

EUROPEAN WORKS COUNCILS  
- Cases of good practice

COMITÉS D'ENTREPRISE EUROPÉENS  
- Exemples de bonnes pratiques

COMITÉS DE EMPRESA EUROPEOS  
- Buenos ejemplos



EUROPEAN COMMISSION



FNVFORMAAT



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## ***Introduction***

The publication you are holding in your hands is the end result of the project entitled:

### **EUROPEAN WORKS COUNCILS: Research Circles**

This project was supported by the European Commission's Directorate General for Employment and Social Affairs in the framework of budget line B3-4003. The project lasted one year, from October 2000 to October 2001, and is the result of joint work by the following partners:

- CC.OO. de Catalunya/Workers' Commissions of Catalonia (promoter) - International Policy Secretariat
- FNV Formaat – Training Department of the Dutch trade union FNV
- ALPHA Conseil – French consultancy acting as advisor to Works Councils
- TUC –Trade Union Congress (Britain) - European Union and International Relations Unit

The project was also supported by the European Confederation of Trade Unions and the Confederation of CCOO of Spain and benefited from the collaboration of trade unions in the countries involved in the project: the CGT and CFDT in France, the FNV in the Netherlands and the TUC in the United Kingdom. The advice provided by Evelyne Pichot as an expert on European Works Councils and Industrial Relations has also been extremely valuable for the project. To all these and everyone else who took part, directly or indirectly, in this project, we would like to express our sincerest thanks, as it would not have been possible to do the work without them.

The partners involved in this project were selected from the trade unions and experts with whom the CCOO of Catalonia have worked most closely over the last few years and whose experiences in the field of European Works Councils have been similar. So, for example, both the CCOO of Catalonia and FNV Formaat have carried out cross-industry

(Engineering, Chemicals, Services, etc.) work on the ground with members of around 150 European Works Councils in the Netherlands and Catalonia, involving advisory, training and self-training tasks employing even the same "Research Circles" methodology.

Our links with "ALPHA Conseil", a consultancy for Works Committees ("comités d'entreprise") in France and European Works Councils, are based on a long and fruitful period of collaboration in several EWCs (VALEO, SCHLUMBERGER, etc.). French legislation gives works committees and unions the right to consult external advisors on economic questions (accountancy experts) and on the organisation of work. This experience has been transferred to the European level by ALPHA and other French consultants, thereby complementing and enriching the trade union advice available to the European Works Councils.

We have worked closely with the TUC, especially its European Union and International Relations Unit, exchanging information, organising meetings and seminars for European Works Council members, bearing in mind the similarities of our respective realities with weak labour and trade union rights and a large number of EWCs belonging to multinational undertakings whose parent company is based in another country, especially the USA and Japan. These affinities, together with previous experiences of co-operation, were guarantees ensuring the success of the project, whose aim is not to remain turned in on itself, but rather to socialise the results and extend co-operation to other partners in the future.

The project's three general objectives were:

1. To identify and analyse the problems preventing European Works Councils from functioning properly.
2. To develop strategies to resolve these problems by insisting on examples of good practice.
3. To circulate the results among the European Works Councils and trade unions.

The project's concrete objectives were:

1. To exchange and share experiences among the members of the European Works Councils.
2. To strengthen the skills of the Councils' members.
3. To identify common problems.
4. To spread the good practices that were identified.
5. To put forward proposals to improve the legal and contractual framework in which the European Works Councils operate..

The project consisted of:

A preparatory meeting with the partners to arrange the international seminar and select the participants, methodology and pedagogical criteria.

An international seminar that was held in Barcelona on 17, 18 and 19 May 2001 and which was attended by the four project partners plus delegates from the following European Works Councils and sectors:

ABN AMRO .....	- Banking
AWA Arjo Wiggings .....	- Paper-making
BARCLAYS .....	- Banking
BAYER .....	- Chemical industry
GENERAL MOTORS .....	- Automotive industry
NISSAN .....	- Automotive industry
SARA LEE .....	- Chemical industry
SCHLUMBERGER .....	- Capital goods
SUEZ LYONNAISE .....	- Utilities
TYCO .....	- Electronics
UNILEVER .....	- Food industry
VALEO .....	- Car components

The criteria for selecting the companies taking part in the seminar were:

- Companies having a functioning European Works Council.
- Making sure all industrial sectors were represented.

- Ensuring a range of different situations and problems.
- That the relevant multinational be present in at least three of the countries involved in the project.
- Ensuring active involvement of both genders.

A participatory methodology was used in the seminars based on the experience of the Research Circles, as we considered that the European Works Council members, through their practical experience, are the ones who know most about the subject. The starting point for the Research Circles were the needs and interests of those taking part and their experiences and knowledge constituted the most important resource. The knowledge and experience of the participants in the Research Circles are the elements that should be brought out by participatory group dynamics so that they can then be studied and systematised so as to identify the good practices capable of being generalised.

The seminar was organised around two themes and four topic axes:

#### A. THE FUNCTIONING OF EUROPEAN WORKS COUNCILS

1. The Council's relations with management.
2. Relations between the Council members, their unions and the workers.

#### B. RESPONDING TO EVENTS

1. Restructuring
2. Mergers, takeovers and outsourcing

Following the international seminar, a meeting was held to share and evaluate the summary reports drawn up by the different working groups in order to prepare this publication.

The project's findings are available on the Internet on the Workers' Commissions of Catalonia website ([www.conc.es](http://www.conc.es)) together with a discussion forum open to the project's participants and other European Council and trade union members.

We hope that the results of this project will be useful in improving the level of the current European Works Councils. In order to respond to the new challenges, pro-active union action is required, anticipating events and enhancing the quality of information and consultation. We hope that the results of this project will also help to fine-tune and improve the provisions of Community legislation on informing and consulting workers (European Company, Information and Consultation and European Works Councils Directives).

Finally, we should point out that the authors of this publication accept full responsibility for its contents, having taken particular care to avoid giving any information of a confidential nature by refraining from naming the companies involved wherever there was any doubt.

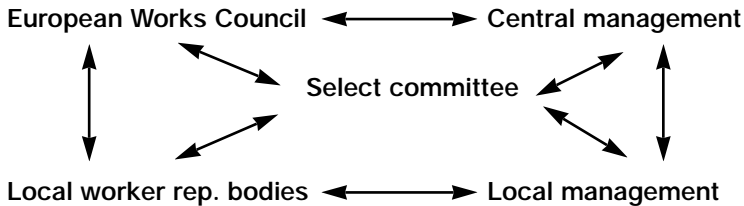
International Policy Secretariat, CCOO of Catalonia



## I. Introduction

The EWC works in a complex network. In diagrammatic form it looks like this:

**Relationships:**



Actually the real situation is even more complex than this diagram would suggest as other parties such as the unions at local, national and international level, governments, etc, are not included. In this section we concentrate on relations with management. These have the following dimensions:

### **-a. EWC with central management**

Members come to a first EWC meeting from different backgrounds and with different types of experience. Some of them may have been at the Special Negotiating Body (SNB). Former SNB members will often take the lead in the first EWC meetings. Also the representatives of management will often have been part of the negotiation team. So the general level of trust and co-operation at the start will be determined to a large extent by the experiences at the SNB.

For others their local experience will form the framework determining the general level of trust and co-operation. Great differences may exist at this level between countries. An important distinction is often to be found between relations at the 'home country' and those in other countries. When the company has a European base, employee reps in the home country often have better contacts. Most of the time they are also better informed about their company. Moreover, they have been able to develop a relationship with central management over a longer period of time and have thus been able to built up more trust and more loyalty to the company. This may result in employee reps from the home country finding themselves at EWC meetings somewhere in-between management and the other reps.

In some countries domestic legislation provides for participation of workers' representatives at board level. A good example is the BAYER Group, which has its headquarters in Germany. This participation however has its problems, especially in the eyes of some reps from other countries:

- It can mean that workers representatives are seen as implicated in decisions that can threaten the jobs of colleagues in other countries.
- Employee reps in these circumstances are bound by laws on confidentiality which means that they should not reveal what they know to fellow workers – at worst this can be viewed as downright treachery.
- Workers in other countries do not have these rights to participation and therefore feel excluded from the whole process.

Management may sometimes try to give the EWC members the feeling of being their guests during meetings. Employee reps that have been fiercely criticising the company in a pre-meeting thus are sometimes hesitant to express this also in the meeting with management. The general atmosphere during an EWC meeting is often polite and friendly. The use of posh hotels and luxurious joint dinners may strengthen this. This friendly atmosphere should not be mistaken however for good co-ope-

ration. Co-operation implies working together in good faith towards some good results.

Alas, many of these meetings do not result in much. Information often comes too late and consultation does not take place.

To make sure that the meeting will cover topics of relevance to the employees, the employee reps must be able to control to some extent both the agenda and the meeting. But even if this is the case, the interaction during meetings is often hindered by practical things like:

- Lack of interpretation.
- A room layout that does not enable all employee reps to have direct eye contact with each other or with management reps.
- Management reps taking too much time for their own presentations so that there is only limited time for questions and discussion, etc.
- Employee reps not receiving copies of the slides in advance so they cannot properly prepare questions.

In some EWC's important steps forward have been made towards improving these procedures, including: setting time limits on presentations, developing a consultation protocol, etc.

Management may resent the EWC claiming that it is expensive and achieves little. Some EWC's however responded by saying if they were enabled to be more proactive then the quality of dialogue would be much enhanced.

One last element in the relation with central management is the question whether the relevant management layer exists at European level. Many globalised companies are managed along international product lines (divisions or business units) rather than along regional lines. Still, in some companies EWC's exist at lower level than that of the general group, especially in highly diversified companies like GENERAL ELEC-

TRIC and SARA LEE, but also for example in the less diversified defence and electronics company THALÈS<sup>1</sup> and in EADS<sup>2</sup> (Airbus, Eurocopter,...).

#### **-b. Select Committee with central management**

A second crucial relationship is that of the Select Committee with central management. In practice it often turns out that the Select Committee plays a pivotal role in the functioning of an EWC. They maintain and coordinate relations in between meetings, prepare and try to get some control over the meetings.

Again at this level, the role of home country representatives, where existing, often differs from those from other countries. In many cases the chair and/or secretary are representatives from the home country. They may facilitate co-ordination among the members by using to the benefit of all their contacts with central management and the more extensive facilities which they often have at their disposal. But sometimes central management will use them as a go-between, which may create distrust amongst other employee reps. The workforce sometimes see select committees (EWC secretariats) as being “too close” to management and therefore not to be trusted. This is not helped by the perception that EWC reps are going on “foreign trips” paid for by management

In one company, the Select Committee uses to visit work places affected by collective redundancy or closure. It occurred that management tried to present the EWC as its allies during restructurings when the select committee was visiting an affected facility. Management tried to give the local workforce the impression that the SC, and hence the

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<sup>1</sup> THOMPSON CSF (new name : THALÈS) has a global EWC with a select committee and 3 “commissions d’activité” (“défense”, “aéronautique” and “technologies de l’information et services”). Each of these 3 commissions is chaired by the branch director (management as it is the rule in French companies), has 10 members from the EWC members or substitutes, and has at least one meeting a year, 2 months before the whole EWC meeting.

<sup>2</sup> EADS has a global EWC and 3 sub-group committees (“European Committee Airbus”, “European Committee Astrium”, “European Committee Eurocopter”). Each of these committees has one member from the EWC and a number of additional employee representatives following agreement within the sub-group. It can meet at least twice a year with sub-group management and can call upon an expert.

EWC, supported the restructuring schemes of management and agreed with the consequences for the local workforce.

Therefore in the above-presented scheme, the SC cannot be put in a fixed position. In some EWC's the SC is very close to central management, but in other EWC's the SC is close to local employee bodies, e.g. in those SC were members represent certain regions and maintain more or less permanent contacts with the countries they represent in the SC. Still another possible model is a SC that is very close to the full EWC, for example in those cases where the SC is no more than the agenda setting committee to the annual meeting.

**-c. EWC/SC and individual EWC/SC members with local management**

This is the third dimension of the relationship with management and one that may often cause problems.

In some countries, especially in the UK, management gives hardly any support to employee reps in carrying out their role as EWC member. Reps may lack crucial communication tools like e-mail and/or access to a private telephone, or lack time off to prepare for meetings and deliver some follow up on meetings. Sometimes local management tries to prevent members going to an EWC meeting, e.g. because the reps are needed at work.

In those EWC's where reps have been able to take on a negotiating role and struck some framework agreements - for example on equal opportunities, trade union rights or basic rights in the case of restructurings - the relation with local management takes on a new dimension. Someone must make sure that central agreements are applied at local level. This can be a role of central management, of the SC or of the local rep. At USINOR for example the EWC monitors a European programme on health and safety, which also includes standards for subcontractors.

## II. An overview of experiences

As most EWC develop over time, practical experiences in the relationship of EWC's with management differ according to their 'age'; but also due industrial relations differing greatly between countries, EWCs differ according to the amalgamation of industrial relations that form the background of the EWC. Thirdly, companies also differ greatly, according to type of industry, prosperity, culture, etc.

This means that there cannot be a single best practice. On the other hand, different experiences may prove to be an important source for learning for others.

### Relations of the EWC and SC with central management

*The way an EWC has been set up has important consequences for the level of trust and co-operation at the beginning. After the negotiations have resulted in the setting up of an EWC, the EWC enters a stage of continuous struggle for the realisation of the formal rights and facilities and for necessary improvements.*

At **VALEO** the EWC was founded because management knew it was legally obliged to do so. In September 1999 the first meeting was held. Every three months the SC meets and tries to negotiate step by step improvements for the EWC. To date there have already been three extraordinary meetings. Real consultation however, like that which a French "comite d'entreprise" has, still does not take place. The select committee meets every three months in a different country. In addition they have the possibility of visiting workplaces. They tend to meet often if there's any trouble such as transfers of production.

At **ABN AMRO** management was also against installing an EWC until it was legally obliged to do so. Then it was willing to give the SNB, and later the EWC, all the facilities it needed. Still the company was not willing to extend the EWC to countries not covered by the Directive such

as Switzerland and initially the UK. With constant discussion and pressing the argument that the EWC should be a full *European* body the employee reps were able to overcome this resistance.

At **GENERAL MOTORS** management was opposed to the inclusion of reps from Eastern Europe. Only after four years and much pressure was the EWC able to take them on board. The employee reps in the EWC have strengthened their position, amongst other things because of the big role the internal planning and executive committees can play. The committee members have the opportunity to travel to other countries, paid for by the local works councils or the unions involved.

At **TYCO** management was eager to be one of the first companies to install an EWC in the UK. Management from headquarters in the US came up with an elaborate proposal. During the negotiations management was assisted by all kinds of lawyers. This led to much suspicion amongst employee reps. The EWC had to fight hard to improve the concept agreement.

At **SUEZ LYONNAISE DES EAUX**, the EWC had already started in 1995. But at first it was not much more than an annual meeting. In 2000 a new agreement was negotiated and they now have more preparatory meetings. Currently the SC meets every two months and is exerting more pressure to solve problems like the lack of a secretariat which the EWC was entitled to have according to the 1995 agreement, but which never materialised. Also lack of local facilities for EWC reps are now addressed. Translation of written materials is, however, another problem.

At **UNILEVER**, employee reps had already started the process of setting up an international union body in 1985. But management refused any discussion on this until it was forced by the Directive to set up an EWC. Then it came up with a proposal of its own, ignoring the already existing union platform. The employee reps turned this proposal down. After negotiations both parties agreed to compromise. The employee reps thereupon decided to flexibilize their demands and start working on a pragmatic basis. In the first years the EWC had to fight for many facili-

ties. In 1998 the EWC held a press conference on the fringe of the annual shareholders meeting to protest against the payment of a super dividend of billions of EURO while at the same time the company was cutting jobs. Since then management has started to take the EWC really seriously. At the time of writing the EWC is negotiating a 6 points program for proper information and consultation. It already has negotiated a protocol for dealing with restructurings.

*One of the problems that has been mentioned during the discussions is controversy over items being transnational or not.*

In the day to day interactions the **ABN AMRO** EWC has to time and again try and convince management to get certain issues onto the agenda. Management often makes use of the argument that issues are local and not transnational. By contacting other countries the EWC can often prove that these issues affect more than one country.

At **SARA LEE** management often makes use of the argument that it does not want to consult the EWC on certain issues because these are local and not transnational. Still the EWC can play a role in facilitating the local bodies. For example when a certain country is hit by restructuring first and negotiates a good social plan, it may send this to other countries that are subsequently hit by restructuring. Also the EWC agreed to treat certain issues in the Select Committee as if they fell under consultation rules. Management seems to be allergic to dealing with problematic issues at the full meeting. Perhaps they fear loss of face. Hence more can be achieved in SC meetings or during informal talks between the chairperson and central management. This however also poses some dangers. Management also sometimes informs the chair informally in advance of important measures to come, a week before the press is informed.

*But there are also sometimes problems for employee reps in the relation between transnational and local issues:*

At **BARCLAYS**, a representative stated that it is sometimes complicated to discuss local issues with no interference in union matters, especially because of the different system in the UK compared to Europe.

*Another problem that arose during the discussions is controversy with management over the use of the confidentiality clause.*

Management at **ABN AMRO** often refers to the confidentiality of information as grounds for not informing the EWC in time . Sometimes EWC members have to get news from the press. Consultation is getting better; getting enough facilities on the other hand never was a problem.

Confidentiality of information is also a big problem at **GM**. After a big fight over the type and timing of the information given to the EWC on the restructuring at Luton, the EWC have been able to negotiate an 'Information Protocol' that should, for example, clarify the time-frame for proper information (see Appendix IV).

*Sometimes, the EWC may receive so much information that it becomes difficult to see the wood for the trees:*

Some EWCs can be buried in information without getting any clear picture as to the companies strategy for the coming period – plenty of quantity but little quality.

At the annual meetings of the **UNILEVER** EWC, members realised that they must try to reduce the great amount of information that management was giving them.

*Some other items include the role of European management in the diversity of activities in companies, and the dominance of company restructuring over all other possible issues:*

At **GENERAL MOTORS** the EWC deals with European management, but in negotiations this was overseen by the US management.

Sometimes the interests of local and central management may differ and the EWC can make use of this. For example when **BARCLAYS** wanted to restructure both in Britain and Spain, the EWC in co-operation with the British unions was able to see to it that the best practice in early retirement obtained in Spain, was also used in Britain, although local management did not want this to happen.

A problem at some companies is the frequent change in management.

A problem for the **UNILEVER** EWC is the great diversity of UNILEVER's activities. The EWC considers it to be an absolute necessity to be capable of carrying out their work in groups corresponding to industrial sectors, although they have only one EWC for the whole company.

In **TYCO** as the company works in five major industrial sectors, the preparation of the plenary meeting by the steering committee is extremely difficult, because each of these sectors operates in a totally independent manner, one from the other.

## Relations with local management

*On this level, the biggest problem consists of realising the rights the EWC members should have according to rules negotiated at central level.*

At **SUEZ LYONNAISE** there's now a Global Code of Conduct for all their facilities world wide. The employee reps would like to check if this Code is respected everywhere as local management does not always apply what is agreed between central management and the EWC members. They have proposed to use internal audits for this, management is now considering this proposal.

Also at **ARJO WIGGINS** facilities for local reps are a problem in some countries. Examples of these are payment for travel expenses, payment

of wages for time spent at meetings, proper opportunity for shift workers to attend meetings, etc.

**TYCO** management does not allow EWC members to visit his or her facilities at local level. Communication takes place by phone fax or e-mail, so this disturbs the rep's work. Currently communication at local level is one of the major problems for the EWC members.

*But the EWC sometimes improves relations with local management:*

**UNILEVER** local managers do not have the power of decision because decisions are centralised. Members of the EWC often have more and better information than local management. Therefore they are eager to hear from the reps what information was given at the EWC. This has led to more respect from local management for the employee reps.

### III. Conclusions

Many EWC 's have to fight time and again to get the right information, and in good time. Consultation is even more of a problem. Only at GM and FORD have we seen examples of an EWC that could take on a bargaining role.

The ETUC recently wrote: 'Too often the practice in European Works Councils does not correspond to the aims of the Directive. RENAULT-Vilvoorde is just one example of many, where there was no dialogue with the employees' representatives and where thus an opportunity was lost. The ETUC therefore demands the strengthening of the right to information and consultation in the Directive on the establishment of European Works Councils. The Directive must clarify that information is given in good time and that it is comprehensive and takes place on an ongoing basis. Timing, form and content of information must be such as to permit employees' representatives a profound analysis of possible consequences of a proposed measure. Consultation of the European Works

Council must take place in good time, in the planning phase of decision-making, so that any eventual opinion of the employees can still be considered during this phase.'

Another element that causes a lot of friction is the definition of 'transnational items'. Management often deems things local that employee reps consider being transnational.

The usual definition of transnational issues is such that it can easily happen that international management takes decisions, which may only affect one location (for example terminating export production for a certain market), but where employee representatives cannot really be consulted by local management, as local management did not take this decision. As this problem is recognised by the European Commission, they have changed the definition of transnational issues in the new Directive on the European Company Statute (standard rules part 2a). The new Directive on the European Company Statute gives a more useful definition as it defines transnational issues in the context of management structures to which consultation structures should relate. The definition states: 'transnational issues are to be understood as matters which exceed the powers of the decision-making organs in a single member state.'

In the light of these experiences the demands from the ETUC seem all the more justified. Also the relation with local management calls for improvement. In some countries management tries to block reps from participating fully in EWC's. The SC may play a crucial role in some EWC's in monitoring the compliance of these rights, sometimes together with central management. In one EWC agreement this is stated as follows:

*The Steering Committee shall be responsible for monitoring compliance with the rights of the EWC Representatives under this agreement and shall ensure that all Representatives are provided with all means to perform their role actively to increase the effectiveness*

*of the EWC. Furthermore it is responsible for ensuring that the employees are released from their work duties to attend the EWC or Steering Committee (if applicable) meetings.*

On the other hand we see that participation of local reps in the EWC may lead to more respect for them from local management.

Notwithstanding all these problems, some highly effective EWC's sometimes cut through barriers by simply drawing up an opinion on things they find important and presenting this to management at the meeting. In these cases management often feel obliged to respond.

Some participants also mentioned the importance of striving for a positive trade unionism. Currently many EWC's have to deal with closures and restructurings where the EWC can only take a defensive position. More positive results might be possible on issues such as health & safety, new investments, etc. It may also sometimes be useful to use management arguments.

After the initial, "setting-up" negotiations, many EWC's follow a certain development path. This shows the initial importance of the law to be able to set up an EWC at all, and the importance of a tactical use of pressure and persuasion to develop the rights and facilities of the EWC. For example an EWC has argued that without better information and consultation the money invested in the EWC is not really used efficiently. This is the kind of argument management can understand and it seemed in this case that management was willing to improve upon the situation. On the other hand we have seen examples of EWC's successfully breaking through management blocking tactics by threatening to go to the press and publish management's reluctance to make improvements. This shows that we must take on a dynamic approach if we want to study the roles and possibilities of EWC's.

Below we give an example of such a development path:

## Relation of EWC and central management:

### Development path:

### Example:

- |                        |  |
|------------------------|--|
| Initiative:            | <ul style="list-style-type: none"><li>- worker reps. request setting up of EWC</li><li>- management is reluctant</li></ul>   |
| Negotiations:<br>(SNB) | <ul style="list-style-type: none"><li>- management accepts inevitability</li><li>- workers reps. demand more facilities</li></ul>  |
| First meeting(s):      | <ul style="list-style-type: none"><li>- management discovers usefulness of EWC as means of communication and building support for company strategy</li><li>- workers reps. try to overcome practical difficulties</li><li>- management takes over the initiative</li></ul>                   |
| In due course?         | <ul style="list-style-type: none"><li>- worker reps. try to make consultation work</li><li>- management loses fear of EWC</li><li>- management opens room for consultation or negotiation to harmonise international industrial relations and improve 'efficiency' of negotiations</li></ul> |

# ***Relationship between EWC members, with the workforce, and with the trade unions***

***by Nick Clark & Sean Bamford***

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## **Introduction**

The EWC Directive is aimed at informing and consulting *employees* and at the same time clearly envisages that this should be conducted via, or at the very least, involving, *employee representatives*. At no stage in the Directive are trade unions mentioned, although they clearly enjoy legally recognised status as employee representatives in many but not all EU Member States.

Trade unions, both at national and European level, have been anxious to ensure that they are not excluded from EWCs, and that EWCs are not used to reduce the role and rights that unions have at national (or company level). However, the differing structures of employee representation in different Member States, and the different roles of trade unions within those national systems has often led to differing perceptions of what relationship is most appropriate between the EWC, the national and local works councils and trade unions.

In some countries, purely company affairs are seen as the responsibility of local representatives (who are probably trade unionists, but may be elected by the workforce as a whole), with unions having a role more in industry-level collective bargaining and relationships with government. In other countries, unions (including full time officials or seconded representatives) may have an important role to play in relationships with a company at national level.

Companies, meanwhile, may have another view, and some have tried to circumvent or minimise the role of unions, as representatives of the workforce or as experts on the EWC.

EWC members may find themselves, therefore, in the heart of a complex set of relationships:

- Between themselves and central management.
- Between the different systems of representation which have led to them sitting on the EWC.
- Between themselves and their own national constituency of activists and representatives.
- Between that constituency and the entire workforce.
- Between the EWC and the national and EU-level trade union organisations.

### **Relationship between EWC members**

A number of factors can impair the effective working between EWC members. There are the perennial problems of language, culture, differing labour laws and trade union structures; all of which can lead to misunderstanding and suspicion. A number of strategies can be deployed at least to ameliorate these difficulties.

#### **UNILEVER**

Have drawn up a standard information sheet for acquiring information from plants in the different countries. This requires minimum translation, given that only the changes (bits filled in) need to be translated.

Such standard information sheets not only cut down on translation costs. They focus discussion helping to overcome another problem: information overload.

Another way of dealing with the language problem can be to do a skills audit of your members to see what language skills they have.

#### **BAYER Spain (Catalonia)**

Delegates who have language skills are being trained up to initially support CCOO EWC representatives but who may then in time go on to take over the job.

More frequent meetings of the EWCs are undoubtedly beneficial, although this is often met with resistance from employees.

The establishment of an effective Select Committee driving the EWC can also contribute in this area. More frequent meetings of this smaller group of EWC representatives helps to engender greater understanding, trust and solidarity.

### **BARCLAYS**

Issue-related working groups are established which maintain links between full meetings.

The differences in legal rights for employees in different countries can create acute difficulties. For example, in Germany a workers representative may sit on the companies Management Supervisory Board. This can create the feeling that there are two different tiers of representatives; those taken in to the confidence of management and ordinary EWC representatives who are not. Those workers representatives who serve on the company Supervisory Board can also be seen to be complicit in the Company's decisions – particularly painful if they threaten jobs in other countries.

There is no easy solution to these inequities in information rights, which spring from differences in domestic labour laws. Two general strategies however recommend themselves:

- EWCs need proper training which sensitises them to the different rights to information and involvement which exist in the countries their fellow EWC members are drawn from.
- Having developed an understanding of these differences in information rights EWCs need to use them positively with information being “socialised” across the EWC.

A particular problem that can arise is workers representatives being sworn to abide by financial confidentiality. For members of the

Supervisory Board this may be backed by domestic law. In other instances EWC members may be given information by management but bound to secrecy by nothing other than their word. Some EWCs have come to the conclusion that information obtained in these circumstances can be destructive, undermining relations within EWCs as well as between the EWC and the workers they represent.

#### **ABN AMRO**

The EWC found a way around this problem by agreement with the company whereby some kind of information is only considered to be confidential for a period of 24 hours.

A reoccurring and major problem identified was the fact that some EWC members are not trade unionists nor elected by those who they are supposed to represent. This ultimately makes effective working between EWCs and trade unions difficult but also within the EWC. Non-trade union EWC representatives seem to be following a different agenda.

Again there is no easy solution but the following were identified as being important:

- Ensuring that management accepts that EWC representatives should be elected in accord with the laws and customs of the country.
- Union commitment to the process of gaining effective trade union representation within EWC's – including offering support such as training and expert advice.

#### **TYCO**

When the Agreement was being negotiated the trade unionists on the Special Negotiating Body insisted on a clause requiring EWC members to be elected from representative bodies (works councils or trade unions), or in cases where they did not exist, according to the law or custom and practice in the country concerned. This ensures an election procedure free from management control or interference.

Even where there has to be an election across the workforce, trade union co-operation can ensure significant trade union presence. TUC affiliated unions did this in P&O resulting in the unions taking all 5 British seats.

The problem is not helped by the low levels of union density in many sectors of the economy within many EU countries. For example in the Dutch banking sector there is 10% union density. In such circumstances a pragmatic approach needs to be taken.

Given the relative lack of experience that EWC representatives have it was considered most important that they could learn from each other. This should however be done not only within EWCs but also between EWCs.

### **Catalonia**

The Study Circles for EWC reps organised by CCOO in Catalonia have proved very useful in allowing an exchange of information and experiences between EWC reps from different companies also involving TU industry federations.

There was a general feeling that unless one could get to know how other EWCs functioned it was not possible to identify in any meaningful way what constituted good practice.

It was also pointed out that there was a need for a proper induction programme for new EWC members. At the minimum new members should be given back copies of minutes and relevant policies and agreements.

### **Relations with Unions**

Ensuring that as far as possible EWC members are drawn from the trade unions was seen as the most important factor in ensuring that there is effective co-operation between the unions and the EWC. Important as this consideration is, it is not sufficient. Unions needed to have a positive attitude to EWCs and be willing to commit resources to ensure they

work. For instance, in the UK the T&GWU has accepted the task of co-ordinating the British EWC members in UNILEVER. In other instances where there are competing confederations or unions they need to work together to ensure EWC representatives have the maximum support and mandate. For example in Spain the CCOO and UGT have agreed a system between them for the appointment of EWC representatives.

Considerable difficulties arise because whilst multinationals often take decisions centrally the effects of these decisions are felt locally. There is a need to ensure better co-ordination through regular contact between the EWC at the European level and the unions at the domestic level.

#### **BAYER**

In Spain, the BAYER Spanish Forum was negotiated, which is the transposition of the European Forum to the Spanish national level. It is an information and consultation body between the unions and BAYER ESPANA. This organisation allows for trade union co-ordination between all the workplaces of BAYER in Spain.

There are other examples of national forums that have been agreed to replicate the function of the EWC at a national level. In the UK such forums have been set up by NESTLES and NORTHERN FOODS.

This role could be played by national group Works Councils provided for by national law or collective agreements (France, Germany, Nordic countries for example)

Belgium transposition law allows meetings of EWC representatives with the company's shop stewards from the whole of Belgium.

A number of EWCs reported the reluctance of management to allow Union experts in to EWC meetings. A number of strategies we identified as helping to overcome the problems associated with these objections.

One suggestion was that unions should lead training sessions for the EWC before the pre-meeting and meeting with management.

A major continental company did not allow union experts into the EWC meetings. But after a time they changed their line and allowed unions in on the condition that a “confidentiality” statement was signed, binding the union expert to the same confidentiality rules which applied to the EWC members as stipulated in the EWC Agreement.

The point was mentioned that unions were in a unique position to draw together their representatives from a number of EWCs which not only would enable the EWC members to learn from each other in training sessions and conferences but also allow the unions to become more actively involved.

### **Relationship with workers/members**

EWC representatives were at times faced by a degree of hostility from members who at times saw them as complicit in the decisions taken by the employers. This arose out of a misunderstanding about the role and the powers of the EWC. EWC's were at times in a position that they had to agree they had been consulted but this was not the same as saying they had come to an agreement over what was to be done!

More frequently the problem encountered was the indifference of members/workers to the work of the EWC. This indifference it was felt would only be overcome if the workers/members were properly informed about and involved in the work of the EWC. A key factor in achieving this objective was to ensure that the work of the EWC was clearly linked into the democratic structures of accountability that already existed in unions and works councils. Other measures could however help.

#### **VALEO**

In order to generate greater awareness of the work of the EWC, each of the Steering Committee meetings is held at a different site, not just at the headquarters of the company.

#### **UNILEVER**

After each EWC meeting a brief information bulletin is circulated among

the staff. Twice a year there is an European publication and the EWC has its own website (also open to the unions).

**BAYER – Spain**

CCOO in BAYER has its own website to inform all workers of the activities of the Bayer National and European Forums.

**UNILEVER – UK**

Have obtained the agreement from management that EWC representatives can visit company sites, where this is no EWC representative, in order to inform staff about the work of the EWC. It is important to ensure that these sites do not feel left out or isolated.

In another instance an EWC uses the company's email system to keep members informed. Because of the lack of security in using the management's networks, where communications are sensitive private email is used. In general email has proved helpful to effective EWC working.

The conduct of the EWC meeting could feed the cynicism of members/workers. EWC meetings were frequently seen as free foreign holidays where EWC representatives were wine and dined in expensive hotels.

**AWA**

In the meetings of the EWC, the "tourist programmes" and the superfluous dinners with management have been abolished.

These "tourist programmes" not only breed misunderstanding about the real value of the work of EWCs amongst members but were a distraction for EWC members themselves. A reoccurring theme being the little time EWC members from different countries had to spend together and therefore it was important that as much of this time as possible was productively spent on business.

A fundamental problem for many EWC representatives is the sheer lack of facilities that are afforded to them by their employers. In some ins-

tances time off for EWC activities is limited to the plenary meetings only. In these circumstances keeping members informed is extremely difficult as is developing an effective EWC.

## **Conclusion**

In reviewing the relationship between EWC's, other workers representative bodies and workers themselves one needs to appreciate:

- The sheer complexity of these relationships.
- The differing remits that these differing representative bodies may have.
- The fact that whereas big business and EWCs operate on a European (or global) basis unions are still essentially national structures.
- That these difficulties are compounded by the fact that EWCs are relatively new structures whose members are by necessity relatively inexperienced.

Despite these problems EWCs are groping towards solutions. Good practice is being established every day. It is however paramount that this good practice is made available to all of those representatives who sit on EWCs. In both capturing and disseminating good practice initiatives like the "Research Circles" are invaluable.

Despite the determination and innovation of EWC representatives some of the problems they face are deeply structural and are not directly in their power to change. There is a challenge to trade unions to respond to the company structures as opposed to the national, regional and sectoral focus which they currently have. How can unions intervene to effect the decisions of companies where they are taken in another country or indeed another continent? For all their faults EWCs in their embryonic form show how trans-European co-operation can, through constant effort, be achieved.



# ***Company restructurings***

*by Carlos Vallejo and Robin White*

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## **Introduction**

Company restructurings cover a very wide area and can be considered to include any major change taking place within the company. For our purposes, however, company restructurings are those changes which have an important effect on working conditions and often, though not always, involve job losses. To understand more of what is going on we can look at some possible **types of restructurings**:-

- **Rationalisation of production between plants.** In Europe this is especially associated with the creation of the Single Market in 1992 when the multinationals, instead of producing the whole product in different countries to get round tariff barriers, restructured their operations to satisfy the whole of the European market producing part of the product in one country, part in another, with final assembly somewhere else. These types of restructurings still continue, however, with the closure of the RENAULT plant in Vilvoorde, Belgium being a classic example.
- **De-localisation of production, within the E.U.** ..... The lack of a "level playing field" in Europe makes social and other kinds of dumping a real possibility. Some examples are VALEO, ARJO-WIGGINS, BAYER and XEROX.
- **.....and outside the E.U.** The favourite sites are Eastern Europe (soon to be inside the EU in any case) with examples such as GENERAL MOTORS and VALEO, and North Africa (Morocco is soon to be in a free trade zone with Europe) for VALEO, DELPHI, LEAR and other motor industry suppliers. At the time of writing however, telecommunications companies such as PHILIPS and ERICSSON are de-localising to green-field sites in China.

- **Downsizing via technological change**, for example in the financial services sector.
- **Downsizing via changes in the organisation of work**, for example in the automobile industry.
- **Outsourcing**. This is the most recent management strategy.

What are the **reasons for company restructurings**? The general reason is the search for more profit, but the context in which this takes place can vary. The following are some different contexts which to a large extent have appeared consecutively in the push towards deregulated markets and financial dominance in the world capitalist system.

1. **New investment** which leads to productivity rising faster than possible market expansion will cause the company to restructure through shedding or redirecting labour. These restructurings may well be “cold” rather than “hot”, as the new investment may well come piecemeal and the subsequent job losses through haemorrhaging rather than amputation.

“Cold” restructurings are to “hot” as industrial illnesses are to accidents at work. They are chronic rather than acute; less painful in the short term - indeed they may even go unnoticed for a time - but in the long term possibly the more serious of the two! European Works Councils have an important role here in analysing information and anticipating consequences.

2. **Market contraction** due to product obsolescence or a general economic downturn is a traditional reason for a company finding itself in the red and wishing to cut costs by restructuring. Another reason is simple bad management, which is far from uncommon. It can be difficult for workers’ reps and trade unions to oppose the logic of such restructurings, but in recent years the great majority of job-cuts and speed-ups and the deterioration in working conditions have been for other reasons.

3. **Market competition.** The advent of neo-liberal policies coupled with the application of new technologies created the global economy, and the watchword in this new world order was the need to be competitive. So company restructurings were carried out to keep up with, or to be one ahead of, market rivals. Changes in the organisation of work, perhaps more than the introduction of new technology, has been the motive force behind these restructurings which have often been “cold” rather than “hot”. These new management methods came originally from Japan and were often known as “Toyotism”, where you had to be “lean and mean” in order to justify your existence.
  
4. **Short-term pursuit of share value.** The most morally repugnant and socially unacceptable logic behind restructurings appeared with the increasing domination, and volatility, of the financial markets in the late 1990’s which led to the pursuit of short term profit above everything else, and to subsequent restructurings to maintain or increase the value of the company’s shares. These speed-ups, sackings and plant closures have little or nothing to do with any economic problems facing the company; they are purely and simply to satisfy the expectations of shareholders. HEWLETT PACKARD closed its production facility outside Barcelona despite its being successful and profitable.

A final note: these classifications are ways of understanding different types of restructurings and the motives behind them. In real life, however, company restructurings may conform to a mixture of these different types.

### ***EXAMPLES OF BEST PRACTICE BY E.W.C. AND TRADE UNIONS***

#### **a. information,**

**Information about the company and its plans** is a central right of European Works Councils. Good and timely information has been found

crucial for any kind of trade union strategy for dealing with restructurings of transnational companies.

#### **Clearest advance won by EWCs**

Reps from UNILEVER are clear that quality information in good time is the most tangible gain that has been won by their European Works Council. They have also achieved homogeneity of information from the company across Europe, which makes co-ordination and organisation of the union side much easier; while the fact of receiving timely information means they are able to negotiate better, irrespective of the level at which these subsequent negotiations are taking place.

Nevertheless, nothing is given to us on a plate and in order to be able to realise the right to company information and to make use of it a European Works Council needs to be co-ordinated, cohesive and proactive. In practice this means being trade union based, with the reps working closely with their respective union organisations, and with a well-chosen expert who is able to provide analyses of company information and discuss strategy with the EWC in order to anticipate changes.

#### **Other sources of information**

In the search for information a number of EWCs have found it necessary not to limit themselves to what the company tells them but to make their own investigations as well, making use of the international financial press and Internet sources. One EWC member in an American multinational started up e-mail correspondence with an American academic about the likely future strategies of his particular company!

But even good information may not be enough.

#### **Which plant?**

At UNILEVER the EWC has found that although they have plenty of information from a variety of sources which enables them to predict in advance if the company is planning to downsize or to close one of its

plants, they are nevertheless not able to predict which plant, or which country, is going to be effected. A clear idea of where there is under- and over-capacity is obviously important in this situation.

What about **consultation**, the other basic right of European Works Councils? This concept was clarified by the interim ruling (4-4-1997 in B.O. 97/00992) of the *Tribunal de Grande Instance* of Nanterre, and in the final instance by the *Cour d'Appel de Versailles* (7-5-1997), after the case of RENAULT's "non-consulting" closure of their Vilvoorde plant in Belgium. The Versailles court regarded as "manifestly unlawful the failure on the part of a leading firm with its headquarters in France to inform and consult the workforce prior to the public announcement of a decision to simply close a production unit of a Belgium subsidiary employing 3,000 workers, who were thereby faced with the possibility of redundancy and the accompanying adverse effects".

An important aspect of this judgement is that the courts ruled that Renault's lack of consultation was unlawful even though the EWC Agreement (a voluntary one signed in 1995) did not actually stipulate that prior information and consultation was required. The courts based their judgements on legal requirements existing in the EWC Directive, as well as point 17 of the Community Charter of Fundamental Social rights and art. 2, para. 1 of the Social Policy Agreement. But the really significant result of the ruling is that information and consultation must be "useful" in their effect.

In spite of this however, many European Works Councils feel that their consultation rights are much weaker than their rights to information. Reps from UNILEVER's EWC have gone so far as to state categorically that: "We have won the right to information, but we still don't have real consultation". This feeling no doubt results from a lack of ability to impose the workers' own agenda on the consultation process. Management may consult, but then they go ahead and implement their original decision anyway. To make any headway we have to change the balance of forces, which gets us back to workers' and trade unions' strength and organisation.

Some EWCs have **used the consultation process to gain valuable time** needed by the experts to analyse the information, and by the EWC to discuss it,....

#### **More time**

One EWC sometimes delays the implementation of Management's plans - giving them more time to organise a response - by insisting that they are "officially" consulted at a future meeting set up for that purpose. In this case the Dutch legislation, as well as the balance of power with the company, may be an important factor.

...or to **gain more information** when they felt they needed it.

#### **More information**

When SCHLUMBERGER wished to spin-off its utilities division the consultation process was used to ask for more information to enable the EWC to discuss together with the experts and formulate a response. This was possible because the EWC agreement comes under French law.

#### **b. and co-ordination...**

**International co-ordination and organisation** are necessary if workers are going to confront the multinational companies on anything like an equal footing. European Works Councils are playing an important role in achieving this and in recent years big advances have been made.

#### **Advances in international communicative skills**

The German motor industry supplier company FRAPE BEHR has a factory in a small town in north-east Spain. An EWC rep at this plant said that she felt handicapped because she could only talk directly with one of the plants in Germany - where there happened to be a Spanish speaking rep. To communicate with reps from the other German plants she had to go through her Spanish speaking counterpart which she felt to be unsatisfactory. This level of co-ordination and sophistication in communicating at international level is a far cry from what used to happen even a few years ago.

Reps are no longer overawed at the prospect of meetings in foreign lands. Other trade union systems are understood, at least for the practical purposes of understanding where other members of the EWC are coming from, and language barriers are seen for what they are - barriers to be overcome, and not blocks to communication and understanding. EWC reps have not only learnt to use the pre-meeting in the annual get-together as a focal point for co-ordination but ongoing co-ordination throughout the rest of the year is now the order of the day in active, trade union based EWCs.

### **Training sessions**

UNILEVER reps make the most of pre-meetings at their annual plenaries by extending them into training sessions

The e-mail revolution has been crucial in developing the horizontal communication which alone is sufficiently agile to be able to respond - almost in "real time" - to the rapidly changing world in which the multinational corporations operate. Use of company e-mail is one of the most important new social rights which is currently being fought for and won.

### **E-mail - a new social right**

Trade unions are campaigning for the use of company e-mail as of right. The global union UNI has been very active in this field. In Spain the CCOO union in the BBVA bank won an important ruling from the "Audiencia Nacional" recognising the right of unions and their representatives to use company e-mail.

### **c. ... can lead to action**

First, a **local problem** that was resolved by combining local and international co-ordination and mobilisation.

### **EWC involved in local victory**

There was a rumour that UNILEVER was intending to close one of its plants in Spain. The unions in the plant mobilised with demonstrations

and protests in which local politicians and town councils were involved and which got coverage in the local press. But the European Works Council was also involved and was invited en bloc to visit the plant. Again local politicians were involved and articles appeared in the press. As a result of all this the company issued a statement saying that they had never had any plans to close the plant – that it had all been the result of rumours – and furthermore, that they never would have any such plans! A victory! – at least for the moment!

A number of things were learnt from this experience. That the union can get results by anticipating and being pro-active, mobilising locally and building alliances with local politicians and the press, but especially when it combines this with mobilising at the international level, in this case with the involvement of the whole European Works Council. Finally, the added-value of “bringing the EWC to the people” meant that workers had a much clearer idea of what it about, who its members were, and how it could be directly useful to them.

The story of the UNILEVER plant in Spain is a good example of how international co-ordination through the EWC can help win a local battle. But the big challenge for European Works Councils if they are going to challenge company restructurings is how to achieve a genuine **transnationality** in their work together, and how this can lead to **real solidarity action**.

“**Transnationality**” is a concept used to describe the idea of a European Works Council working together as a whole, with members having not just a collective but an international mentality as well. This is vital to apply to the international level the basic trade union principle of uniting and meeting the boss collectively. A formally well functioning and co-ordinated EWC with good facilities and ample information may be necessary but it is nor sufficient, and is no guarantee against the fetishism of national frontiers and falling into the divide and rule trap.

## Examples of trade union solidarity across national frontiers.

### **Solidarity information passing**

Reps in country X heard from country Y that production was going to be moved there, and that the company was planning to close a factory in country Z. Local management denied any knowledge of these plans – and indeed may not have known. Reps in country Y confirmed the rumours. What was notable in this case was that EWC reps in country Y chose to share their knowledge with counterparts in country X, rather than just sitting back as the beneficiaries of these management moves. Because of their timely warning the EWC was able to act quickly and made it clear in both countries X and Z that unless they were properly consulted about any such moves well in advance they would react very strongly. At the time of writing management has not implemented this plan.

EWC reps have increasingly found that key company decisions concerning production are made centrally, rather than by local or national management who may not even know about them. This means that it is vital to share information across plants and across countries, and very often of particular importance to link in with reps working at company headquarters

### **Flexible solidarity**

At SUEZ LYONNAISE the experts for the French works councils make available their analyses for the EWC of the company, ie: for the rest of the European workforce.

EWC reps often say that what's needed is for them to have the **right to negotiation**. This is a tricky issue and needs to be looked at carefully.

On the one hand, if key decisions are increasingly being taken by central management then it's logical for negotiations to take place at the international level. Otherwise we are allowing companies to act unilaterally, or at most are limiting ourselves to rearguard actions at local level. At least in the case of European based companies this would appear to

put EWCs in the front line. But we need to be careful here because if company negotiations are to be carried out at European level, who is to conduct them? – the EWC? What about the European trade union federations, or the unions at national or regional level in the countries concerned. If negotiation rights are won at the European level then effective co-ordination between EWCs and the trade union bodies concerned will be even more necessary than it is now!

But with company negotiations at national level we can still go quite a long way *if* we have won the battle of receiving information in good time *and* have effective trade union co-ordination across national boundaries. If national trade union negotiators in different countries co-ordinate their demands and negotiating strategies and tactics, what would happen? The problem seems to be more one of international trade union co-ordination rather than whether or not negotiations take place at the European level. In section *a)* under **Information**, for example, it was reported that EWC reps from UNILEVER had found that with good and timely information they were able to negotiate better,

#### **Protocol on Restructuring**

This has been agreed between the UNILEVER management and the EWC. Under it the company is committed to act in a socially responsible manner, to try and find a buyer for the plant in the case of closure and, in the case of a buyer being found, to try and ensure that the new owners respect the workers' wages and conditions.

Now let's look at the GENERAL MOTORS case - where the **EWC co-ordinated European-wide action to challenge the company's restructuring plans.**

#### **Closure averted and a restructuring framework agreement won.**

In December 2000 GM Europe told the EWC of plans to cut 6,000 jobs across Europe, 3,000 of them being at the Luton plant in the UK which was to close. Management informed the press at the same time, thereby violating both the EU Directive and the GENERAL MOTORS EWC Agreement which require timely and complete information to be given to

the EWC. The decision to close the Vauxhall plant at Luton also violated a job security agreement signed in 1998 with the British unions.

In January the EWC presented a list of demands which included: no closures or forced redundancy; transferred workers to maintain all their benefits; job cuts only on the basis of voluntary agreement or early retirement; improved productivity through product and sales campaigns; all existing agreements to be honoured.

With the aim of securing a framework agreement covering all sites, the EWC called a Day of Action on 25 January to pressurise management to come to the negotiating table. There were work stoppages in the UK, Germany, Belgium, Spain and Portugal with 40,000 taking part in rallies. With plans for more industrial action in the pipeline management agreed to negotiate. On 5 March a **framework agreement on restructuring** was signed which contained the following points:

- No redundancies from restructuring measures before 2005
- UK plants to be maintained with a guaranteed growth in capacity
- No disadvantages for workers transferred to other locations
- Union recognition and employee representation to stay the same

The GM case can be considered a breakthrough. It was a victory which stopped in its tracks the company's plans for massive job losses and the closure of a plant. It was, said EMF General Secretary, Reinhard Kuhlmann, "a massive show of European solidarity" which, as the ETUC noted, "had halted the planned closure of the Luton plant". The ETUC went on to say that the framework agreement is "a basic building block for a code of conduct on restructuring and job stimulation in the car industry."

If the GENERAL MOTORS agreement can be a building block for car workers, then it can be a positive example for all workers in Europe, showing what a well organised European Works Council can do when there is solidarity between workers!

## Conclusions

**Good information received in good time** from the company has been found by EWC reps to be essential in dealing with company restructurings; likewise **co-ordination and organisation** at the international level. The first has been won and the second achieved by European Works Councils in very differing industrial sectors. The choice of an **expert** for the EWC who is capable of **analysing information in order to anticipate changes** is another point where there is across-the-board agreement.

But while necessary to challenge company restructurings these elements have not been enough in themselves. **Active mobilisation with solidarity action** has been needed for workers to win, whether anticipating a possible crisis as with UNILEVER, or in dealing with one as at GENERAL MOTORS.

A number of reps, particularly from France, called for changes in the law at national and European level to give workers stronger rights. In the wake of the recent wave of restructurings and dismissals the EU Commission has announced a series of measures and intentions to improve the situation. These include: speeding up the approval of the three social Directives (on information and consultation, on the European Company Statute, and the renegotiation of the EWC Directive); drawing attention to existing EU legal obligations relating to restructurings; and consulting with social partners on the development of corporate responsibility in facilitating change.

But experience has shown that an improved legal framework of rights will need organisation and action on the part of EWCs and trade unions in order to be effective.

# ***Facing up to Mergers, Takeovers and Outsourcing*** ***by Evelyne Pichot and Thierry Jouvét***

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## **Introduction**

*Processes involving mergers, takeovers and outsourcing of companies are becoming more and more widespread, rapid and complex and have decisive consequences for employment and the future of businesses. We have seen just how significant and differentiated these processes are in the companies taking part in the EWC Research Circles seminar.*

*How can we deal with this? How can we correctly gauge the stakes involved and our room for manoeuvre? What can we do to defend the workers?*

*We have sought to identify the major problems encountered by European Works Councils and the solutions that have been found, or are conceivable, concerning:*

- the obtaining of information;*
- contacts and links between representatives of different companies;*
- the working out of analyses, opinions and proposals;*
- relations with the authorities regulating competition;*
- the adaptation of European Works Councils to changes in company size and composition;*
- modes of action.*

## **Major challenges involving big stakes**

Mergers, takeovers and outsourcing represent a huge challenge for members of European Works Councils. Such processes soon lead to major changes in employment, as a result of the restructuring associated with them, and in working conditions. They also generate decisive

modifications in the organisation and future of the group's activities and positioning.

The challenges present themselves at various different levels, from the local right up to the European, including matters such as balancing the interests of different countries and the evolution of the enterprises in question. The time in which the approaches are decided and the challenges laid down is extremely short. And the workers' representatives have to face up to them at the same time as the organs of representation and the balance of forces between unions are being modified.

As a result of a series of takeovers, the VALEO group, for instance, increased its workforce over a period of 20 years from 1,000 to 75,000. It first diversified and then refocused. Every year another large company was bought up. Such external growth was pursued in order to eliminate a competitor, to acquire market share, to complement its existing operations or to follow a car manufacturer setting up new facilities. These takeovers entail duplication, followed fairly quickly by restructuring or closures with redundancies.

The merger between UNILEVER and BESTFOODS created the biggest European enterprise in its sector. By the same token, the duplication of production sites has led to a major restructuring.

BAYER has developed a plan, based on outsourcing, for reorganising its accounts, concentrating them in two centres in Europe under the form of specific companies. One of the first consequences of this move has been the axing of jobs elsewhere in the group, although its public statements have mentioned the creation of jobs in the new companies. In the new firm set up in Spain, wages and conditions are poor as new workers are taken on. The collective bargaining agreement applicable there is the least favourable to workers of all the agreements and distinctly worse than the original agreement covering the chemical industry.

In short, certain groups are going through a succession of processes involving major uncertainties. Thus, at SUEZ-LYONNAISE, they have

experienced a major merger, a number of takeovers and the selling off of an entire sector all in quick succession. This last operation was carried out in order to raise the cash required for a big investment in telecommunications, another sector in which the group operates. In the end, however, it was unable to pull off this transaction, the acquisition of a UMTS licence. The group's decisions are in fact dependent on the decisions of national governments, whether they are to do with telephony, water privatisation or the prices of utilities. And this has huge consequences.

### **Processes to be distinguished**

The processes of mergers, takeovers and outsourcing affect companies and groups in different ways. Those taking part in the EWC Research Circles seminar underlined the need to look carefully at these differences, as the repercussions of, and ways of facing up to, these processes are similarly diverse.

The TYCO group, for example, a holding company of hundreds of firms, starts a new merger every day. These takeovers are carried out independently by the various different branches of activity. They are pushed through in order to eliminate a competitor, to develop products showing good potential or to position the group in a new country. In the space of just two years, the number of workers employed by the group has shot up from 200,000 to 300,000. The changes are happening so fast that it is extremely hard to grasp the exact limits of the group and to integrate the workers belonging to the newly acquired companies. The consequences for the branches' operations and for the workers are very different depending on what originally motivated the acquisition in question.

Following a different course, GENERAL MOTORS and FIAT have set up a joint venture whereby a gradual process over a four-year period is set to culminate in its acquisition by FIAT. The workers in the new company who were originally employed by GENERAL MOTORS have obtained a guarantee that they will be taken back into this group if the process fails.

# 1. Facing up to the Challenge : Obtaining the Necessary Information

## Keeping and updating basic information

Keeping basic information up to date, such as the list of companies and units, the number of workers, the activities, the existence and the details of workers' representatives, etc., is essential in order to be able to face up to the challenge of a major operation. This basic information also enables the workers to have international and sectoral reference points and to anticipate possible operations.

However, it is often difficult to obtain such information and finding it and updating it can be a lot of work. Different channels can be used, including taking part in board meetings and general shareholders meetings.

### Using different information channels

One convener of a European Works Council puts in regular requests for information to the management, surfs the Internet in order to keep the information up to date and gathers information on new acquisitions from the national or European competition authorities.

### Using the European Council's network and economic expertise

In the VALEO group, the European Council members' network has proved essential for obtaining and exchanging basic information as well as information in time of crisis. Having an economic and strategic analysis available to the workers' representative bodies also allows them to anticipate likely operations and to place the operations that are undertaken in their context.

## Obtaining confirmation and more precise details concerning rumours and media news; holding meetings

In the case of major operations, rumours or news stories in the press often precede the information reaching the workers' representatives. Local management teams generally have little information, so it is use-

ful for the EWC to have access to central management, even if in certain cases central management claims that it is not a transnational matter.

Representatives must nevertheless be aware that there may well be a gap between the announcements in the press, or the initial plans, and their actual implementation. This is exactly what happened with SUEZ-LYONNAISE's project of acquiring a UMTS licence.

#### **Obtaining more accurate details**

The European Works Council at UNILEVER asked management for more precise information regarding the news of mergers that had been reported in the press.

When news of a merger with SEMA GROUP appeared in the press, the SCHLUMBERGER group's French Works Council demanded information from central management and found the price of the acquisition on the group's Internet site. The representatives of both European Councils then met and exchanged information.

#### **Holding several meetings as required**

The ABN AMRO European Council held several meetings and set up a number of working parties until it obtained sufficient information.

## **2. Facing up to the Challenge: Forging Links**

### **Whatever the fears may be**

Differences in culture, perceived conflicts of interest and power relations can constitute obstacles to establishing links between representatives from the different groups involved in a particular operation.

For example, in the UNILEVER-BESTFOODS merger, there were no discussions between the European Councils during the six months while it was being studied by the competition authorities. There was a big difference in the information held by the representatives of the two groups. This came about largely as a result of fears over the choice of which units would be kept or developed in the future.

### **Establishing contact despite the difficulties**

There was no common experience between the workers coming from GENERAL MOTORS and those from FIAT and it proved impossible to arrange any co-ordination or joint tactics between the workers' representatives when the two groups started to come together. However contacts and exchanges of points of view eventually took place between representatives of the two groups and a worldwide meeting was organised.

### **Developing co-operation**

Co-operation is easier when the groups and cultures are similar to each other and the representatives belong to trade unions, but this is not always the case. The development of networks and links in advance is extremely important in facilitating the steps that need to be taken.

### **Co-operating and coping with differences**

Differences in activity, IT services and production mean that the workers of the SCHLUMBERGER and SEMA groups, which are due to merge, are different. Nevertheless, their representatives are convinced they will be able to "cope with the differences" by means of co-operation.

### **Organising one or more extraordinary meetings of the European Works Council**

An extraordinary meeting was convened to deal with the takeover of the WOOLWICH by BARCLAYS BANK. This improved the information available, even if it was not followed up by further action.

### **Starting to work together from the very first contacts**

RENAULT holds a stake in NISSAN, but does not have a controlling interest. That may change in the future and relations have already been established between the two European Councils.

### **3. Facing up to the Challenge: working out analyses, opinions and proposals**

#### **Being consulted, and not just informed, in good time**

Generally speaking, European Works Councils are informed, but there are still serious problems regarding consultation. It has proved particularly difficult to ensure that the information and consultation happen at the same time.

#### **Winning consultation rights**

As far as some UNILEVER representatives are concerned, the European Council was not really consulted, but that does not mean that it was no use at all. On the contrary, it was very useful for both the quantity and the quality of the information received, sometimes in good time, and for allowing and stimulating international trade union co-operation. The next challenge, however, is to win real consultation rights so as to be able to exert an influence on future mergers and takeovers.

#### **Successfully drawing up opinions and proposals**

It is no easy task working out opinions and proposals in a context where a lot is at stake, the room for manoeuvre is uncertain and there is a great deal of pressure. A quick economic analysis is needed to gauge what exactly the stakes and the room for manoeuvre are. The support of experts, so as to be forearmed with company and industry analyses, can be very helpful in this regard.

#### **Using experts and lawyers**

The representatives of several groups have stressed the usefulness of having experts and lawyers intervene to enforce rights and enhance the European Council's capacity for analysis and action. The resources of the representatives' national bodies, particularly the French, have been used to initiate such intervention in certain cases.

## **4. Facing up to the Challenge: making Contact with the Competition Authorities**

An important part of mergers, takeovers and outsourcing is subject to the control of the competition authorities. In the European Union this control is exercised by the European Commission's Directorate General for Competition (see procedure in the Appendix). Its calendar often determines that of the operations planned by firms.

### **Gathering information**

Some workers' representatives have already had occasion to be in contact with these competition authorities, The first reason for making such contact is to garner information, whether it is a matter of updating basic information on a group pursuing a policy of takeovers or in regard to a particular operation.

#### **In cases of community-scale mergers**

All the information on the procedure set in train by the compulsory prior notification and on the decisions taken is available on the European Commission's server.

A non-confidential version of the information on the operation may be made available to the workers' representatives.

These possibilities have already been used by certain European Councils, e.g. UNILEVER.

### **Attempting to make yourself heard**

The managements, customers and suppliers of groups engaged in a merger process within the EU are consulted by the Directorate General for Competition, but not the employees. Nevertheless, the "recognised representatives of the workers" are entitled to be heard within this concentration control procedure and such a possibility has already been used, for example, by ELF, PECHINEY, CAT and LEGRAND.

Even if the Directorate General for Competition only looks mergers today from the standpoint of their impact on the creation or strengthening of a

dominant position, it may still be important to make the workers' point of view known from the outset, before any decisions on transfers are made. Such a hearing may get a commitment to measure and take into account the economic and social impact of the projects and decisions.

**Regarding the transfers required by the Commission before authorising a merger**

At the time of the merger with BESTFOODS, the Directorate General of Competition drew up a list of companies that UNILEVER would have to sell off before it authorised the deal. The European Council knew of these conditions but was unable to develop the capacity to influence the outcome at that time.

## **5. Facing up to the Challenge: using and adapting the representative structures**

### **Makes sure the workers are “really” represented**

In countries where there are few workers, the members of the European Works Council are often appointed by management. Whenever the group is joined by a major new organisation in a particular country, the workers must have the chance to be properly represented.

**Make provision for electing national representatives in the event of change**

The convenor of one European Council has highlighted the need to make provision in the agreement for replacing members of a European Works Council whenever a new organisation joins the group. He regards it as sensible to set a threshold of 70 workers in a given country before they are entitled to elect representatives.

### **Integrating the representatives of new organisations**

Integrating the representatives of new organisations may be difficult in view of the speed at which changes occur and the partial nature of the information concerning takeover operations. Different viewpoints may

also emerge between the workers' legal representatives and the unions regarding the setting up of representational structures.

#### **Renegotiating the European Works Council agreement**

Following the acquisition of the WOOLWICH, the composition of BARCLAYS' European Works Council was renegotiated, as the WOOLWICH did not have an equivalent structure, in spite of being present in several European countries.

#### **Making provision for integrating new representatives into the European Council and visiting them**

Whenever a takeover occurs in the European Union, VALEO's European Works Council agreement provides a mechanism for adjusting representation on the Council by bringing representatives from new countries onto it and rebalancing the proportion of members from each of the different countries if necessary. Whenever a new country joins the group, the European Council's select committee holds its next quarterly meeting in that country.

#### **Finding an organisational formula appropriate to the new situation**

Several years after the acquisition of TRACTEBEL by SUEZ-LYONNAISE, the European Council has still not been properly integrated. The representatives of the group that was taken over have not wanted this and different countries on the SUEZ-LYONNAISE European Council have not seen eye to eye. The solution which has been found for the moment is to re-organise the SUEZ-LYONNAISE European Council by divisions, with their own European meetings complementing those of the Council as a whole. The divisional meetings should focus on more concrete matters and facilitate the integration of the TRACTEBEL representatives.

#### **Bringing representatives together in the event of a merger**

Bringing representatives together in the case of a merger may be a rather delicate matter. One representative estimates that five years were needed to integrate the different cultures within his European Council

and to get to know the group, but the merger carried through recently has constituted another group that it will again be necessary to get to grips with. The difficulty in dealing with this type of new situation may even lead to resignations among the EWC members.

#### **Gradually bringing the European Councils together**

When the merger was carried out, the UNILEVER European Council arranged a meeting with the BESTFOODS representatives. The BESTFOODS European Council was maintained as a transitional measure, while two members of the BESTFOOD select committee joined the five members of UNILEVER's select committee, the two companies having 10,000 and 70,000 employees respectively. A new European Council agreement was then negotiated with five members from BESTFOODS and 6 from UNILEVER. Under this agreement, representatives will soon be elected by all 80,000 workers in the group as a whole.

#### **Renegotiating the European Council agreement**

Two chemical groups, each with its own European Council, entered into a merger process. With the involvement of the most representative unions, it was possible to reach an agreement on renewing the European Council, in spite of an agreement on redundancies having been signed just a few months before.

#### **Bringing the representatives together from the onset of the process**

As soon as the merger between SCHLUMBERGER and SEMA was announced, an information and action committee was set up between the European Councils with the goal of maintaining employment in both groups and links were made in the different countries. This co-ordination enabled the two European Councils, active in very different sectors, to continue functioning while having an overall view. In the next stage, a delegation from the European Council of one of the groups will attend the other group's European Council meetings before possibly going on to discuss the setting up of a common body.

#### **Ensuring, nonetheless, a minimum degree of stability in the European Council**

It is necessary for European Councils to adapt to changes, but so too is it for them to maintain a minimum degree of stability in their func-

tioning, especially when their interlocutors and management teams also change.

### **Resisting permanent change**

The management of a banking group would like the European Council to reflect the group's structure, but this group is forever restructuring itself. The European Council cannot keep changing like this if it is to be able to get on with its work and has requested that the European Council should have its own organisation that will allow it a minimum amount of stability.

## **6. Facing up to the Challenge: Obtaining Concrete Results**

Mastering the stakes involved, the room for manoeuvre and appropriate actions is easier at the local than at the European level. It is hard to act when major operations, in which political influences come into play, are being carried out. Nevertheless, representatives are faced with the need to act and achieve concrete results at the community level in just the same way.

### **Putting in place the means to act**

#### **Applying pressure**

Over the years, one European Council has improved its way of dealing with takeovers. In particular, it has kept up pressure on management to take into account the opinions of the workers' representatives whenever decisions are taken at headquarters.

#### **Taking legal action**

The convenor of one European Council considers that EWCs often have more power than many people imagine. If, however, negotiations and pressure turn out to be insufficient, he envisages the possibility of calling in lawyers to find a legal solution to the problem, making use, if necessary, of existing national resources. Another representative said that he keeps the threat of legal proceedings up his sleeve in case the management tries to block other legitimate moves.

## Keeping up links with the workers

Passing on information<sup>3</sup> to the units and workers affected by an operation is essential, especially when a position has to be taken or compensatory measures are being negotiated.

**Establishing links with the workers concerned** Using its statutes, UNILEVER's European Council has been able to make direct contact with, and pass on information to, the local representatives of workers affected by a takeover bid, outsourcing or decisions regarding the selling off of parts of the group taken by the competition regulator. A visit by a member of the European Council is provided for in such cases.

### Acting responsibly

The French convener of a European Council has said that he sends out regular information to the workers in various different ways. But he stresses that his mandate also leads him to take decisions in certain circumstances without systematically asking for the workers' opinion. One of the possible sanctions against an action contrary to the workers' expectations is not being re-elected.

## Delaying decisions

### Making use of the formal right to consultation

In a Dutch group, following a meeting at which they were informed of management's intentions, the representatives demanded that a subsequent consultation meeting be held, as happens in the Netherlands, in order to hold up the taking of a decision for a certain time.

## Obtaining guarantees

### Identifying the room for manoeuvre

A few years ago, SCHLUMBERGER wanted to close down a factory in

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<sup>3</sup> On the confidentiality of information, see the specific chapter

France and expected to do it in a month and a half. As a result of trade union pressure and negotiations, the closure took a year and a half and all the workers were found new jobs. If it is hard to have direct effect on a takeover bid, it may be possible to obtain more favourable results for the workers in the operations linked to it.

### **Different guarantees depending on the operation**

The European Council and the unions in a Dutch group were able to obtain certain guarantees by their actions and by reproducing guarantees agreed in similar cases. In the case of outsourcing, efforts are focused on the procurement solution and on maintaining benefits. In the case of downsizing, the guarantees sought include early retirement and voluntary redundancies.

## **Conclusion**

Transnational merger, takeover and outsourcing processes are multiplying and accelerating under diverse forms that it is useful to distinguish, as shown by the examples quoted in the introduction.

Even though they have barely had time to accumulate a fund of experience, the European Works Councils are faced with particularly vital, complex and tricky decisions and processes in relation to these operations. And the difficulties encountered by the managements with whom they negotiate in mastering and managing these processes only add to the uncertainties.

The representatives in the EWC Research Circles seminar have nevertheless developed practices which assist them in facing up to these processes and it is important to underline their interest for all European Works Councils. This is the case regarding how to obtain the necessary information and make analyses, where the work of keeping one jump ahead and the ability to enlist the aid of competent resources becomes decisive.

However, ensuring that serious consultation takes place, and does so in good time, is something that by and large still remains to be achieved,

in spite of the efforts of the European Councils in this direction. Companies' commitment to negotiating with the workers, on the one hand, and the effective exercise and strengthening of consultation rights, on the other, are necessary developments if the opinion of the workers in the companies are going to be really and seriously taken into consideration.

The way to approach the regulating authority intervening in such operations has been opened up by several European Councils, but the possibilities remain fairly limited. However, these authorities, such as the European Commission's Directorate General for Competition, take decisions that have major repercussions on employment and economic equilibria, especially when they require certain assets to be sold off in return for authorising mergers or takeovers. Generalising the taking into account of the workers as essential stakeholders in the company and a real articulation between the EU's competition policies and its social policies are indispensable. Otherwise, the results of negotiations between the two sides within companies will be completely cancelled out by external decisions that fail to take them into consideration.

Certain particularly interesting practices have been developed by a number of European Councils with a view to gradually bringing the workers and their representative bodies together in the event of mergers and takeovers. The existence of clauses allowing the European Councils to adapt to changes in the composition of their company or group facilitate such processes and have proved to be decisive. They should be generalised and eventually made compulsory.

However all the questions raised and the answers put forward here deserve further study, especially in view of their decisive bearing on the future of companies engaged in merger, takeover and outsourcing operations and their employees. The representatives in the EWC Research Circles seminar have expressed a real need to continue exchanging experiences and opinions on this subject.



## *Conclusions*

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### **THE NEED TO HOLD UP BOTH ENDS OF THE CHAIN**

There was 1994, HOOVER year. Then came RENAULT-VILVORDE year in 1998. Will 2001 be ALCATEL year? Within the space of a few months, the European telecom equipment giant announced a proposed merger with the American no. 1 LUCENT, which was subsequently abandoned. It then announced 20,000 redundancies followed by the selling off, over the next three years, of 108 of its 120 industrial facilities in Europe and the rest of the world. For many years now the ALCATEL group has had a regularly functioning European Works Council, including a select committee. However, at each of these three major strategic turning points, the group's management has first of all spoken to the media and the financial circles, short-circuiting the usual procedures of informing and consulting its European Works Council.

1994 had led to the adoption of the directive on European Works Councils. 1998 had established that the provisions regarding information and consultation had to be "useful in their effects" and had led to the preparation of a draft directive on this subject. 2001 will see the adoption of this directive and that of the European company statute. This will also open up the way to further work on the social regulation of mergers within the EU, companies' social responsibilities and the revision of the directive on European Works Councils.

It is in this context that the seminar organised in May 2001 in Barcelona by the Workers Commissions (CCOO) of Catalonia, the Dutch FNV Formaat, the British TUC and the French Groupe Alpha brought together members of European Works Councils whose regular functioning is without doubt well above the average of what is to be found among currently existing European Works Councils as a whole. This seminar was particularly rich in lessons. Using concrete and comparative examples, it showed how, in the current stage of the European Works Councils' development, optimisation of the regular, day-to-day functio-

ning of their structures and their ability to grasp the challenges relating to information and consultation with a “useful effect” on major strategic moves such as restructuring, mergers/takeovers, outsourcing and hostile or friendly takeover bids, were linked.

The European Works Councils are recently created bodies characterised by their combining different national industrial relations cultures and, above all, by the fact that they meet very infrequently. Proper functioning, enabling them to get the most out of these meetings, therefore represents a decisive challenge. So everything to do with setting meeting agendas jointly with management, sending out the relevant documentation in advance, the existence of adequate translation systems for written material and interpretation systems for oral contributions, is extremely important. But it is also vital for these European Works Councils to be the ones that management really negotiates with (even if it means organising branch groupings or commissions in multi-trade conglomerates) and above all for delegates to have time, communications resources and good assessment tools at their disposal.

The fact that plenary meetings of the European Works Councils are so few and far between strongly underlines the need for there to be a regularly functioning co-ordinating and liaison structure -a select committee- that can meet on an ordinary basis several times a year and on an exceptional basis in the event of major developments. It is in relation to this select committee that the ability to integrate different approaches to industrial relations is essentially decided<sup>4</sup> and it is around this committee that information networks are built up, providing the ability to both monitor and react and, consequently, legitimising these structures in the eyes of their local, national and European constituencies. The question of resources (facility time, travel expenses), size and inclusiveness beyond the “parent” country is also posed in regard to the select committees. And it is important that arrangements for assistance with economic and trade union expertise are regularly made at this level.

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<sup>4</sup> On condition that the select committee, like the European Works Committee, is made up of workers’ representatives and elected trade-unionists, and not members chosen by management, as is still too often the case.

Without strengthening these fundamental elements, the European Works Councils will have the greatest difficulty in meeting the major challenges posed for workers, and for them, by the implications of their firms' globalisation strategies.

Obtaining the relevant information in good time, without being systematically blocked by confidentiality clauses, having the means in terms of time and the availability of the necessary expertise, enable European Works Councils, or their select committees, to express well-founded opinions and make recommendations. In other words, as representatives of the workers, to be fully fledged actors, and not just a "third party", in managing change.

Many of the representatives gathered in Barcelona have had initial, insufficient experiences, often cut short, of managing such major strategic upheavals in their companies and have sometimes been able to obtain certain concrete results for the workers in Europe. Despite the limitations encountered and the frustration experienced, they have come out of this even more firmly convinced of the usefulness of the European Works Councils and the need to strengthen their prerogatives.

Developing serious consultation in good time is something that, to a large extent, still remains to be achieved. But a number of initial experiences have shown the road to go down in future, especially in cases of mergers and the need to take into account the viewpoint of workers and unions alongside considerations regarding competition. In this domain, the Barcelona seminar and other recent experiences have revealed the emergence of innovative new practices among both workers' representatives and management.

However these matters certainly deserve to be followed up and studied in greater depth, paying particular attention to the most advanced examples of "good practice" and the calendar of the European social agenda concerning European Works Councils, European companies and information and consultation.

Advancing along these avenues, making it possible to balance economic considerations against social considerations, is important not just for the workers in the European groups and their representatives; it is also a challenge for all social actors and citizens.

## Appendix I :

### PROVISIONS REGARDING THE CONFIDENTIALITY OF INFORMATION

(national provisions concerning national representatives or European Works Councils)

	Confidentiality provisions	Information excluded from information obligations and rights
<b>Germany</b>	"Members and alternate members of the Betriebsrat are obliged not to disclose and not to exploit the operating secrets or business secrets of which they have knowledge as a result of their membership of the Betriebsrat and whose confidentiality has been expressly indicated by the employer"	If the company's operating secrets and business secrets are affected
<b>United Kingdom</b>	Strict conception of confidentiality	(Precise financial and economic data with restricted circulation)
<b>Ireland</b>	Respect for the confidentiality of information provided in confidence (94/45/EC)	Information regarded as commercially sensitive by management if it can show that its disclosure would significantly harm the group's economic and financial position or that it conforms to the rules for withholding information contained in an agreement between management and the workers' representatives. In the event of failure to agree on the transmission of information: "independent arbitrator" (94/45/EC)

**Belgium**

The company manager may indicate the confidential nature of certain information, disclosure of which is liable to cause serious harm to the company, to the Works Council

The company manager may be authorised to waive the principle of compulsory communication regarding certain specific points (such as distribution margins) following a request, specifying the grounds, to the Ministry of the Economy. Requests to waive this principle are rare.

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**Luxembourg**

Respect for the confidentiality of business secrets or information expressly communicated by the company in confidence

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**Netherlands**

Respect for the confidentiality of business secrets, information expressly communicated by the company in confidence or information whose confidential nature the workers' representatives must take into consideration. Management cannot impose non-disclosure unless there are reasonable grounds for doing so on the basis of a document by management setting out the scope, the duration and the persons concerned (94/45/ EC)

In the event of the company manager refusing to supply the information requested by the Works Council, the "Professional Committee".  
When it is conceivable that the group's functioning may be seriously harmed (94/45/EC)

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**Denmark**

Duty to secrecy regarding confidential matters; specific cases on the grounds of the company's interests (94/45/EC)

Specific cases justified on grounds of the company's interests if the information would cause the company inconvenience or harm (94/45/EC)

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**Italy**

Respect for the confidentiality of business secrets or information expressly

Information that might disrupt the market; disagreements over the

provided by the company in confidence that is liable to cause serious harm to the company's functioning or activities  
Respect for the secrecy of industrial secrets and financial transactions (94/45/EC)

passing on of information dealt with by a tripartite conciliation committee (94/45/EC)

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**Spain**

Bound by professional secrecy, particularly in relation to economic matters and those specified by management.  
"No document whatsoever that has been entrusted to the works council may be used outside the immediate scope of the council or for any purposes other than those for which it has been so entrusted"

Information relating to industrial, commercial or business secrets, manufacturing techniques and processes, strategic commercial data on markets, customers or suppliers (94/45/CE)  
In regard to financial information, if its diffusion or use might seriously affect the company's functioning or cause irreparable harm to its economic or financial competitiveness on the markets or public confidence in its solvency, its functioning or the quality of its products (94/45/EC)

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**Portugal**

The members of the Workers' Commissions are bound to secrecy regarding the information they receive as confidential. The employer must justify the confidential nature of the information

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**Greece**

Obligation to maintain the confidentiality of information that is particularly important for the company  
Possibility of agreement in regard to passing the information on to third parties

The matters covered by professional secrecy (banking and legal transactions, questions of national importance, patents, questions of fundamental importance for the company, the disclosure of which

would have major effects on the company's competitiveness, etc.) are excluded from the right to information, unless the Court rules that they should be communicated

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**France**

Members of the Works Council (Comité d'Entreprise) and trade union representatives are bound by professional secrecy concerning manufacturing procedures and are obliged to exercise discretion in regard to information of a confidential nature presented as such by the employer  
Accountancy experts assisting the Works Councils are bound by professional secrecy

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**Sweden**

A party having a duty to furnish information may negotiate its confidentiality; if such negotiations are unsuccessful and there is a risk of serious substantial harm to one of the parties or to a third party, the court may impose a duty of silence

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**Finland**

There is a duty to secrecy on employees, collaborators and their representatives. concerning individual data on the company's financial situation and its state of health, in the absence of agreement by the interested party, and confidential information presented as such by the employer, the disclosure of which would probably be prejudicial to the company or one of its partners

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**Austria**

Members of the Betriebsrat and external participants are subject to an obligation to discretion regarding personal data as well as business and manufacturing secrets of which they have knowledge, in particular those concerning plant, procedures and specific techniques presented as confidential

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## Appendix II

### PRICE SENSITIVE INFORMATION AND CONFIDENTIALITY: RIGHTFUL LIMITS TO THE RIGHT ON INFORMATION?

Many EWC's experience that useful information is sometimes simply denied or given under very strict confidentiality clauses. In the past the reason quoted was often that competitors might take advantage of the information. Nowadays management more and more uses references to stock exchange rules on information that may influence stock prices as an excuse for not giving information.

Actually this is not as straightforward as management often presents it. First of all we must make a distinction between 'secrecy' and 'confidentiality':

- Secrecy refers to the right of central management to not be obliged to provide information which would plausibly cause serious harm to or be prejudicial to the functioning of the company.
- In the case of confidentiality, EWC members get the information, but are limited in the possibilities to pass it onwards.

Now, are stock exchange rules or laws on insider trading really a ground for secrecy or confidentiality? These rules or laws do not have the goal to limit the rights of worker representatives, but to prevent distortions on stock markets by uneven access to information. If some traders do know something about a company that others do not know, they have an unfair advantage. Therefore the New York Stock Exchange for instance is very keen to improve the timely and transparent disclosure of financial information, as this is important to 'the quality and integrity of the markets'. So they want companies to 'communicate as much information as they can as often and widely as possible'. (Quoted from a letter from the NYSE to the SEC, 20-12-1999).

This is clearly a common objective of both laws on worker rights to infor-

mation and these stock exchange rules. So the first question when reps are confronted with the argument that the company can not give information to the EWC because of stock exchange rules should be: why try to hide something?

Still, sometimes it is obvious that information cannot be published openly, e.g. in the case of merger talks where there still is a great risk of failure or where other parties might get a sudden interest. In that case the question is: can EWC members be informed whereas others are not. It is clear in these cases that some people get the information anyway: staff members of the company, the negotiating team, the bankers, lawyers and consultants that are hired, etc. But they should not use this information to trade in the shares of the companies involved. Do laws or regulations forbid companies to give EWC members this kind of information? The answer, surprisingly perhaps, is: no.

The biggest European stock exchange, the London Stock Exchange, allows companies to keep information about 'impending developments or matters in the course of negotiation' secret to the public, and still give this information to 'employees or trades unions acting on their behalf' (Quoted from the Admission and Disclosure Standards, may 2001, section 3.4-3.5.).

Although every stock exchange may have its own rules, and we have not studied them all, it is hardly likely that other countries should have more limited rules on employee rights than the UK. Besides the stock exchange rules there may be laws to forbid insider trading. As the phrase already indicates, this will not forbid the dissemination of information to employee reps, but only forbids them to trade on the basis of this information. This can be explicitly made clear in a written agreement with the EWC members.

So, companies should not use stock exchange rules or laws on insider trading as a scapegoat for secrecy. Employee reps are recommended that where they are confronted with this argument, to ask the company for a written statement with exact reference to sections in rules or laws

that should implicate that the company cannot give this information. Also it is urgent that policy makers recognise this problem. It does not seem logical to make laws to improve information and consultation right for employees on the one hand, and let these rights be abolished by other rulings, or the misuse of these rulings, on the other hand.

Stock exchange rules or laws on insider trading cannot be used as a reason for *secrecy* (that is: refusing to give information), as there are no rules stating that legally recognised employee representatives may not be informed. Their position can be compared with staff members of the company that are involved in these price sensitive operations, like preparing a take-over, and also have all kinds of confidential information at their disposal. Stock exchange rules or laws on insider trading can be used as a reason for giving information under *confidentiality* clauses. However, this can only be justified if and when:

- There are proper reasons for not giving this information to parties outside the company (investors, analysts, etc.) and:
- this information if made public would be likely to lead to substantial movement in the price of its listed securities.

Practice shows that management sometimes uses this confidentiality clause more often than not, e.g. in the case of a company deeming the total minutes of regular EWC meetings confidential. Some national laws on the EWC have put in strict limitations on the use of the confidentiality clause. In the Dutch law for instance it reads:

*With respect to the provision of information, the central management may impose a requirement of confidentiality if there are reasonable grounds to do so; a statement shall be issued as early as possible prior to the matter in question being dealt with, indicating the grounds for imposing the requirement, what written or oral information is covered, for how long it applies and whether there are any persons with regard to whom such confidentiality doesn't need to be maintained.*

This enables employee reps to deny receiving the confidential information, if they consider that this will hinder their relation with the people they represent.

Still, sometimes reps may accept the confidential nature of information, be it for stock exchange rules or laws on insider trading, or for reasons of competition, or to prevent premature unrest. This raises the question how to deal with this in relation to colleagues? The EWC has the obligation under the directive/law to (without prejudice to any obligation on them to maintain confidentiality), inform the employees' representatives within the company or, in the absence of employees' representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure.

## Appendix III

### COMMUNITY CONTROL OF CONCENTRATIONS

The control of concentrations, governed by EEC Regulation 4064/89 of 1989, is one of the four components of Community competition policy.

Proposed concentrations, or mergers, with a Community dimension involving undertakings with a turnover of 5,000 million euros world-wide and 250 million euros in the EU must be submitted for approval before they are implemented. In 2000, notification was given to the Merger Task Force, dependant on the European Commission's Directorate General for Competition, of 345 intended concentrations.

Over 90% of the matters notified conclude with acceptance at the end of the first phase of examination, which lasts one month. The most problematic - and most emblematic- concentrations are subject to a four-month examination procedure, which generally leads to authorisation conditional on transferring certain assets, stakes in companies or patents to competitors. Formal prohibitions are rare, with just two in 2000.

Under the terms of the Regulation, concentrations leading to the creation or the strengthening of a dominant position are banned. The criterion regarding a dominant position that significantly impedes competition in the common market linked to the concentration thus guides the Task Force in drawing up its assessment of the competition situation and the compensatory measures required for authorisation.

All the notifications and decisions are available on line and can be found on the European Commission's server at the following address:

**<http://www.europa.eu.int/comm/competition/mergers/cases>**

Article 18 of Council Regulation No. 4064/89 provides for "the recognised representatives of their employees" (i.e. employees of the undertakings concerned) to be heard as "[n]atural and legal persons showing a

sufficient interest” as part of the process of examining a concentration operation subject to Community control. The workers’ representatives may thus ask to be able to make known their observations, concerns and opinions regarding an operation with decisive consequences for their company, its employees and perhaps even the sector or regions concerned. The request to be heard must be addressed to:

Task force “contrôle des opérations de concentration entre entreprises” (Merger Task Force):

Commission Européenne; DG Concurrence  
Rue Joseph II, 70; B-1049 Bruxelles

It must however be pointed out that the Merger Task Force hardly puts into practice point 13 of the preamble to Regulation 4064/89 on the Control of Concentrations which calls on it to “place its appraisal within the general framework of the achievement of the fundamental objectives... of the Treaty, including that of strengthening the Community’s economic and social cohesion”. The few occasions on which workers’ representatives have been heard so far have dealt only with matters entirely related to competition. This practice may gradually change in connection with the concerns of the European Commission’s Directorate General for Employment and insistent demands from the European Parliament to improve the articulation between the EU’s social policy and its policy on competition.

Access to the file is covered by procedural guarantees aimed at ensuring effective exercise of the right to be heard<sup>5</sup>. The Merger Regulation provides that “[a]ccess to the file shall be open at least to the parties directly involved, subject to the legitimate interest of undertakings in the protection of their business secrets”<sup>6</sup>. The workers’ representatives are however not regarded as “parties directly involved” and their access to the file, even to a “non-confidential version” of it, is not currently guaranteed. Nevertheless, these provisions are likely to be improved.

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<sup>5</sup> Rulings of the Court of First Instance (TPI) of 29 June 1995 (cases: T-30/91 *Solvay*, T-36/91 and T-37/91 *IC*)

<sup>6</sup> Article 18.3 of Council Regulation No. 4064/89

The ETUC has produced a document: ***Directive on European Works Councils - working document N° 46: The EWC and company take-overs.*** This document is very useful for European Works Councils faced with concentrations subject to control by the European Union and can be obtained through affiliated TU organisations or directly from the ETUC.



## Appendix IV

### GENERAL MOTORS RESTRUCTURING AGREEMENT : European Framework, 5 March 2001

The European Employee Forum (EEF) of General Motors sets forth the following framework in relation to current restructuring initiatives, including the run-out of the current Frontera, as discussed in the emergency meeting of the EEF steering committee on 12 December 2000:

1. It is the primary goal of management and employee representatives to institute actions that focus on the support of our employees and their futures. The placement of the people as well as the maintenance and security of remaining business is of the utmost concern.

2. *Job security*

Management will avoid forced redundancies in relation to the above-mentioned restructuring initiatives and take all reasonable steps to avoid forced redundancies as follows:

In line with the respective national legislation and contractual obligations national management will provide personnel planning and will consult and will work with local employee representation to achieve this goal which may include (in no particular sequence), but is not limited to such processes as:

- part-time work programmes
- transfers to other national locations of General Motors and transfers to other international locations of General Motors
- voluntary separation programmes
- early retirement programmes

If necessary after all openings are filled, career opportunities and placement outside of General Motors will be assisted.

Efforts to place workers in reasonable positions will require an increased willingness of employees with regard to mobility and flexibility

for the work location as well as for working times and practices.

Rights described in section 2 of this framework only apply to employees willing to accept reasonable job offers or, in the event of insufficient job opportunities, one of the alternatives described above. Management will afford the opportunity for employee representatives to discuss the situation with individual employees who may be adversely impacted.

It is also necessary to assert that the required numbers of employees are placed in facilities that have urgent start-up needs and requirements due to market conditions.

On the basis of competitiveness, GME will in concert with the respective national organisation continue to pursue new business opportunities for the ongoing site.

### 3. *Employment terms and conditions*

The transfer of the employees will be handled according to the respective national legislation. It is the intention that employees will not be disadvantaged. Both parties acknowledge that the total packages may vary from case to case. Details are subject to local negotiations.

### 4. *Employee representation*

Union recognition on a local level will remain the same.

Employee representation on a European level will remain unchanged during the current election term.

Current collective agreements will be the subject of local/national negotiations.

With relation to the above-mentioned restructuring measures, information will be shared at the national level, through the personnel function, with appropriate employee representatives.

The EEF will continue to be the appropriate forum to discuss this topic where it has transnational implications.

5. *Production in Luton*

Vehicle production will be maintained in Luton.

The new Commercial Van X-B3 Vivaro will be introduced and the current Frontera will be maintained at the site.

The installed capacity for Vivaro will be 84,000 units and the installed capacity for the Frontera will be 18,000 units.

On the basis of competitiveness, management will continue to pursue new business opportunities in connection with economic insourcing and will pursue location of suppliers and other non-GM business opportunities.

6. *Production at Ellesmere Port*

Epsilon will be placed in Ellesmere Port, as already announced.

The intention to source a suitable replacement model after the run-out of the current Astra in Ellesmere Port is reconfirmed, as stated in the 1998 agreement.

With these initiatives the prerequisites for a future flexibility are given. This will be a tool for more stability in employment and less dependency on product life-cycles.

The overall installed capacity will be at least 180,000 units.

7. *Implementation*

Implementation of this framework shall occur on the national level.

According to European legislation and national laws, management and employee representatives will ensure that the agreed provisions will become legally binding for individual employees as well as for negotiating partners.

8. *Exceptional circumstances*

The capacity figures used in chapters 5 and 6 are based on the

current GME business plan. Capacity figures will not change management's objective to flexibly balance its European production schedules among all plants.

If in the future further exceptional negative economic conditions occur which will mean a reconsideration of paragraphs 5 and 6, information and consultation will be instituted.