF, unions represented on the EWC did not try to reach a common standpoint on controversial matters. In important structural changes that involved cutting jobs, they saw the defence of workers' interests as being primarily exercised at national level. Swedish union representatives argued that it would not benefit the long-term interest of the EWC to try to take majority decisions in controversial matters.

In these circumstances a major concern among workers' representatives on some EWCs is that management intentionally seeks to play them off against each other in restructuring situations and to develop competition between countries in decisions on location of production/service provision, or on where jobs are to be cut. However, there are several notable examples of initiatives by workers' representatives aimed at strengthening solidarity between countries and preventing any such 'playing off' (see Box 22).

Box 22 Examples of solidarity initiatives among workers' representatives through EWCs

Kraft Foods (one of the Foundation case study companies) is a firm particularly affected by global relocation of production between sites, and individual locations are subject to a permanent 'benchmarking' through cost comparison. In this context, the employee side on the EWC developed and adopted in June 1999 an 'internal code of conduct' to apply in the event of production relocations. This code lays down rules for the mutual exchange of information and for negotiations at local level, and for concerted action in the event of competition between locations. Competition among locations is not averted through this approach, but the code regulates its handling on the employee side. It is described as a 'set of rules for and by employees for the (preventative) handling of transnational conflicts'.

In 2005 **GM Europe** announced that it would be seeking to cut costs and implementing a 'site-selection process strategy' involving its Opel Delta plants over 2006–07, in order to decide how it would allocate production capacity to the various sites. The EMF GM trade union coordination group, bringing together representatives of unions with members in the company across Europe, plus EWC representatives, met in February 2005 and expressed concern about the company's cost-cutting and site selection strategies, which it believed would 'lead to a dangerous process of downward-spiralling competition among the European GM plants and unions'. In response the representatives agreed a set of 'principles for equitable and equitable plant utilisation and for the GM "site-selection process"'. They also set up a joint Delta working group involving union and EWC representatives from all the Opel Delta plants, to develop a proposal for the implementation of the agreed principles on the basis of a 'mutual, fair and truthful process of information and decision-making for the upcoming site-selection process'.

The working group met in December and agreed a 'European solidarity pledge'. The EWC chair stated: 'We will not let GM continue to play off sites against each other, and we demand a European framework agreement that excludes closures and compulsory redundancies and provides for an equitable utilisation of factories. Under these conditions, we are ready to hold discussions at European level with GM with a view to guaranteeing the competitiveness of the Delta plants.' The solidarity pledge lays down a set of 'rules and principles for the creation of a trustful and binding form of cooperation'. These cover issues such as minimum standards, information and consultation, monitoring, seeking a European framework agreement, external and internal communication, training and exchange programmes, and supporting activities and solidarity (EWCB, 2006d).

The evidence available from available case studies and reports in the specialist media is by no means comprehensive, is of variable quality and may be biased to some extent towards cases of 'best' and 'worst' practice. However, overall it seems that most EWCs deal with transnational corporate restructuring, with information and consultation varying from the provision of general information at annual regular meetings to frequent extraordinary meetings (in various formats) specifically to discuss particular restructuring exercises.

The nature of EWCs' involvement in restructuring differs. It appears that in a large group of EWCs, the role of EWCs is essentially that of communication, with management providing information and employee representatives asking questions or offering views. However, another group of EWCs – apparently a minority – seek or have some form of influence on the course of the restructuring. This does not apply to the decision on the basic restructuring itself and EWCs are not seen as bodies that have a role in strategic decision-making, but influence may in some cases be brought to bear on the implementation of the restructuring. A number of EWCs have been able to help ensure that employment and social aspects are taken into account to varying extents in the restructuring. In a small number of known cases, management and the EWC have concluded some type of agreement on how to handle the restructuring. These may take the form of negotiated responses to a specific Europe-wide restructuring exercise or rules and guidelines to apply generally when restructuring occurs. These generally contain both substantive provisions on mitigating or accompanying the employment effects, and procedural provisions on information, consultation and/or negotiations.

Another form of EWC involvement or intervention may occur where restructuring causes conflict between management and employee representatives, with the latter opposed to some company restructuring plan or arguing that there has not been proper information and consultation on the issue. In these circumstances, a small number of EWCs have sought to take the matter further, outside the normal framework of EWC meetings and communication, through recourse to the courts or to some form of Europe-wide protest action.

Aside from whether or not the company concerned is undergoing restructuring, the factors that seem to influence whether or not EWCs become involved to a significant degree in transnational restructuring include the following:

- The type of restructuring, with negative developments involving job losses and closures more likely to engage EWCs than positive developments such as expansion and acquisitions.
- The content of the agreement establishing the EWC.
- Aspects relating to timing, and especially whether or not the information and consultation over the restructuring occurs at a stage where it is still possible for the EWC to have an input into how it is to be implemented, or both the restructuring and its implementation are presented to the EWC as a *fait accompli*.
- The existence of a facility for extraordinary meetings or for some form of ongoing communication between management and employee representatives between full EWC meetings, usually through a select committee. An active and regularly meeting select committee can be especially important in involving EWCs in restructuring in a timely fashion.
- The perceptions of management about the EWC and its role, with the involvement of EWCs in restructuring more likely in companies that see this as having advantages. For the latter, EWCs potentially offer a forum through which management can secure understanding of the rationale for its cross-border decisions which affect employees' interests, and even acceptance. They offer the prospect of key decisions gaining greater legitimacy amongst the wider workforce precisely because they have been the subject of a transnational process of information disclosure and dialogue.
- The level of organisation and coordination of the employee side outside the framework of the EWC itself, with stronger EWC involvement in restructuring apparently more likely where

there are strong trade unions and/or works councils in the home country and elsewhere, cross-border networks of workers' representatives and trade unionists, often organised by international trade union organisations, and/or other ongoing contact and liaison between employee representatives on the EWC.

Factors that may complicate or render problematic EWC involvement in restructuring include:

- Debates over whether restructuring is 'transnational' and thus falls within the remit of the EWC.
- Tension between the national/local and European level of employee involvement/representation over transnational corporate restructuring, raising issues, often legal in nature, such as which representatives should be informed and consulted first, and what the nature of their input should be.
- The fact that in some multinationals precedence is given to strong and long-standing channels of communication, negotiation, etc. at national level, especially in the home country. This may make information and consultation of the EWC over restructuring issues less meaningful.
- The fact that in some multinationals there is a dense network of relationships between management, trade unions and employee representatives, often very close in the home country, making it hard to distinguish where real information and consultation occurs, with any real employee influence on restructuring decisions or negotiations sometimes taking place away from the EWC, often at national level.
- Restructuring situations in which a multinational's various operations are in competition with each other, which may weaken the ability of the employee side to influence the restructuring process, as the representatives from the various locations may not be able to agree on a joint approach. Workers' representatives sometimes perceive deliberate management attempts to play them off against each other in such cases (and in a few cases have taken initiatives aimed at preventing this and strengthening solidarity between countries).

When adopted in 1994, the EWCs Directive sought to bridge a ‘representation gap’ between increasingly transnational corporate decision-making and employees’ nationally defined information and consultation rights, by establishing for the first time transnational industrial relations structures in multinational companies operating within the EU (Hall, 1992). The context was the creation of the single European market, whose impact was being felt in widespread restructuring and rationalisation, increasingly involving transnational management decisions that simultaneously affected workforces in more than one country – a trend that has become more marked in the years since, as European integration has deepened and globalisation has intensified.

Before the Directive, workforces and their representatives did not have any right of consultative access to transnational management decision-making structures, as was graphically underlined by high-profile controversies such as the 1993 decision of Hoover (USA, domestic appliances) to relocate production from a French to a Scottish site, involving the closure of the former (EIRR, 1993). Since the Directive came into force, however, EWCs are seen, as one leading commentator (Ramsay, 1997) put it, as ‘the main current channel for seeking to match the internationalisation of capital’s decision-making’.

As an institution, EWCs were born out of restructuring and it can be argued that how they deal with this issue is the acid 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). The evidence presented in the current report suggests that there is enormous variation between EWCs in this area, but that relatively few can be said to have influenced transnational corporate restructuring in an appreciable way through the exercise of their information and consultation function.

In formal terms, according to the agreements establishing them (*see Chapter 1*), it appears that the great majority of EWCs (80% or so) 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, while a smaller majority (around 60%) should be informed and consulted on specific restructuring-related topics (e.g. transfers of production, mergers, cutbacks and closures). While restructuring should thus 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 universal. 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 quite well equipped to be informed and consulted regularly on restructuring-related issues and specifically on restructuring events that arise. However, several other features of EWC agreements should be taken into account when assessing the meaning of these information and consultation entitlements. Especially with regard to exceptional restructuring events, 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, while 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) as ‘the exchange of views and

establishment of dialogue' between employee representatives and management. Only a small minority of agreements (one in 10 or so) contain more provisions on a more in-depth form of 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 may also be relevant that EWCs are often prevented from dealing with matters dealt with by national-level consultation or negotiating processes and restricted to dealing with matters that correspond to a particular definition of 'transnational'.

While the agreements on which EWCs are based are obviously important (as is the legislative framework), they are not necessarily an accurate guide to how EWCs operate. There are numerous examples of EWCs exceeding their formal remit as they grow and develop, or of provisions of agreements becoming dead letters in practice. As has been argued (Müller and Platzer, 2003), a lack of rigorous regulatory specification in the Directive, and in EWC agreements, does not mean that the EWC as a company-level forum for social dialogue and an instrument of participation is necessarily weak. Rather, its effectiveness is achieved – or not – by practical operation.

However, seen overall, the empirical information on the involvement of EWCs in transnational restructuring (see *Chapter 4*) presents a similar picture to that drawn from the contents of agreements. It appears that the majority of EWCs deal with transnational corporate restructuring with information and consultation at both annual regular meetings and 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 Directive's sense, with management providing information and employee representatives asking questions or offering views. The evidence suggests that only a minority of EWCs have succeeded in going beyond this and exerting some form of influence on company restructuring.

This is not a new finding. That many EWCs exert only very limited influence on management decision-making, particularly as regards restructuring, has been a central trade union criticism. The European Commission's April 2004 consultation document on EWCs also notes that instances where information and consultation have been 'absent or ineffective' during restructuring have given rise to 'concern and anger' among employees (European Commission, 2004). More generally, survey evidence points to widespread dissatisfaction amongst EWC representatives with the current practices of EWCs, particularly regarding the quality of information and consultation (Waddington, 2003). For many employers, however, there is evidently no interest in developing their EWC's role beyond information and consultation in the Directive's sense and a lack of influence on management decision-making is seen not as a defect but as a virtue.

The exceptions to the overall rule of a lack of EWC influence on restructuring underline the potential of EWCs to take a more active role. 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 since they are not conceived as decision-making bodies or as substitutes for a board of directors. But there are cases where they have been involved in and affected the decisions on how to implement the restructuring. 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 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 (see Chapter 2).

These accords may take the form of references on how to deal with restructuring in a wider accord on CSR (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 that most 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.

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.

In the case of 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, while at the same time a few EWCs have a clear input, which may go as far as negotiating agreements on how the restructuring is to be dealt with. The empirical evidence suggests a number of contributory factors (see Chapter 4). One very straightforward one is that an EWC needs to be informed and consulted before a decision and the details of its implementation have been finalised if it is to have any chance of influencing management’s thinking and actions. It is often argued that only involvement at such a stage can constitute meaningful consultation.

However, a persistent complaint from employee representatives and trade unions is that restructuring and its implementation are presented to the EWC too late and as a *fait accompli*. 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-market rules. A key factor in involving EWCs in restructuring in a timely fashion is the existence of 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.

Other factors in an EWC's ability to become involved meaningfully in restructuring include its relationship with national/local levels of employee involvement and representation, and its place within the overall flow of information and influence in the multinational (e.g. 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 concerned may be relevant, with 'negative' changes to the company, notably involving the loss of jobs, more likely to attract the interest of employee representatives and prompt them to seek influence, but also in situations where the multinational's various operations are in competition with each other, tending (by management design or not) to weaken the ability of the employee side to reach consensus and influence the restructuring process. Restructuring also often needs to manifest itself in a clearly 'transnational' way in order to be susceptible to EWC influence.

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 trade union organisations, and/or other ongoing contact and liaison between employee representatives on the EWC. (It is worth noting that some international trade union organisations have developed policies on EWC involvement in restructuring, with a notable example being EMF, which has recently agreed a set of principles for common responses to restructuring plans, including seeking negotiations and considering cross-border action – EWCB, 2006e; EMF, 2005.) This clearly applies to the most 'advanced' EWCs in this area, such as Danone, Ford, GM and Unilever. On the other side of the meeting table, it also appears that management's 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 that have 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 (see *Chapter 3*), but the findings from this review of the available documentary and empirical evidence are generally consistent with the main lines of broader academic research into the general capacity to act and influence on decision-making of EWCs. These suggest that, while many EWCs are largely 'symbolic', involving a low level of information provision and no formal consultation, and little or no contact between employee representatives, or with management, between annual meetings, others have developed a more active and influential role involving, to varying degrees, ongoing contact and activity between employee representatives and regular liaison with management. Some EWCs have been able to exert a measure of influence over management decision-making and even engage in the negotiation of agreements or joint texts with management.

The capacity of EWCs to influence management decision-making has been found (Marginson *et al*, 2004) to be conditioned by factors such as the nature of companies' business operations and the degree to which they are integrated and internationalised; management structure and management policy (e.g. the extent to which there is a European-level management structure that corresponds to

the EWC, and the 'proactiveness' of management's approach to the EWC); and the nature of pre-existing structures of employee representation (in particular, the existence of representative structures at national group level in the main countries and/or a pre-existing international network amongst employee representatives on which the EWC can build).

These factors apply equally to the meaningful involvement of EWCs in transnational company restructuring. 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 an 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 more involved in restructuring situations, while symbolic and less effective EWCs will tend to be less involved. However, there is also some evidence that dealing with restructuring can help build an EWC's coherence and effectiveness. For example, it was reported in the Foundation 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.

To conclude, 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, 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, and 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.

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Appendix

Sources of case study information

The sources of the company case studies referred to in Chapter 4 of this report are as follows:

1) 41 company case studies carried out on behalf of the European Foundation for the Improvement of Living and Working Conditions (the Foundation), completed in Summer 2003. The aim was to study EWCs with headquarters in five EU Member States – France, Germany, Italy, Sweden and the UK – on the basis of a common conceptual framework, with a view to describing how EWCs function in reality. The case studies (available at www.eurofound.eu.int/areas/participationatwork/ewccasestudies.htm) cover the following companies:

- Air France (France, civil aviation)
- Allianz (Germany, financial services)
- Amersham (UK, pharmaceuticals)
- Assa Abloy (Sweden, locks and handles)
- Assicurazioni Generali (Italy, insurance)
- Atlas Copco (Sweden, machinery)
- Auchan (France, retail)
- Aventis (France, chemicals)
- Bayer (Germany, chemicals)
- BOC (UK, gases)
- Boehringer (Germany, pharmaceuticals)
- British Airways (UK, civil aviation)
- British American Tobacco (UK, tobacco)
- Club Med (France, leisure)
- DaimlerChrysler (Germany, automotive)
- Deutsche Bank (German, banking)
- EADS (Netherlands, aerospace)
- Eiffage (France, construction)
- Electrolux (Sweden, electrical appliances)
- Eni (Italy, energy)
- GlaxoSmithKline (UK, pharmaceuticals)
- HSBC (UK, banking)
- IKEA (Sweden, furniture)
- 'Italian food company' (Italy, food)
- Kraft Foods (USA, food)
- Lafarge (France, building materials)
- Marazzi (Italy, ceramics)
- Merloni (Italy, electrical appliances)
- Michelin (France, tyres)
- Pirelli (Italy, tyres and cables)
- Riva (Italy, steel)
- Robert Bosch (Germany, technology)
- Royal and Sun Alliance (UK, insurance)
- Sandvik Specialty Steels (Sweden, metalworking)
- Securitas (Sweden, security services)
- SKF (Sweden, ball-bearings and seals)
- Südzucker (Germany, sugar)
- Suez (France, utilities)
- Swedish Match (Sweden, matches and tobacco products)
- Volkswagen (Germany, automotive)
- Whirlpool (USA, electrical appliances)

2) 9 company case studies presented at two seminars organised in September–October 2004 by the European-level cross-industry social partner organisations and summarised in *Joint seminars on European Works Councils. Description of cases presented, 7 April 2005*, available at www.europa.eu.int/comm/employment_social/social_dialogue/docs/300_20050407_ewc_cases_en.pdf.

The companies concerned are:

- Carrefour (France, retail)
- EDF (France, energy)
- EDS (USA, IT services)
- Ericsson (Sweden, communications technology)
- Fortis (Belgium, finance)
- GKN (UK, engineering)
- Henkel (Germany, chemicals)
- Lafarge (France, building materials)
- Unilever (UK/Netherlands, consumer goods)

3) 10 company case studies and similar articles published in *European Works Councils Bulletin* (EWCB) over 2000–06, covering:

- EDS (USA, IT services) – ‘The EDS European Works Council – A partner for the business’, Rasmus Edelberg and Diane Sinclair, EWCB 53, September/October 2004, pp. 16–18, and ‘European-level consultation at EDS’, EWCB 41, September/October 2002, pp. 7–12.
- Electrolux (Sweden, domestic appliances) – ‘The evolution of the Electrolux Works Council’, Mike Regan, EWCB 49, May/June 2002, pp. 13–16.
- Exel (UK, logistics) – ‘Exel European Employee Forum reviewed’, Chris Smith, EWCB 50, March/April 2004, pp. 11–15.
- Fortis (Belgium, finance) – ‘Restructuring and EWCs – The Fortis experience’, Bruno Demaître, EWCB 45, May/June 2003, pp. 11–14.
- General Electric (USA, diversified) – ‘EWCs and organisational change: The case of General Electric’, Valeria Pulignano, Guglielmo Meardi and András Tóth, EWCB 58, July/August 2005, pp. 10–13.
- GlaxoSmithKline (UK, pharmaceuticals) – ‘The GlaxoSmithKline EWC in profile’, Paul Marginson, EWCB 56, March/April 2005, pp. 14–18.
- HSBC (UK, banking) – ‘Making a European Council work: The case of HSBC’, Jim Arrowsmith, EWCB 60, November/December 2005, pp. 8–11.
- Reuters (UK, Media) – ‘The Reuters European Employee Forum in focus’, Robert Stevens, EWCB 62, March/April 2006, pp. 14–17.
- Sharp (Japan, electronics) – ‘Four years in the life of the Sharp EWC’, Michael Williams, EWCB 30, November/December 2000, pp. 11–14.
- Volkswagen (Germany, automotive) – ‘The Volkswagen EWC and national employee representation structures’, Claudia Schipmann, EWCB 37, January/February 2002, pp. 12–15.

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European Works Councils and transnational restructuring

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The adoption of the Directive on European Works Councils (EWCs) – partly a response to the increasing incidence of industrial restructuring across Europe – resulted for the first time in the creation of transnational industrial relations structures. This report examines the influence that EWCs have had on the handling of transnational restructuring. It finds substantial variation between EWCs in how they deal with restructuring. The findings show that while the role of most EWCs is limited solely to the provision of information and consultation with management, a notable few have been able to affect the implementation of such restructuring processes. The report finds that the influence that EWCs exert appears to be dependent on the attitudes of management, the existence or otherwise of strong trade union traditions, and the degree of international integration between a company's operations.

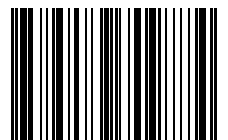
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