

Coordination and interaction in European works councils



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FOREWORD



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

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

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

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

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

Isabelle Schömann

Confederal Secretary at the ETUC

INTRODUCTION

1

1.1 Background, policy context and objectives of the research

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

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

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

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

The main objectives of the research project were:

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

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

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

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

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

1.2 Methodology and case studies

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

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

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

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

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

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

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

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

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

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

Table 1 Overview of the sample of EWC cases

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

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

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

DESK RESEARCH: WELL-KNOWN PROBLEMS AND POSSIBLE SOLUTIONS

2

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

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

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

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

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

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

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

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

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

2.1 Benefits and value of European Works Councils

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

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

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

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

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

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

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

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

¹⁴ Ibid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3

3.1 Quality and efficiency of social dialogue in transnational companies

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

Key results

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

Factors that contribute to quality and efficiency include

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

Establishing working groups / committees



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

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

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

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

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

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

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

Positive impact of national legislation on corporate duty of vigilance



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

KORIAN

Other examples:

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

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



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

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

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

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

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

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

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

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

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

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

Examples

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

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

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

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



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

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

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



Legal regulations restricting additional mandates of board-level employee representatives

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

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

3.5 Legal and economic experts reinforce the EWC members' position

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

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

3.6 Ongoing and additional future challenges

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

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

- ▶ ÖBB: the agreement on a Memorandum of Understanding on Remote Working reached in November 2021 is regarded by the EWC and by national and European sectoral trade union federations as an important achievement of the EWC that was absolutely necessary in the light of the massive increase in working from home during the pandemic. The Memorandum is regarded as a small but important first step in establishing group wide minimum standards of regulating remote working throughout the group as a whole;

An agreement on remote working was also negotiated and signed at Generali.

- ▶ In other companies (e.g., Compass) the EWC and the trade unions involved have tried to convince management about the need for similar group wide regulation, but this was opposed by the employer, arguing that this issue is not a transnational issue but a national one.

INTERACTION AND COORDINATION

4

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

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

The good practice of linking the European and national level



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

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

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

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

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

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

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

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

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

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

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

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

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

Learning

The following learnings have emerged from the case studies:

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

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

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

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

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

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

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



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

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

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

STELLANTIS

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

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

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

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



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

TRANSNATIONAL RESTRUCTURING: FROM FORMALISED PROCEDURES TO REAL INFLUENCE

5

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

Some thoughts in the light of the case study experience:

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

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

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

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

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

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

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

Interviewees also reported negative experiences and practices

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

Good practices

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

5.3 Involvement and role of national trade unions

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

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

Stellantis: organising workers' voice in restructuring



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

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

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

STELLANTIS

5.4 Involvement of national and European trade union federations

The example of the ÖBB EWC demonstrates the clear added value of closely coordinated EWC and national trade union practices in relation to concrete achievements for countries where industrial relations are less favourable for workers and trade unions.

ÖBB Group EWC - if the EWC has a strong mandate for all stakeholders involved, real progress is possible



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

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

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

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

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

5.5 Critical practices

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

Transnational Declarations and Agreements

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

Bad practices

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

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

CONCLUSIONS AND RECOMMENDATIONS

6

6.1 Why coordination and interaction are essential



► Solidarity and cohesion

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

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

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

► Lack of means

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

► National-level influence

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

► Due diligence

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

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



▶ ETUFs and Trade union coordinator

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

▶ Processes and methodologies

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

▶ Expertise

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

▶ Coordination is important for gathering quality information

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

▶ Confidentiality

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

▶ Board-level and EWC workers’ representatives

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

▶ Training

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

6.3 Recommendations on other measures



▶ Action pays back

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

▶ Transnationality

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

▶ Sectoral social dialogue

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

▶ Experienced EWC representatives

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

▶ Select Committees

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

▶ **Results-oriented EWCs**

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

▶ **Remote meetings**

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

▶ **Access to Court**

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

7.1.1 Background, context and evolution

Alstom SA is a French multinational manufacturer operating worldwide in rail transport markets.

Significant M&A/divestment activity in the last years

- ▶ In 2015, the power and grid division of Alstom was sold to GE. The deal was accepted by EU and US competition authorities in 2015 under the condition that Alstom's heavy gas turbine business was being sold to Ansaldo Energia. Since then, the Alstom Group has operated solely in the rail sector;
- ▶ In late 2017, Alstom announced a proposed merger with Siemens Mobility of Germany. In February 2019, the European Commission prohibited the merger on free market concerns;
- ▶ In February 2020, the company announced the acquisition of Bombardier Transportation (deal finalised in January 2021). The European Commission approved the deal, subject to remedies (in France, Germany, and Italy).

According to the last negotiations, the composition of the EWF includes 29 members in total (it used to be 18 before), including even members from countries which are not part of the European Union, such as the UK and Switzerland. The composition of the EWF was greatly modified following the Bombardier Transportation acquisition and tends to create tensions between old and new members, as the acquisition required new elections and a change of experts. It seems there is a cultural gap between the historical social dialogue practices of the two merging companies, that is vividly at stake at present time.

Years before, the refusal of the Siemens Mobility deal by the European Commission greatly affected the quality of the social dialogue between French and German members, as the French employee representatives reportedly were against the deal (following the trauma that represented the previous divestment to GE) and fed the European commission with arguments to exclude it. Consequences of this conflict are still hurting the quality of social dialogue between French and German EWF members today.

7.1.2 Social dialogue, workers participation and trade unions

The European Works Forum (signed in May 1996) and the last renegotiation led to an addendum to the 5th amendment in February 2021, following the acquisition of the Bombardier's group's railway activities, which led to major changes in the geographic structure of headcounts.

The agreement is overall of a good quality with a lot of rights mentioned, but suffers to some aspects from a lack of clarity in the definitions ("if required", "if very important", "sufficient means", ...). These kind of

agreements require a good level of social dialogue between the manager and the representatives as well as between the representatives themselves. Yet, this is not the case due to the events mentioned before (refused deal with Siemens Mobility and completed deal with Bombardier Transportation), which infringe the potentiality of the agreement.

The select committee (composed of six members) meets at least once per term, or more often if needed. It is entitled to preparatory meetings after having informed the management.

The plenary sessions take place three times a year, or more often if needed due to emergency questions (a specific time during spring is dedicated to the presentation of the fiscal year budget; a specific time before summer is dedicated to economic, financial, and strategic matters; and a specific time in winter is devoted to the 2nd term performances and forecast). Two meetings should be physical and one virtual (but due to Covid, all meetings are currently virtual).

The agreement encompasses a broad definition as regards information (broader than foreseen by the European directive with topics such as health and safety, training and equality) and a more restrictive definition as regards consultation (only in case of major decisions regarding the company's future). Nevertheless, it expressly mentions the fact the information-consultation process should take place before the final decision is taken. As regards the articulation of the different levels, the agreement states that the European information and consultation process should take place during or before the national processes, but not after them (the national information and consultation processes can not be closed before the European one).

- ▶ Consultation is foreseen when at least 1% of the European workforce in at least two countries represented (cf. a list attached in the annex) is affected by a project related to either the structure of the group (MA, divestment...), a change in the work organisation, or restructuring;
- ▶ Consultation is also possible even if the headcount threshold is not met, under the condition that the project can be defined as "very important";
- ▶ Other rights worth being mentioned:
- ▶ Working groups on specific topics are made possible by the agreement (but were not yet settled at the time of the interviews);
- ▶ For very important matters, the agreement allows the creation of ad hoc commissions.
- ▶ Although there is not a specific budget dedicated to expertise, the right to resort to two different experts is mentioned and the costs are paid by the management;
- ▶ The presence of the IndustriALL coordinator is also foreseen for the plenary sessions and the select committee meetings.

Besides, there is one board level employee representation, the former EWF Chairman, but he is censored by confidentiality and is not of help to EWF members.

All interviewees agreed that relationships with the management used to be better in the past and that the understanding of the agreement by the management tends to become more restrictive over time (access to information, organisations of physical meetings...).

7.1.3 Interaction and coordination

As mentioned above, the relations between the French and German EWF members are tensed and the social dialogue among members is not as good as it used to be. Moreover, there are tensions between historic Alstom members and new incoming Bombardier members. The future resignation of the EWC Chairman due to the divestment of his site and the uncertainty about who will come next increases these tensions.

The Covid era and virtual meetings that replaced all the plenary and select committee meetings have not helped to ease the social dialogue, between members themselves and with the management as well.

A WhatsApp group has been created to help circulate information. However, it is not used by many members.

Interviewees agreed that the coordination at the European level was not satisfactory anymore due to tensions between members and the lack of physical meetings helping to ease difficulties.

There were diverging views as regards the good transmission between the national representative and the local levels. Some interviewees considered it to be well functioning thanks to the articulation of the national representation bodies and the help of the national federations. Others found it to be not functioning due to the lack of coordination between the different levels and national trade union political divergences. We may conclude from those statements that the situation differs depending on the country and is not homogeneous. On the contrary, the bottom-up circulation of the information was generally seen as not sufficient due to a lack of visibility of the EWF representatives, even in their own country.

The trade union coordinator was reported to be of help in this context. Moreover, IndustriALL and the national federations were reported to contribute to the top-down and bottom-up circulation of information.

7.1.4 Articulation in the context of restructuring

For past restructuring, an appeal to the EWF was made with the help of IndustriALL. However, it currently seems that national representatives do not necessarily appeal to the EWC in case of restructuring: during national (non-transnational) standalone restructurings involving downsizing in Switzerland, the representative from Switzerland did not appeal to the EWC due to a lack of interest, as full employment is not an issue in this country. Simultaneously, the German representatives do not appeal to the EWC for the European remedies and the restructuring in their country (on the whole 1.300 jobs are at stake). They are said to consider that they can do better with the help of the German co-determination system, and thus that they do not need the EWC's help.

In these two cases, the national representatives' bodies dealt directly with the management with the help of their national federations.

7.1.5 Conclusions and assessment

The Covid era and its virtual meetings due to social distancing aggravated a social dialogue that was already harmed by tensions between members themselves and by a management that did not totally respect the content of the agreement in terms of information and consultation rights.

The agreement in itself is of good quality, despite its lack of clarity that creates opportunities for the management to tend towards a more restrictive understanding of the employees' representatives' rights.

Cultural differences and mistakes as regards the application of national legislation (French in this case) were mentioned as a main obstacle to the good understanding between members.

The role of IndustriALL and the national federations has been stressed as a useful resource.

The lack of visibility of the European employees' representatives within the global company has been stressed by the interviewees as a brake to their effectiveness. More visibility (e.g., through a website mentioning who and where they are) has been highlighted as a first internal step to make the social dialogue articulation between the different levels more efficient. A second step mentioned was the possibility of a joint communication of all EWF members that would shed light on their role.

The renegotiation of the European directive has not been seen as a good leverage for improvement, but rather the good application of the one of 2009 has been quoted as of main importance. A potential renegotiation is seen as risky, because employees are not strong at the European level, whereas employers are. However, the European Commission as responsible party for the proper understanding and application of the 2009 directive could improve employees' representatives' rights (proper information and consultation processes, easier and real access to a judge in case of conflict, ...).

Last but not least, the improvement of national labour legislation (for example in order to meet the French or the German standards) and the global harmonisation of national legislations were quoted as a possible leverage to improve workers representatives' rights.

7.2.1 Background, context and evolution

Antalis was created through the merger of about 40 international paper distribution companies all over the world. In each country, the different brands from the Arjowiggins Merchandising legacy were a cornerstone of the new entity. In 2007, a major restructuring took place which mainly stroke the Arjowiggins commodities segment. Since then, the company has been acquiring a significant number of undertakings, including Xerox Document suppliers Europe business in 2013.

In 2020, the company is delisted from the Euronext Paris: Antalis was acquired by the Kokusai Pulp & Paper Co., a leading company from Japan present in Asia and Australia.

Antalis employs 4.000 employees in paper, packaging and visual communication media, of which around 80% are based in Europe. 20% of the workforce is based in the UK and Ireland, followed by France (11%) and Germany (8%). The company's headquarter is in Paris.

The agreement was signed before the deadline in 1996 to become a derogative agreement and then got revised and amended in 2003, 2013 (new agreement of reference in force) and 2021. The Brexit had a significant impact on the Antalis EWC, that is supported by a coordinator nominated by UNI Europa Graphical. The UK employees are represented by the trade union, under the agreement, that is UNITE. The EWC covers the EU countries with more than 100 employees as well as the EFTA countries, and therefore Switzerland, too, as well as the Baltic area and Russia. However, the EWC has refused the management's request for an additional seat for the company's Paris headquarters.

7.2.2 Social dialogue, workers participation and trade unions

It is interesting to note that not only management is represented on the EWC, but also the supervisory board as a shareholder, which allows the presence of the Japanese KPP group at the meetings.

The agreement explicitly expresses, in line with UNI Europa's position, that the EWC is not a body for negotiating on working conditions and pay for group employees. On the other hand, the agreement also excludes any 'discussion' on this topic, which is unusual (see art. 1 of the 2021 amendment). The EWC agreement covers important issues, such as HR policy and employment, training and qualifications, health and safety including environmental protection. In practice, however, the EWC members worked together on the comparison of national health and safety information, which proved to the management that the level of information given to the EWC was insufficient.

The new amendment signed in 2021 specifies the types of communication media and the rules for their implementation. Thus, on the one hand, there is a detailed record of the exchanges transcribed after each

meeting, which is confidential and therefore not disseminated; on the other hand, there is a record approved by both parties, which is widely disseminated on the notice boards and internal documents. The amendment provides for specific rules on the dissemination of EWC activities to be negotiated between the company's social partners at country level, if not already provided for in labour law. In practice, however, management keeps the vast majority of information provided to the EWC confidential. The minutes are sometimes validated a year after the meeting, so they lose their usefulness.

About ten years ago, the EWC collectively left the meeting room to denounce the lack of information available: this action yielded results. Social dialogue has become satisfactory because the management shares a lot of important information. However, it has tried to replace the EWC with the select committee (5 people), a point that was rejected by the EWC when the new amendment was negotiated.

7.2.3 Interaction and coordination

According to the 2013 agreement, the EWC secretary is a coordinator. The five members of the secretariat must speak English or French and come from one of the countries with the largest number of employees. In case of a restructuring, workers' representatives from the countries concerned receive information up to 72 hours before the EWC. The EWC receives the specific information related to its mandate, as well as the information transmitted to the national bodies concerned by the restructuring. The consultation of the EWC finally takes place after the national bodies.

On a day-to-day basis, the main communication barrier is language. It took time to learn how to communicate: the new online translation tools had to be mastered (including learning to check the quality of the message received, as the translation was sometimes incoherent). The EWC agreement defaults to French and English. There are therefore two main channels or informal groups, one French-speaking and one English-speaking. However, not all EWC members have these languages in common. This limits exchanges by email and WhatsApp. The multi-lingual Secretary has to do a lot of personal interaction via bilateral contacts. She tries to have an exchange at least once a month with each member and invites them to make proposals for the agenda of the meetings. The most difficult communication is with the members from Eastern European countries.

Attempts to set up a Facebook page and a newsletter did not work. However, the company has provided a shared platform, Weconnect, which gives access to agendas, working documents, agreements, etc. Yet, the platform is only accessible for EWC members.

The group is still quite tightly knit, even though some members, including the Dutch and German members, are not unionised. The triggering effect that brought the group closer together was a training course organised by UNI Europa over four consecutive days. This training was an opportunity to identify priorities for action, such as health and safety issues. The management in charge of this area had been invited to participate, which helped to strengthen both the understanding of the issues and the dialogue with the management.

UNI Europa has also appointed a union coordinator to support the Secretary between and during meetings. The coordinator, from the ACV-CSC Building Industry & Energy union, has been active since 2011. He has helped the EWC members to get to grips with google translate and sends information in 5 languages. He participates in the preparatory and plenary meetings.

7.2.4 Articulation in the context of restructuring

Following a restructuring, it was decided that the EWC Secretary (Dutch-speaking Belgian) will represent the Netherlands.

In the case of restructuring, the EWC can be accompanied not only by a trade union expert and a technical expert, as is usually the case, but also by additional experts with the agreement of the management. The agreement states that the experts should not carry out any investigations, including accounting, and that they will not have any information other than that available to EWC members.

The most important event was the change of the main shareholder to a world famous Japanese company, KPP. This change was welcomed by all EWC members as the economic situation of the company was disastrous. The management invited the EWC to an online meeting, also attended by the Japanese CEO as an observer. The EWC members received information before this meeting, so they could discuss their position and prepare the formal meeting. The EWC members unanimously voted in favour of the acquisition of Antalis by KPP.

The UNI Europa coordinator contacted the Japanese union thanks to the support of UNI Global union.

The new Japanese management continued supporting social dialogue, although in Japan, social dialogue is poor. It accepted to keep the UK representatives on board despite of the opportunity given by the Brexit to amputate the EWC.

7.2.5 Conclusions and assessment

In conclusion, it is important not to underestimate the importance of language and cultural barriers. The Antalis EWC was able to overcome them thanks to a) the commitment of the UNI Europa coordinator and the Secretary who acted as an effective tandem to coordinate exchanges between EWC members, b) new technologies (which nevertheless require learning, especially with regard to automatic translation interfaces), and c) a training course, which had a triggering effect to launch a common group dynamic.

The EWC's experience in comparing health and safety information between countries has been a successful exercise. The EWC has been in a position to demand better information from the management and its position in social dialogue has been strengthened.

7.3.1 Background, context and evolution

Arctic Paper is a Polish-Swedish pulp and paper manufacturer headquartered in Poznan, Poland and (filial) in Gothenburg, Sweden. Business activities are based on the operations of three mills: Kostrzyn nad Odrą (Poland), Munekdals and Grycksbo (Sweden). A further mill in Mochenwangen, Germany was closed in 2015. Since 2013, the Arctic Paper Group is the majority shareholder in the listed Swedish pulp producer Rottneros AB.

The history of the company as a private entity dates back to 1983 when the Swedish Trebruk AB acquired the mill in Kostrzyn from the Polish state. In 2003, the company was renamed into Arctic Paper AB, which since 2009 under the name Arctic Paper S.A. was listed on the Warsaw stock exchange.

Arctic Paper has sales organisations across Europe, including in Austria, Belgium, Denmark, France, Germany, Italy, Latvia, Norway, Spain and Switzerland, apart from the two core countries Poland and Sweden.

In 2021, the company employed a workforce of directly employed workers of 1.200 according to the annual report on sustainability.³⁷

The company owns pulp mills in Rottneros and Vallvik and paper mills in Munkedal, Grycksbo and Küstrin.

As regards corporate governance, Arctic Paper SA has a management board consisting of a CEO from Poland and a Swedish CFO. Besides, there is a supervisory board with five representatives of business interests and experts, but without employee representatives.

7.3.2 Social dialogue, workers participation and trade unions

The EWC of Arctic Paper was established at the initiative of Swedish and Polish trade unions in 2011 under Polish legislation. To this day, it remains the only EWC agreement under Polish legislation.

The Arctic Paper EWC is a small transnational body of employee interest representation that initially consisted of delegates from three countries: Poland, Sweden and Germany. In 2016, the EWC agreement was revised as a consequence of the closure of a paper plant in Germany (Mochenwangen, Baden-Wuerttemberg) at the end of 2015. After the loss of two German mandates, the EWC is now composed of seven members: three each from Sweden and Poland and one for the sales offices. Two plenary meetings are held per year mainly in Poznań or Gothenburg. In accordance with Polish legislation, the EWC receives a budget to cover all its operating costs. An annual budget of 25,000 € was specified in the EWC agreement with the provision of annual adjustments. Additional means can be granted under exceptional circumstances.

³⁷ Arctic Paper Sustainability Report 2021. https://www.arcticpapergroup.com/globalassets/arcticpapergroup.com/03-investor/csr_arctic_paper_en_2021_2_2022_v19.pdf

As regards exceptional circumstances, the provisions of the EWC agreement are quite general and concise: It only is stated that in case of exceptional circumstances, *“the company will cooperate with the chairman of the EWC and inform him/her”*. Management and EWC chair will also take a joint decision *“on how to inform and consult the other members”*.

The EWC delegates are elected or appointed amongst employees that are members of the involved national trade unions. They elect the EWC chairperson who is a member of the Polish trade union NSZZ Solidarność and elect a working committee.

The EWC holds two (in Q2 and Q4) meetings per year either in Poznan or Gothenburg with a duration of two days including pre-meeting, evaluation meeting and travel. The first day of the meeting is dedicated to information on the current situation of the Group’s plants and the situation of the paper market. Discussions are supported by simultaneous translation. On the second day of the meeting, the CEO and the CFO are available to answer any questions of the delegates.

7.3.3 Interaction and coordination

According to the EWC chair, the cooperation with the Arctic Paper management board works quite well and there are frequent meetings both in individual plants and at board level meetings. The flow of information on management decisions and activities is regarded as satisfying. The trade unions involved in Arctic Paper are fully accepted by the management board.

However, it was also mentioned by the EWC chair that there are issues about the provision of economic and financial information by the management during annual wage negotiations. (It should be noted however, that such information is out of scope of the information activities in the context of the EWC).

Most of the exchange and interaction between Polish and Swedish trade unions is happening during the annual meetings of the EWC. There are trade union committee meetings before each EWC session, where the topics to be addressed are discussed and agreed upon. After the sessions with the management, there are evaluation meetings as well as information meetings with local trade union commissions and committees.

The exchange between Polish and Swedish EWC delegates on meeting outcomes and consequences has been improved by the introduction of the company’s intranet at the end of 2021.

The establishment of an intranet according to the EWC may also improve the communication between Polish and Swedish EWC members between meetings. The lack of such exchange and interaction between meetings has been highlighted as an aspect where there would be room for improvement. The different languages have been mentioned here as the main barrier for more frequent interaction and communication across borders.

As regards European coordination, it should be noted that the Arctic Paper EWC currently is not “under the radar” of the respective European trade union federation, i.e. industriAll. Though there are close linkages to the international department of the NSZZ Solidarność trade union, the EWC is not part of any structured European coordination. According to the EWC chair, *“we do not have a coordinator from the European confederation, but this is because there is no need for one.”*

7.3.4 Articulation in the context of restructuring

The most important case of restructuring in the past was the closure of the plant in Monchenwangen and earlier attempts to restructure the plant – which failed.

The following passage is from a written statement of the current EWC chair (who was not involved in the EWC at that time):

“This was in 2008. The company bought the Mochenwangen GmbH paper mill in order to expand its offer for the European graphic arts market. At the time, the paper mill produced around 115,000 tonnes of graphic paper

for book printing. This was mainly for the German, French and Spanish markets, so for important markets. According to the information given to me by the co-founder of the EWC at Arctic Paper, who was the Deputy Chairman of the Board at that time, as Arctic Paper Mochenwangen was running out of time, the company started to experience problems. In the long run, the plant began to make losses. An attempt was made to change this unfavourable situation. The plant operated on a Monday to Friday basis, during the weekend the plant was shut down completely and on Monday it was started up again. The operation of this type of plant relies mainly on the supply of large amounts of energy. The start-up of the plant is very energy intensive. Turning the boilers off on Friday and firing them up on Monday entailed considerable losses. Plants of this type operate in a continuous operation system. Attempts were made to introduce a continuous motion system in the company, but our side ultimately (the workers' opinion) rejected this idea. In addition, the employer argued that despite the financial losses, it pays contractual raises to employees, so it sees no way out and has to close the plant.

Consequently, a decision was taken in July 2015 to look for a buyer. In 2016, the decision was taken to close the plant. During the discussions with the management, the EWC was properly informed about the planned actions. Some attempt to compromise between the EWC and the Management was the effort to consult the employees about the possibility to work at weekends. In connection with the fact that our side (I mean employees) was not interested in it, the EWC then consulted with the management on the amount of severance pay for employees.

I do not know the exact reality as I was not a member of the Council at that time and I also do not know what the labour market in Germany looked like at that time, but from the information which I received at that time it seems that the employees were satisfied and had the possibility of a relatively easy transition to new jobs."

7.3.5 Conclusions and assessment

In general, the EWC chair regards the cooperation at national and international level as having a good or even a very good quality.

In this context it is also important that the EWC is quite small and consists of delegates from only two countries and a limited number of plants.

This may also explain why according to the EWC chair there is no need for transnational coordination of the Arctic Paper EWC.

ASAHI EUROPE AND INTERNATIONAL

ANNEX 7.4

7.4.1 Background, context and evolution

SABMiller's first EWC Agreement was concluded on 27 June 2006 and renegotiated and signed on February 21, 2012.

This new version is based on the 2009 directive and foresees that two yearly meetings shall be organised by management.

In 2015, SABMiller was purchased by AB InBev, during which time SABMiller's EWC continued to operate and was informed about the transaction process. However, there was no cooperation with the EWC AB InBev; the two councils functioned separately. According to interviewees, it is likely that the members of AB InBev EWC were hardly informed about the acquisition of SABMiller for more than \$107 billion.

In April 2016, Asahi Group Holdings, Ltd. ("Asahi") completed the acquisition of former SABMiller plc's Peroni, Grolsch and Meantime brands and associated businesses (the PGM Business).

In March 2017, Asahi acquired from ABInbev businesses in the Czech Republic, Slovak Republic, Poland, Hungary and Romania and other related assets that were owned by SABMiller Limited (formerly, SABMiller plc) in Central and Eastern European countries.

Asahi Group Holdings established Asahi Breweries Europe Ltd ("ABEL") for the purposes of managing businesses in these 5 countries. ABEL was set up as a standalone subsidiary of Asahi. The PGM Business (directly owned and managed by Asahi Group Holdings) and ABEL were managed as two separate businesses. The two groups were run separately and two separate EWCs existed.

In 2021, the company called Asahi Europe and International (AEI) was re-connected to PGM. They have been negotiating remotely and signed with success another agreement; however, the physical signing, due to the Covid-19 pandemic, took place only in June 2022 in the Czech Republic.

The EWC is now composed of 18 members and a select committee of 7, representing one country each. Italian and Dutch representatives joined the EWC only a few years ago.

There are no specific rules of procedure in the EWC, but in the agreement, a special role is played by a steering committee with the Secretary and the deputy Secretary. When the two annual ordinary meetings are not enough for workers' representatives' needs, the Steering Committee meets physically with the central board. The number of meetings has recently increased. In the last two years, this happened in the form of a teleconference due to the Covid-19.

The EWC may develop internal operating rules. No provision of such rules shall be deemed to be binding on the AEI Group unless the Chair of the EWC has first accepted it. Such rules shall not contain provisions which contravene the terms of the EWC agreement.

7.4.2 Social dialogue, workers participation and trade unions

According to interviewees, the management shares information about the most important international projects. The problem lays with consultation, because the confidentiality of these projects does not allow EWC members to contact directly interested employees even though they may be affected by redundancies to some extent.

Unfortunately, in practice, it is often the case that EWC members, who are usually also members of a trade union, are only interested in the professional groups they belong to. Moreover, certain members have difficulties to follow the discussions on financial strategies.

The management is open when it comes to trade unions activities, but only within certain limits. As far as the EWC is concerned, the management typically presents detailed information on issues such as sustainability, general changes to the market environment, or investment projects, but refrains from discussing more “hard” issues like financials (which they deal with superficially) or wages. There have been discussions on non-wage benefits, which have been more or less substantial. The central management is usually well represented at the EWC meetings (HR manager is directly involved; CEO joins for a few hours).

The EWC benefits from an expert that provides financial analysis. Additionally, the expert was requested to feed the EWC with information regarding inflation and non-wage benefits.

7.4.3 Interaction and coordination

Interaction and coordination on a daily basis between EWC members occur rather at the level of the steering committee depending on the needs, generally every two to three months.

Usually, national representatives are involved after the decisions have been debated with the EWC and adopted by the management. Confidentiality applies to much information provided to the EWC.

According to one EWC member, some form of dialogue exists with the headquarter management and may even be fruitful: *“I went to Budapest 5 times a year regarding the intention to release 130 tele-seller and finance positions in my country. The talks looked like negotiations, but they weren’t! Our strength was simply the effective persuasion of the employer that problems at workplaces are poorly described and compacted. The result of these consultations was the dismissal of only 20 employees.”*

There is board-level representation of workers at Asahi in some European countries and national board-level representatives are in contact with EWC members, but they are usually informed by management after the EWC members.

The EWC provides Annual Reports and other documents that do not have confidentiality status to national representatives. According to interviewees, there is little interest for European matters unless they directly concern specific professional groups. EWC reports barely touch upon issues of national relevance. They do not, for example, discuss any market, financial or strategic issues that pertain to specific countries.

Exchanges between the Select Committee and EWC members take place every quarter.

In relation to interaction with European and transnational trade union federations, it has been reported that EWC members were invited to an IUF meeting in 2021, this was the occasion to network with Japanese affiliates in the company.

According to responses received from the EWC, contacts between the European Works Council and sectoral trade union federations at national level are rather occasionally.

7.4.4 Articulation in the context of restructuring

The 'Project Triumph' example

The goal of Project Triumph was to create a platform for integrated systems and consistent processes for support activities or internal administrative functions of the company. This includes some transaction processing work carried out in finance, human resources, procurement and IT departments.

Triumph was a strategic investment for SABMiller on a global scale.

This means that working practices had to change. For example, consistency in the way suppliers were paid improved by using shared information.

There was a reduction in employment due to standardisation and the integration of the internal company administration platform. New jobs and new roles were also created during the implementation of regional shared service centres.

The management committed to inform and consult workers' representatives along the process. This was effectively done with 5 meetings in one year time. However, once again, the confidentiality rules imposed on the EWC frightened its members of going public.

The IT reorganisation

More recently, in 2021, the EWC was consulted about the IT department reorganisation. The management debated the topic with the EWC during 3 to 6 months before the final decision was adopted, under confidential restrictions.

The EWC was informed first, and then all employees (as for example in Poland, there is no Works Council in the Company). Information was provided at national level practically one day after the EWC. The project lasted many years and the EWC and employees were kept informed about it.

7.4.5 Conclusions and assessment

The information gained on the EWC is essential and this is a strong point. On the other hand, the generally occurring confidentiality simply prevents from going to the national level. Locally, there is a consultation, but this is generally done after consultation with the EWC.

The select committee has an important role representing all seven countries. It happens that the select committee replaces the EWC on certain occasions, including for extraordinary meetings.

According to interviewees, the role of EFFAT can be crucial provided that its representative has the appropriate knowledge and the time to participate in the deliberations of the EWC.

According to interviewees, *"in order to improve the efficiency of EFFAT, the new Directive should stipulate that the EFFAT coordinator would receive fair remuneration for his participation in meetings."*

7.5.1 Background, context and evolution

Compass Group plc is a British multinational contract catering company headquartered in the UK. It is the largest contract foodservice company in the world with a workforce of about 480,000 in 2021 of which about 150,000 employees are in Europe. Compass has different catering brands of which Eurest is the most widespread in Europe. Besides food services and catering, Compass is also active in other business areas such as facility management and cleaning. The largest subsidiary here is the German based PLURAL service pool with about 5,000 employees that provide services such as cleaning, facility management, health care, security and labour recruitment/lease. The PLURAL company was taken over by Compass in 2009.

In 2019, Compass was engaged in a major acquisition when it signed an agreement with the family-owned Finnish based Fazer Group to acquire Fazer Food Services. At that time, Fazer Food Services had a workforce of 7,000 employees, most of whom worked in around 1,000 restaurants in Finland and other Nordic Countries. The acquisition was subject of a competition approval procedure of the EU Commission.

The Covid-19 pandemic in 2020 and 2021 has struck Compass very hard, the employees of contract catering clients in business and industry, public administration and other areas started to work from home and sporting and other large events were cancelled globally.

More recently and during the Covid crisis, Compass made a number of investments in new technology and innovative new services and solutions such as “virtual canteens” (personalised meals for office workers as an alternative to own canteens), virtual or cashier-less cafeterias. The sudden slump in demand in 2020 and 2021 put thousands of jobs of frontline workers at Compass subsidiaries at risk and in particular part-time workers and workers on flexible contracts were laid off.

Compass is one of the few transnational catering companies that already at an early stage had established an EWC – the first agreement was already negotiated in 1996 as a voluntary agreement. The establishment of the EWC in 1996 was achieved by the pressure and campaigning of British trade unions in the sector, in cooperation with ECF-IUF, the predecessor organisation of EFFAT, and since that time, the Compass EWC is coordinated by UNITE, which exercises the role of EFFAT EWC Coordinator for Compass.

In the history of the EWC there have been significant changes over time

The initial agreement was renegotiated in 2004.

- ▶ In 2006, Compass Group Plc sold Select Service Partner (SSP), their subsidiary for travel concessions, operating food and beverage facilities in airports, railway stations, bus terminals and roadside locations, in order to focus on the core business contract foodservice. In 2013, negotiations on the establishment of an EWC in SSP started, coordinated by EFFAT, and were accomplished in 2015;
- ▶ The Recast EWC Directive in 2009 had a strong impact on the Compass EWC as the new legal framework provided for much better provisions than the 1996 agreement and its 2004 amendments, and therefore the employee side in the Compass EWC demanded a renegotiation of the agreement. This demand was rejected by Compass management, however. Against this, the employee side took the initiative to terminate the agreement in 2013;

- ▶ The negotiation of a new agreement was a lengthy process, but finally a new EWC agreement was signed in 2016, which, from the perspective of UNITE and EFFAT, is quite a good agreement in terms of contents and provisions as well as resources and EWC infrastructure;
- ▶ Other major changes of the Compass EWC are related to the Brexit: In the light of the UK leaving the EU, the EWC moved its legal basis from British to German EWC legislation as the European HR management moved from the UK to Germany. Apart from the change of the applicable law this move was also a change in management culture as regards social dialogue and workers participation, e.g. at board level. Furthermore, the amended agreement ensures that UK workers representatives continue to be part of the EWC;
- ▶ Besides these changes in framework conditions, there has been quite a stable situation within the EWC, at least with regard to the select committee functions and coordination – the Select Committee of the current EWC is more or less still composed of the same persons as before, they have also been the main actors of the SNB when negotiating the new EWC agreement and still, UNITE is coordinating the EWC on behalf of and in close cooperation with EFFAT;

7.5.2 Social dialogue, workers participation and trade unions

Headquartered in the UK, but with HR management for Europe located in Germany, the Compass Group is a company with, on the one hand, roots in the Anglo-Saxon management culture and respective relationships and, on the other hand, the German culture of strong works councils influence and workers participation at board level.

As regards the employees' side, social dialogue, relations between management and employees / trade unions and the EWC are characterised by stability over time: The EWC Coordinator at UNITE in the UK as well as most of the members of the Select Committee have already a long history in the company and know each other for a long time. Despite all differences - the Select Committee is composed of EWC delegates and active trade unionists from the UK, France, Spain, the Netherlands and Germany - there have been quite significant achievements such as the negotiation of a better agreement in 2016 after a period of difficult and long negotiations (nearly three years) and according to the interviewees, the EWC has gained some influence on HR management in Europe.

Achievements according to the interview stakeholders (EWC Chair, UNITE Coordinator, EFFAT Officer)

- ▶ Negotiating a good agreement in 2016 based on the Recast EWC Directive with amongst others;
- ▶ commitment of the parties to “operate in good faith, trust, mutual respect and in the ‘spirit of cooperation’ “;
- ▶ responsibility of the European management to also train local managers to practice such an approach in the relationship with local employee representation bodies;
- ▶ clear definitions of key terms (information, consultation, transnational matters, information and consultation procedure, provisions on confidential information, appointment of EWC members, contents of the annual report of the EWC, extraordinary meetings, rules and provisions as regards linking European and national information and consultation processes, administration, EWC budget and facilities, dispute regulation);
- ▶ the agreement includes a clear provision that in the context of the nomination of EWC delegates, the trade union organisation in a subsidiary has a privileged right of nominating a delegate (if the subsidiary is unionised of course);
- ▶ the agreement includes provision on experts and the right to involve experts not only in the context of exceptional circumstances such as restructuring and reorganisation, but also for examining the annual report of the management to the EWC;
- ▶ provisions on training of EWC delegates – the agreement includes the need that EWC delegates need training and qualification in order to fulfil their role in a good way;

- ▶ in the context of the acquisition of Fazer Food Services into Compass 2019 the integration of the respective EWC delegates of Fazer went quite smoothly and well;
- ▶ thanks to the competent and active role of UNITE and other trade unions in Compass, both the UK as well as the German based European HR management fully accept the role of trade unions within the EWC and the need that there is trade union coordination of the EWC.

Challenges

- ▶ The Compass EWC is very diverse and consists of a large variety of around 20 workers' representatives. However, due to a high fluctuation of employees and also workforce characteristics (share of part-time and flexible workers, diversity of the workforce, etc.) the sector is very difficult to organise for trade unions. This has led to the challenge in particular to recruit delegates in the Central and Eastern European countries (Poland, Czech Republic, Slovenia, Romania). This has led to a situation where of the 20 countries that should be represented in the EWC only Western Europe is firmly represented by delegates;
- ▶ According to the EWC Chair as well as the UNITE Coordinator, a challenge of EWC practice is the timing of information and consultation. Often information comes at a late stage which makes consultation difficult or even impossible;
- ▶ Management, also according to the EWC Chair and Coordinator, lacks a more pro-active and formal approach in relation to transnational activities and measures. Transnational matters are defined rather narrowly and so far, there has been little willingness to engage in the development of European provisions, standards or rules on important issues;³⁸
- ▶ In particular during the Covid pandemic years 2020 and 2021 no annual meetings were held and this had a negative influence on the integrative role of the EWC in regard to new members and delegates who are not involved in the Select Committee;
- ▶ Information flows and communication between the annual EWC meeting and meeting of the Select Committee with Management (two per year) is rather weak.

7.5.3 Interaction and coordination

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

- ▶ In practice, the involvement of national employee representatives and trade unions faces a number of challenges such as;
- ▶ When information comes late, it is often not possible to involve local unions. This very often is the case and therefore it is very difficult to organise a comprehensive and meaningful consultation process;
- ▶ In case of no union being present in a subsidiary, involvement and consultation with local employee reps is simply not possible;
- ▶ According to both EFFAT and UNITE, it would be important that EU and transnational level trade union coordination should play a stronger role in keeping contact and communicating with national level sectoral unions. But this is very difficult due to a lack of resources and time;
- ▶ A special case of interaction and coordination related to employee representatives in the board level (here, the supervisory board of the Compass Group in Germany). The EWC Chair (who is also a

³⁸ An example here has been redundancies in the context of the Covid-19 related slump in the business. Though this affected all countries, the European management treated this as a strictly national issue. Another example mentioned is the initiative of the EWC to discuss and negotiate a European agreement on fighting sexual harassment. Such an agreement, however, would also be in the interest of the management.

member of the Supervisory Board) has stressed the added value of being present in both structures: The German board lacks information on the European dimension of decisions and discussions and it proved to be very helpful to have the information from the EWC as a background knowledge. Also the other way round is important: the knowledge about strategic orientations and debates within the Board – even in case of confidentiality restrictions – is very helpful for the work of the EWC;

- ▶ IA further dimension of coordination and interaction relates to the relation between the EWC and the European Trade Union Federation (ETUF) at sectoral level: The Compass EWC has a close relationship to EFFAT, as the vast majority of Compass business is in food services, and in most countries workers in this sector are affiliated to EFFAT member organisations, and EFFAT has been involved in negotiating the EWC agreements and coordinating the work of the EWC since the beginning. Nevertheless, as Compass is also active in property services and cleaning, EFFAT keeps UNI Europa, the ETUF in charge of these sectors, in the loop. Apart from the EWC Select Committee, the UNITE Coordinator plays an important role in this context. For EFFAT, the active involvement of transnational companies and their EWCs in the European sectoral policy development is very important. This also includes a role of EWC representatives and TNC managements in European sectoral social dialogue activities;
- ▶ On the other hand, from the perspective of the EWC, the ETUF plays an important role not only in relation to provide legal and other expertise, but also in helping to establish links to local and national trade union structures with the aim to improve the presence in particular in those countries where trade union membership is weak.

7.5.4 A specific example of articulation in the context of restructuring / reorganisation

Restructuring, in particular the acquisition of other companies (Fazer case 2019) or new business lines as well as divestments have been a constant feature of the development of Compass during the last decades.

From the perspective of the EWC, it is important to highlight the following

- ▶ The strict definition of transnationality of a measure hampers a more proactive approach of shaping restructuring and developing general framework conditions at European level (e.g. standards of socially responsible restructuring, etc.);
- ▶ The new agreement and the move of the European HR management to Germany (also in combination of co-determination and employee participation in the German subsidiaries) have strengthened the influence of the EWC slightly;
- ▶ Against this, EWC reps are optimistic that there might be the chance to engage in European negotiations on the issue of sexual harassment in the near future.

7.5.5 Conclusions and assessment

The Compass case shows the following

- ▶ Achievements were possible when there is unity not only in the EWC but also when there is support provided by the involved trade unions at national and European level as well as by the employee members at board level (the current Chair of the EWC is also a member of the Compass Group Works Council in Germany, a member of the Works Council of Compass subsidiary PLURAL in Germany with 4,5000 employees, and an employee representative in the German Supervisory Board of the Group; apart from that she chairs a regional section of the sectoral trade union³⁹);
- ▶ Achievements are not hampered by the quite different cultures of social dialogue that exist between the countries represented in the Compass EWC, in particular with trade union dominated interest representation e.g. in Spain, Italy and the UK versus the works council centred model e.g. in Germany and the Netherlands. While such differences may cause some frustration, unity is achieved by a clear sense of the need of unanimity and mutual trust in order to achieve common goal;
- ▶ Although the relationship between the EWC Chair (a senior employee representative rooted strongly in works council work at the workplace) and the trade union EWC Coordinator (a full-time officer of UNITE and not an employee of the company) is not free from tension, both play an active and important role in shaping EWC policies in situations of restructuring but also – currently – in developing ideas on EU level initiatives on better working conditions (e.g. the plan to negotiate a European framework agreement to fight sexual harassment in the company).

³⁹ It should be noted that this sectoral trade union is not the German EFFAT affiliate NGG, but the EFBWW affiliate IG BAU. This is due to the fact that PLURAL belongs to the facility management and cleaning sector, which in Germany is organised by IG BAU, which is affiliated to UNI Europa for this sector.



fnac

DARTY

FNAC DARTY

ANNEX 7.6

7.6.1 Background, context and evolution

The first EWC agreement, signed in 2016, only covered the FNAC group. The merger with the Darty group in the same year had no impact on the geographical scope, as FNAC was established in more countries (France, Belgium, Netherlands, Spain, Portugal, Switzerland) than Darty. Darty did not have an EWC. However, the merger had a significant impact from a social point of view as the EWC now represents twice as many workers (about 25,000 employees) as before. However, the numerous franchises (41% of the total) are not covered by the agreement, nor is Switzerland.

With 950 physical shops, the group has become a leader in omnichannel distribution in Europe. With the successive acquisitions of WeFix, Billetreduc.com, PC Clinic and Nature & Découvertes, the company is positioning itself on new markets.

But it is above all the battle for e-commerce that is raging, which will lead the company to try to compete with Amazon and other players by creating an e-commerce site and a network of independent retailers hosted on its “marketplace”. With the adoption of its Everyday project, the company has opened up to a new approach to commerce based on the articulation of service (credit, insurance, after-sales service, etc.), advice (sales) and sustainability (spare parts, environmental rating of products, technical tests, recycling, etc.).

However, the two main brands have not been merged. FNAC and Darty employees discuss the differences in labour relations between the two brands and their corporate culture. The agreement was adapted late in 2022, to bring it into line with the new dimensions of the two-headed group, but this renegotiation did not lead to any improvements.

7.6.2 Social dialogue, workers participation and trade unions

In its article 7 “promotion of social dialogue”, the EWC agreement explains that “beyond its traditional mission relating to the information-consultation of the group’s employee representatives, and without confusing it with this, the EWC constitutes a forum for social dialogue whose objective is to ensure the development of the FNAC group in the interest of all”. This article introduces the possibility of creating thematic working groups whose resources and activities are established on a case-by-case basis in agreement with the management. During the negotiation of the initial agreement, management rejected the SNB’s proposal to adopt a global annual or biannual work programme.

The aim of these working groups is to examine in greater depth “cross-cutting issues of interest to all the countries represented on the Committee and to share good practices relating to them. The working groups thus set up may submit the results of their work to the management, which will decide, in consultation with the European Works Council, on any follow-up action to be taken.

In 2020, a working group was created at the request of the Select Committee on the theme of Corporate Social and Environmental Responsibility and Sustainable Development. The management presented its vigilance plan in relation to law No. 2017-399 of 27 March 2017 “on the duty of vigilance of parent companies and ordering companies”. Environmental issues are a key point in the new Everyday strategy of the management, so this working group has a significant influential potential role. But more resources would be needed to make it work, including the presence of external support from experts, as management is content with a simple information process and rarely responds to questions raised by EWC members.

7.6.3 Interaction and coordination

Article 6 of the agreement, relating to the links between the European and national levels, provides that ‘The information-consultation of the EWC will in principle be organised simultaneously with the completion of the procedures of information and consultation of the works councils that may be imposed by legislation or by national collective agreements’.

However, bearing in mind that each event or project remains unique and may have particularities to be taken into account, the negotiators concluded that “in some particular cases, a different process may be adopted jointly by management and the EWC or select committee if it is mandated to do so”.

A priori, the great geographical imbalance in favour of France and the multiplicity of French trade union organisations in the group is not a favourable basis for an inclusive approach, especially when the group is actually divided into two equally sized companies. Half of the EWC members represent France, the others represent Spain, Portugal and Belgium. The Spanish and Portuguese represent only FNAC and other small companies, Belgium represents Fnac and Darty (Vandenborre) and Nature et Découverte.

The EWC only began to function in earnest in 2018. It quickly faced significant issues for workers

- ▶ The redundancy of 57 employees in Belgium in 2018 and a reorganisation involving multi-skilling, time variability; the EWC expressed its support and concern for the Belgian colleagues. The management refused to discuss this issue in the EWC session but agreed to receive a trade union delegation in Paris;
- ▶ The sale by Darty of its Dutch business (called BCC) in 2020. The EWC has requested an extraordinary meeting, which was refused by management. However, the EWC agreement suggests a broader interpretation of the principle of proportionality as it states that a matter will be considered transnational according to three possible criteria: “(a) if the level of decision-making involved in the management proposal; (b) if it concerns the whole Group or at least two companies or two establishments of the Group located in two different States covered by this agreement; and (c) if, irrespective of the number of States involved, it has a potentially significant impact on European workers or involves transfers of activities between States. (Article 3)

In conclusion, although the agreement is facilitating new areas for social dialogue (sustainable development issues), information-consultation is in practice restricted by management to traditionally transnational issues.

7.6.4 Articulation in the context of restructuring

The retail sector was heavily impacted during the Covid pandemic:

- ▶ Mandatory shop closures in some countries, but not in others;
- ▶ Decline in customer traffic and purchasing power;
- ▶ Problems in preventing contamination risks during home installations and repairs;
- ▶ Difficulty in refilling stocks from suppliers on shortage;
- ▶ Strong increase in online sales but not compensating for in-store declines and consequently strong decline in turnover;

During this period the EWC was denied regular plenary meetings and on several occasions met by video conference. With the help of an expert, the EWC investigated the differences in wage compensation for temporarily unemployed employees in the group's countries of operation (EU zone) during the first pandemic wave of 2020. The study showed that some countries (France, Belgium) had better compensation than Portuguese and Spanish employees. In the Netherlands, business remained at the same level because the government kept the shops open, but managers could telework.

Through this comparative work, the EWC was able to expose the differences in treatment between employees in the same group and obtained a commitment from management to end these disparities. The aim was to maintain salaries in full, covering the difference between the usual salary and the unemployment benefit paid by the public administration or the bodies responsible for paying benefits.

More recently, in view of management's refusal to provide the EWC economic experts with country-specific results (the company's annual figures are made public by sub-region), the EWC members decided to provide the experts with their own country-specific information.

7.6.5 Conclusions and assessment

The FNAC-Darty EWC agreement is of satisfactory quality, it has a broad definition of transnationality and allows for the set-up of thematic working groups. Although a dialogue with management exists, management does not necessarily play by the rules during restructuring. The members of the EWC, from different companies, do not know each other very well and have not yet established a united line.

But the effectiveness of an EWC is sometimes based on small victories or advances that would create a transnational dynamic between EWC members. In the case of the FNAC - Darty group, the EWC members, who are few in number and from a limited number of countries, wish to engage in more collaborative work on issues related to working conditions such as multi-skilling. The issue of unequal treatment of employees in the same group, a factor of injustice, is a good stimulus.

Today, these exchanges seem to be of more interest to representatives from the countries with the least advantageous working conditions (Spain and Portugal). To what extent did this progress benefit French or Belgian employees who were more advanced in the negotiations?

Nevertheless, when employee representatives from one country communicate about a management project and its social implications, the other representatives can better prepare themselves in their respective countries for information, consultation and negotiation sessions.

In general, better coordination on collective bargaining seems desirable. Hiring an external expert to conduct a study comparing working conditions between countries was a good lever to push management into concrete transnational social dialogue.

7.7.1 Background, context and evolution

General Electric (GE) is an American conglomerate founded in 1892 by the merger of part of Thomson-Houston Electric Company and Edison General Electric Company. Nowadays, the company is operating in about 150 countries and is an iconic stock on the New York Stock Exchange.

Between 2005 and 2018, it has been the second largest company on Wall Street (behind ExxonMobil, until the crisis of 2008). However, the company has been severely hit by the financial crisis due to its exposure to the financial sector through its finance and real estate activities. It was nonetheless still the 7th biggest world company in 2014.

In 2014, GE reached an agreement with Alstom to purchase Alstom's power and grid businesses for €12.5 billion. The merger proved being complicated and did not deliver the expected value. From 2017 on, the company went through turmoil due to its decreasing profitability and high debts resulting from its acquisitions strategy. Therefore, the stock market price decreased by 80% between 2017 and 2021. From this time on, General Electric has been progressively selling assets (biopharma activities, financial activities, niche activities...) to pay back its debts.

As of 2021, GE is divided into five main businesses: GE Power, GE Renewable Energy, GE Healthcare, GE Aviation and GE Capital. But in November of that year, the company announced it would divide into three public companies. The new companies will be focused on aerospace, healthcare, and energy (renewable energy, power, and digital). The first spinoff of the healthcare division is planned for 2023, to be followed by the spinoff of the energy division in 2024.

7.7.2 Social dialogue, workers participation and trade unions

Like many American companies, GE pursues an anti-union strategy. However, the stronger European legislation protects the social dialogue. The social dialogue quality is not seen as bad, but the management is said to be always trying to avoid information and consultation processes.

After the completion of the acquisition of Alstom's power and grid businesses, negotiations started to settle a real EWC within GE. Until then, they were existing EWCs, but only at branch level (based on the businesses activities). The GE's EWC agreement was signed in February 2018 as an outcome of these negotiations.

The agreement sets that the GE EWC structure consists of a cross-business committee (the "Central Committee") together with the Business Committees that were previously established. Accordingly, both the Central Committee and the Business Committees form part of the EWC of the GE Industrial Businesses.

The agreement provides precise definitions of the terms and rights encompassed.

The tricky aspect of the agreement is the mention that consultation by the Central Committee is only foreseen when two or more GE Industrial Businesses are impacted. A transnational character of the decision is not suffi-

cient to launch the information and consultation process, the trans-business character is also mandatory. This is seen by the interviewees as a limit of this agreement to the extent that it is possible for the management to take major transnational decisions without consulting the Central Committee, but only the concerned Business Committee. This amendment creates a lot of debates between EWC representatives and the management to agree on what is circumscribed to one business only or what affects several (even indirectly).

As regards the rest of the content of the agreement

- ▶ The agreement foresees one ordinary meeting of the Central Committee and two ordinary meetings of each of the Business Committees but in fact many more meetings are held on ad hoc issues due to constant restructuring and changes;
- ▶ Both Central Committee and Business Committees have a Select Committee in charge of the organisation of meetings;
- ▶ The agreement provides the right for Committees to be assisted by experts of their choice when a consultation is launched;
- ▶ The agreement sets precise timelines as regards the information and consultation processes.
- ▶ The agreement provides a dispute resolution procedure in case of disagreement as regards information between employee representatives and management;
- ▶ The maximum number of Central Committee employee representatives is 32 (with specific thresholds by country according to the number of employees).

7.7.3 Interaction and coordination

There is a trade unions coordinator for each Committee (Central and Business based).

A first layer of coordination is ensured through the foreseen channels between the Central Committee and the Business Committee. Then coordination is also ensured thanks to the trade unions coordinators (one for each Committee) as well as the role of IndustriAll as the single European Federation that plays a unifying role. At national levels, the national trade unions also take part in the coordination processes along as the existing representative bodies. According to interviewees, coordination is currently satisfying but highly time consuming.

According to the interviewees, the Central Committee and some of the Business Committees are well functioning, but with notable discrepancies between Business Committees.

7.7.4 Articulation in the context of restructuring

Two cases were quoted as good examples of the employee representatives' ability to find solutions when the EWC agreement seems too restrictive.

- ▶ In case of a redundancy plan in a plant in Germany, there was no representative from this site in the relevant Business Committee. Therefore, the Business Committee chose to invite a representative from the site as "external expert" as foreseen by the agreement. Then the local representative could attend the meeting, express his opinion, and explain to other EWC members the local situation;
- ▶ GE is planning to spin-off its Healthcare activities. GE management only wants to consult the Healthcare Business Committee as it is the only one concerned by the spin-off and not the EWC Central Committee. The EWC Central Committee members found out that beyond business issues, the spin-off would affect the whole employee pension system. Then the management had no choice than to accept to also consult the Central Committee;

One example was quoted as solidarity between countries

- ▶ The management is planning to switch workload from a UK site to a German site. Once aware, the representatives from both countries discussed directly together to take a joint stand on the project.

7.7.5 Conclusions and assessment

Time plays a key role in coordination processes. According to interviewees, it is of utmost importance that the agreement provides the employee representatives with enough preparatory and debriefing time without the management to build a common line of interest beyond national and local interests.

The fact that all members are unionised has been quoted as an undeniable strength of GE EWC.

Visibility of the EWCs (Central and Business-based) work has been reported to be very important to show to employees its utility as well as to unify employee interests. EWC representatives try to make their statements public as much as possible.

Interviewees reported that the Steering Committees was only active on organisational matters, but that for all matters regarding information and consultation processes, only the whole Committees were relevant and legitimate.

As regards the current European EWC Directive, the priority reported by interviewees was its enforcement. Besides, making the processing of legal dispute clearer was quoted by all interviewees as important; as well as the need to make penalty for companies stronger in order to be more deterrent.

7.8.1 Background, context and evolution

Generali is one of the largest global insurance and asset management providers. Established in 1831, it is present in 50 countries in the world, almost 75,000 employees serving 67 million customers (corporate figures as of December 31, 2021). In particular, Generali is the number insurer in Italy, the third largest in Germany, while in France they reach the 8th position in the life insurance segment and do better in other segments of the activity.

In 2020, the insurance company suffered a 34.7% drop in net profit, to €1.74 billion, due to the effects of the coronavirus pandemic on the economy.

Generali announced a strong increase of 63.3% in its net profit in 2021, to €2.84 billion, reflecting a clear recovery in its business. The group also published a “record” operating profit of €5.85 billion, up 12.4%,

Generali then saw its net profit fall by 9.3% to €727 million in the first quarter of 2022, due to impairments caused by its exposure to Russia, a country that Generali plans to phase out due to the invasion of Ukraine.

The group confirmed its strategic plan targets of 6-8% annual earnings per share growth and cumulative dividends of €5.2 billion and €5.6 billion over the 2022-2024 period.

Operating profit was supported by growth in the life insurance (+7.2%) and non-life (+1.2%) segments. In contrast, asset management saw a decline of 14.5%.

The company frequently communicates on its culture of social dialogue and openness to civil society debates, particularly through its human resources policies.

Generali is a company with strong external growth, with the relatively recent purchase of undertakings in the Czech Republic, Hungary and Portugal. The EWC has difficulties in keeping up, as some countries do not send representatives. The UK has a seat, but no representative. About 50% of the EWC members are trade union members. UNI Europa Finance is represented by an Italian affiliate.

7.8.2 Social dialogue, workers participation and trade unions

The EWC agreement, revised in 2012, is an agreement of good quality, although it gives a relatively strict framework for information and consultation: the main interlocutor of management is the Select Committee rather than the EWC. The EWC usually gives mandate to the Select Committee to act on its behalf. The Select Committee, consisting of 8 members, can be informed and consulted instead of the EWC under certain conditions. The EWC is informed afterwards of the Select Committee action. However, the EWC remains competent to endorse joint statements with the management (see below). The EWC can also set up working groups, and be assisted by experts, in agreement with the management. Beyond usual topics for information-consultation, the debates can be held on issues such as training, equality and disability, also with the agreement of management.

The agreement allows for two meetings per year, one time with the management and once without, although it is not uncommon for two consultations to take place per year. Similarly, beyond the EWC agreement, weekly online meetings are held every Monday between the secretary, the deputy secretary and the group's HR management in order to make a quick review of current events in European countries: this is a practice that was put in place with the pandemic crisis, which the interviewees would like to see perpetuated in the EWC agreement.

Several documents have been adopted unilaterally or jointly at the request of the EWC

Fundamental workers' rights

A European Social Charter, adopted unilaterally by the management but at the origin of the European Works Council, at the end of 2006, marks the commitment of the group to respect the fundamental rights of the workers employed by Generali on the following themes: the promotion of social dialogue, vocational and personal development (training), respect for equal opportunities (the fight against discrimination), the provision of appropriate information to staff representatives (including internal redeployment when jobs are cut), the recognition of freedom of association, the prerogatives of staff representation bodies and the right to collective bargaining.

With regard to its implementation, the text states: "In the event of an actual or alleged violation, Generali S.p.A. will contact the local management(s) concerned and the secretary of the Select Committee as soon as possible to analyse the situation and, if necessary, the measures to ensure compliance with the principles set out in this Charter."

Inclusion and diversity

In addition, Generali's management and the Select Committee, mandated by the EWC, signed a joint declaration on 26th June 2019 entitled "Generali is committed to promoting a culture of diversity and inclusion": this document, which testifies to the significant production of Charters, guidelines and other extra-financial information by the company, has the benefit of integrating European workers' representatives into its proactive policy. The statement also emphasises the resources implemented, such as the creation of a Diversity and Inclusion Council composed of national representatives, although there is no mention of the concrete modalities of involvement of European workers' representatives in these body. However, the statement refers to another statement from 2017 on telework which contributes to the diversity and inclusion objectives (see below).

The document, in which the EWC and management commit to a corporate culture that makes diversity and inclusion an asset and a necessity, does not, however, impose anything on group entities at national level. Indeed, the expected measures and activities should *"fully respect the local autonomy of the respective social parties in formulating statements, concluding agreements and any other act in this field"*.

Telework

With regard to telework, the work for a joint declaration signed on May 16th 2017 was inspired by that carried out by the social partners in the European insurance sector. In the same spirit, the declaration has an informative and encouraging scope for the national social partners to find innovative solutions to work organisation and work-life balance.

Crisis management

In 2021, a joint declaration was adopted to promote adequate work organisation in times of crisis. The document recognises that it can be applied to different but similar situations to the Covid 19 pandemic. Through this document, the partners commit themselves to promoting telework, while recognising the need to put in place safeguards such as the right to disconnect, data protection, protection against psycho-social risks as well as other issues such as training, compensatory measures (equipment costs, additional income for specific personal situations), the right to have recourse to trade union organisations, etc.

The novelty of this declaration concerns the follow-up mechanism set up with the EWC and its Select Committee, via regular information meetings. Moreover, the text recognises that crisis management, telework and related issues can be the subject of information-consultation.

7.8.3 Interaction and coordination

It is important to highlight that Germany and Italy, in accordance with the agreement revised in 2012, represented around 50% of the workforce, but hold only 13 of the 43 seats in total, which symbolises a step in favour of more Europeanisation of the debates with management.

It is also worth noting that national representatives do not necessarily appeal to the EWC: during national (non-transnational) standalone restructurings involving downsizing in Germany and asset sales in Belgium and the Netherlands, they did not appeal to the EWC due to a lack of interest, as their national bodies are probably well prepared for crisis management. Finally, the dismissal of two Polish representatives was not discussed either.

The Covid-19 pandemic has had a beneficial effect on communication between management and the Select Committee and conversely a negative effect on exchanges between EWC members. Many representatives do not involve themselves as much as expected by other representatives, too many seats are vacant and some participants such as the Czechs delegates face other difficulties, they do not have interpretation at the meetings. In general, the Select Committee is a proactive group.

Finally, France has an employee representative on the board, but this is not the case at the Italian headquarters.

The EWC has no annual roadmap, but is quite active in social dialogue with the management.

The “One Company” problem: Beneath Europ Assistance, which is a “Group inside of the Generali Group” a number of companies emerged by upstream mergers or cross border mergers of parts of local core companies into a cross border company. These companies cannot set up a cross border employee representation, because in the EWC Agreement states that the Generali EWC shall be the only EWC in the Generali Group. According to interviewees, *“the national employee representations of these “One Companies” always end at the national borders, due to a lacking cross border representation. Therefore, the local employee representations don’t have any legal access to the foreign head of the company, and there are no provisions to meet their colleagues from other countries for exchanges.”* One exception however, stands with GOSP (Generali Operations Service Platform): there is a working group established inside the EWC, which can assume parts of a cross border exchange. For the other “One Companies” the problem of the lacking cross border representation is unsolved.

7.8.4 Articulation in the context of restructuring

The Gospel project is a reorganisation of IT services, transferred to a company owned 95% by Generali and 5% by the consulting company for a period of 7 years only. According to the project, the workers concerned would not be imposed any change in their contract and working conditions. Nevertheless, temporary postings and transfers of employment contracts were reported by workers’ representatives.

In its opinion, the EWC made a number of demands, including that management provide information on the development of the project to both the EWC and the national bodies of the countries concerned.

In 2020, the management organised two information meetings at the request of the EWC, which then expressed its opinion some months after the second meeting. The EWC asked for the creation of a working group to follow the whole reorganisation of the IT department. Thanks to a good coordination, the EWC’s position was communicated to the national works councils and the two levels information was compared in order to have a more accurate knowledge and to avoid unfounded rumours. The EWC position helped the national works councils to position themselves in this process.

7.8.5 Conclusions and assessment

The EWC of Generali is a proactive one as it has adopted several joint statements with the management on the HR policy of the Group. Nevertheless, these statements, as their name indicates, only suggest a way forward, without imposing any obligation of any kind on the social partners, whose autonomy and scope for action remain autonomous. Nevertheless, the approach may be of interest to some countries: the fact that the central management gives their green light may enable national representatives to legitimise their requests vis-à-vis local management where social dialogue is poor or non-existent. This is particularly meaningful when an implementation monitoring process is carried out, as decided in the most recent statement on crisis management and for the restructuring of the IT department.

Furthermore, it is particularly relevant to highlight that the Generali EWC links up with the European sectoral social dialogue, which consists of the European insurance employers' federations and the affiliated trade unions of UNI Europa Finance. In this, the EWC offers a good practice that could be replicated.

According to the interviewees, the agreement is generally satisfactory, but would need some updating here and there. The role of the Select Committee is important because it is informed and consulted instead of the EWC under certain conditions. This arrangement suits management well for reasons of cost and speed of process. However, on the other hand, a certain amount of trust has been built up because the information from management is increasingly transparent and extensive, and the EWC can pass this on to the national employee representation bodies. Moreover, the consultation processes are well structured and thorough.

Finally, and beyond information-consultation, social dialogue is rich, notably on social policy issues. In order to prevent the EWC from being a rubber stamp, more commitments from the management could allow the search for more quantitative and qualitative concrete results, while leaving the social actors free to decide on the implementation methods.

7.9.1 Background, context and evolution

Since 2017, the H&M Group has continued to expand its network of shops around the world but the pandemic has hit the company, forcing a 20% decline in turnover over the year 2020. As a result, the company has stagnated on average over the last 5 years. However, the number of employees has fallen sharply again in 2021. While H&M employed 136,000 employees worldwide in 2019, they were only 107,000 in 2021.⁴⁰

Moreover, the company, like its competitors, had to face up to a questioning of its business model, and in particular of its sourcing, following the Rana Plaza accident in Bangladesh in 2013, and more recently had to face up to numerous controversies, accused of racism, greenwashing, fast-fashioning, etc.

Investors and consumers are today constantly assessing the ability of the management to direct the subcontracting chain towards more sustainable production; efforts made with key partners such as Greenpeace for the NGOs and IndustriAll and UNI Global Union on the trade union side attest of this, its position as the world's number two company nevertheless requires it to set an example.

H&M concluded a first EWC agreement in 2004, which was revised in 2007. The EWC wants to renegotiate this agreement to bring it into line with the directive 2009/38/EC; the agreement is very short and not very descriptive. It does not provide for consultation of EWC members, but as a forum for "information, exchange and discussion".

In parallel, H&M signed a global agreement with UNI Global Union in 2004 and another with IF Metall and IndustriAll in 2016.

7.9.2 Social dialogue, workers participation and trade unions

The renegotiation of the EWC agreement has become a priority for its members. The 2007 agreement is no longer adequate, but the renegotiation has been stalled since 2019 already, not only because of the pandemic but also because the group management does not want to improve the agreement, according to the interviewees. For this reason, the EWC has sent a letter of termination on 11 May 2022 terminating the EWC agreement (with a 6 months' notice period).

A new agreement could, however, according to them, strengthen the role of the EWC, particularly with regard to consultation. Indeed, the developments acquired thanks to the 2009 directive make it possible to impose consultation on all non-derogatory agreements, of which the H&M agreement is one. The EWC must therefore be consulted at least annually by the management and also in exceptional circumstances. But the ambiguity of the agreement, which does not mention consultation, seems to sow doubt.

⁴⁰ See : <https://hmgroupp.com/investors/five-year-summary/>

The EWC agreement does not allow for large meetings: Seats allocation rules are not adjustable according to country importance. There is simply one seat per country and three for Sweden and Germany.

Although the minimum list of items for debate foreseen by legislation is extended to “work environment” and to “political issues affecting the company” (section 5), the quality of information does not allow the EWC to enter in a true social dialogue with the management.

7.9.3 Interaction and coordination

The H&M EWC has a long history of tensions and disagreements among its members, which are mainly based on differences in culture and social relations between countries, with some members being more oriented towards good cooperation with the management, and others having a more offensive approach.

Today, the cooperative approach with the management is more difficult to reach, EWC members are more united as a consequence of the management’s lack of respect for its legal obligations.

For several years EWC members produced written country reports to be shared with other EWC members. However, there are mixed feelings of EWC members towards this practice, and it was abandoned by a majority of countries because some reports were incomplete or even inaccurate, which could undermine the voice of the workers’ representatives. Nowadays, exchanges are more informal, although time constraints on meetings do not allow EWC members to go in detailed information exchanges.

The EWC agreement of 2007 is no longer a relevant basis today. The select committee has only three members, while its workload has increased significantly. Paradoxically, the Covid-19 pandemic has given a new impetus to the EWC as many video-conference meetings have been organised: these frequent exchanges give an interesting dynamic allowing a more regular follow-up of exchanges which is timely. There is now a monthly meeting of the Select Committee, and the team now receives more information from the management, although not often useful one.

The Select Committee also produces a newsletter for the whole EWC and organises an online meeting. Unfortunately, some members do not participate either due to lack of adequate technical equipment or training or lack of commitment.

In this respect the EWC agreement is for once an interesting support as it allows EWC members to meet without management once a year for two consecutive days (including traveling time) at the company’s expense.

However, the agreement limits the exchange between EWC members and members of national works councils as it takes a restrictive approach in this respect, requiring that confidential information is only shared between EWC members and not with other employee representatives (section 8). In that respect, this section is in contradiction with the national law of certain countries like Germany that require EWC members to transfer information to the national / central works council.

7.9.4 Articulation in the context of restructuring

The experience of transnational social dialogue with the H&M group is not best practice. Already between 2008 and 2010, the group had outsourced logistics transport in many European countries. However, no information-consultation was organized at the time, as the EWC members became aware of the process afterwards, by comparing their national situations.

Later, a restructuring that affected Spain, Italy, France and Portugal simultaneously was presented by the management as a set of local decisions. In Spain, about 1,000 jobs were cut.

More recently, the closure of a large number of shops in Europe over the last few years has raised concerns among EWC members. They asked to be informed about the number of closed shops and the number of new shops that were opened, which according to the management would be almost break-even. According to the

EWC members, it is unfortunately impossible to know precisely which geographical areas are most affected and how many jobs have been or will be lost. For instance, the EWC was informed of 600 job cuts, although the data is aggregated and does not allow to identify each countries impacted. However, this process will continue:

According to the official website of the Group, *“the H&M group is continuing to renegotiate a large number of leases as part of the company’s intensified store optimisation, which also involves rebuilds and adjustment of the number of stores and of store space to ensure the best store portfolio in each market. The H&M group’s contracts allow around a third of leases to be renegotiated or exited each year. For 2022 the plan is to open around 95 new stores and close around 240 stores, making a net decrease of around 145 stores. Most of the openings will be in growth markets, while the closures will mainly be in established markets.”* All countries represented in the EWC belong to the established markets according to the interviewees. Although negative effects on jobs have already started, there is still a significant short- and medium-term issue for the group’s employees regarding the future of their jobs.

Social dialogue is clearly weak even on issues that are obviously transnational, such as the reorganisation of the European operations into sub-regions. About this reorganisation, the level of information given to EU and national levels has loopholes, that certain interviewees assess as a misleading tactic by the management.

The same applies to the restructuring of IT activities, for which a support service centre has been set up in Romania, although the teams in Germany and Sweden will remain in place to cover global needs. Despite the transnational relocation of jobs, management explains that the social consequences are national (redundancies and recruitment), and that they do not fall within the competence of the EWC.

Regrettably, the EWC could not hire any economic and financial expert to analyse the data from different countries and challenge management interpretation of figures.

7.9.5 Conclusions and assessment

The H&M committee is one of a long list of EWCs that are often (badly) informed and not consulted. Recently there has been a positive development in the amount of information presented by the management to EWC members, but this information mainly covers financial data, rarely social information.

The immediate challenge for the EWC members is to succeed in renegotiating the 2007 agreement in order to have more resources and prerogatives.

In the meantime, one sentence in the EWC agreement is worth noting for this study: ‘The costs of national preparatory activities in connection with EWC meetings shall be established in accordance with national laws and agreements’ (section 7 of the agreement). It is unlikely that national laws or agreements provide for these costs of meeting preparation, but this article is an invitation to a) organise preparatory activities (meetings, communications, ...) and b) negotiate agreements to gain access to workers and their workplaces in the framework of the EWC membership mandate. Indeed, in some countries, more time credits are needed to fulfil the mandate. If bargaining at European level gets bogged down, the national level might be an alternative to strengthen the EWC workers resources and access to workplaces, provided that these initiatives are again well coordinated, with the help of UNI Europa commerce and its affiliated organisations, to secure equality between European representatives.

Another major priority for the H&M EWC, which can be found in many multinational companies, is to promote the coordination set up of HR departments at the European or international level and the designation of legitimate interlocutors on the side of HR management at group level. The division of Europe into sub-regions is also an entry point to further structure the internal coordination of the EWC. In addition, the good links between the EWC and international trade union campaigns aimed at raising the profile of the group is another successful avenue.

More training to strengthen EWC members is needed. With the support of UNI Europa Commerce, some progress has been made, for example training on due diligence. But improving the content of the EWC agreement on training is also a priority.

In conclusion, it seems that management has a 'borderline' attitude that needs to be framed by a better agreement. If the negotiation fails, the EWC members would be entitled to opt for legal action, since the right to information-consultation, as provided for by the directive of 2009/38/EC and its transposition into Swedish law, is directly applicable to the agreement.

7.10.1 Background, context and evolution

Korian, headquartered in France, is Europe's leading care group for the elderly and dependent people. It is a fast-growing business sector that has become very competitive.

By 2050, the number of people aged 80+ will have doubled from 3.9% to 9.1% of the population in OECD countries and from 4.7% to 11.3% in the 27 EU Member States. It is estimated that up to 50% of them will need help in their daily lives. However, it is clear that public authorities are already struggling to provide appropriate care for older people with reduced physical or mental capacity. Some countries have opted to liberalise competition in this sector.

The Korian group has a network of retirement homes and a variety of housing offers such as senior residences, living and care communities with the "Ages&Vie" homes, as well as home help and care services, in particular via the "Petits-fils" network of agencies. Korian is also a major player in the field of health services, with follow-up and rehabilitation care and mental health clinics.

Korian is present in 7 European countries (France, Germany, Italy, Belgium, Spain, the Netherlands and now the United Kingdom), with more than 1,000 establishments as of 31 December 2020. The Group employs 57,500 people, including 26,000 in France.

With 90,000 beds in Europe, notably following the acquisition of the Inicea clinics, the group has a turnover of 4.3 billion euros (end 2021), still growing strongly despite the recent crisis, and a significant net result, which rose to 64.9 million last year.

In France, the housing sector for the elderly is highly criticised for its working conditions and treatment of the elderly. The public authorities have recently strengthened controls and sanctions, in view of the many high-profile scandals. The Korian group has strengthened its communication and CSR policy through partnerships in an attempt to shake off the bad image of the sector.

The Korian European Works Council was the subject of an agreement signed in 2019, which is based on French labour law. EPSU is a co-signatory and supported the SNB during the negotiation. In its preamble, the agreement refers to the European directive of 2009 /38/EC, but also to the international instruments of the ILO and the OECD, complemented by an important reference to the French law on the duty of vigilance of 2017, which makes it possible to envisage that the EWC would be involved in the elaboration of vigilance plans for the prevention of risks related to the activities of the Korian Group and its established business partners.

The agreement has some strong points, in particular a broad definition of transnationality which states that regardless of the number of countries involved, the EWC will be informed and consulted on issues that have a significant impact on the employees of the group and also if it is a decision of central management or a good practice that is intended to be duplicated in another member state.

The agreement will continue to apply to countries that have left the EU and its scope covers an important list of social issues such as training, occupational health, CSR, equality, environment, ... but these are information points only in principle; the issues on which the EWC is consulted are more limited in number and correspond to the minimum provided for by law in the subsidiary requirements. Another strong point is that the time allowed for consultation is adapted, in agreement with the EWC, to the consequences of the measures envisaged by the management, which potentially allows the information-consultation to be organised effectively.

7.10.2 Social dialogue, workers participation and trade unions

The European Works Council receives satisfactory economic and social information according to the interviewees. It has functioned relatively well until 2021 (see below). Although the topics discussed are numerous and the agendas are sometimes too full, the means available to EWC members to deal with the issues are sometimes too limited, according to some interviewees.

At present, the management of the Korian group is considering a move to a European Company, so the agreement will be renegotiated with this in mind in 2022.

Management seems to be interested in the social climate and social dialogue, as social consultation is often highlighted in the reference documents. Some interviewees regret that the exchanges are sometimes too top-down and not interactive enough. The management conducts a regular internal survey called “Pulse” (formerly “kommunity”) on the level of employee commitment and satisfaction. According to the interviewees, the advantage of these surveys is that they highlight the deterioration of social dialogue and the social climate into the Group.

The French representatives represent the trade unions CGT, CFDT, FO and UNSA. Their coordination is very difficult and tense, which has an impact on the functioning of the EWC. Beyond traditional ideological differences, trade union and staff representatives are under pressure: the Macron ordinances of 2017 have contributed to a considerable reduction in the number of representatives and delegation hours for staff representative bodies. Thus, the elected staff representatives in France represent 400 establishments through only 10 representative bodies. The law in fact organises an accumulation of mandates which places an excessive burden on each representative, particularly in the diversity of the subjects they have to deal with. It also means that they lose a great deal of proximity to the field and therefore to the problems of employees.

This is similar in Spain, where it seems impossible to visit or even contact most of the workplaces before participating in the EWC. The Spanish delegate now benefits from the support of a permanent Officer from his union CC.OO, which is a turning point for him. Other interviewees expressed the wish to have more delegation hours, not only at national level but also as a member of the EWC, to exercise their mandate.

One German and one French employee sit on the Board of Directors, representing the two largest countries in the group. The Group is therefore prepared for a transition to a European company.

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

The health and safety working group produced a document entitled “Health and safety protocol on the prevention of accidents at work”, which was adopted jointly with the Korian Group management on 16 November 2021.

In its preamble, the document refers in particular to the international and European standards in force to back up the meaning of the various articles. This memorandum of understanding is divided into several themes which list the commitments of the Korian Group and present good practices from several countries where the group is established:

- ▶ The prevention of accidents at work must become a pillar of the corporate culture of the Korian group: to achieve this, the management will rely on referents (experts, ambassadors) and on employee representatives within the framework of the internal social dialogue of the company. They will work together to develop medium-term objectives (3 years) and to monitor and evaluate the impact of the prevention policy (scorecard);
- ▶ The promotion of favourable working conditions and sustainable solutions for continuous improvement: this work is based on the identification of good practices and ISO standards, improved equipment, ergonomics and training, including psychosocial risks. The use of external expertise, partnerships and social consultation will be points of support. Good planning of tasks and management of absenteeism are important conditions for success;
- ▶ Empowering employees to take charge of their occupational health situation: this is based on awareness, training and compliance with existing rules;
- ▶ Set up a monitoring process and an adapted action plan: standardise internal reporting and the process
- ▶ More job retention through internal reclassification: this includes people who are “unfit” following an accident at work;
- ▶ Integrate risk prevention into procurement practices and property investments. For significant projects, the EWC health and safety working group should be involved.

This memorandum of understanding is to be implemented by the local social partners at national level. The group and the EWC also set up a specific joint committee to monitor and implement the memorandum for a period of three years.

However, the document does not provide for a conflict resolution mechanism, but only refers to the local law in force and French law for the interpretation of the text of the protocol itself. Furthermore, while some interviewees were pleased with the scope of the protocol and its innovative nature, others regretted the insufficiently democratic nature of the process of adopting the text (drafting in working groups and adoption in plenary without in-depth debate).

7.10.3 Interaction and coordination

Management and the EWC regularly produce a joint newsletter to inform EWC members and local employee representatives about the outcome of transnational discussions and upcoming activities. This informative document is, for some interviewees, too consensual, even manipulated by management in its content. A more collective drafting process could be a solution to this situation.

According to the EWC agreement (article 3.3), the EWC is informed and consulted ‘as far as possible’ before the national level process.

The agreement sets up a process of linking the national and European levels that some interviewees do not witness in practice, as explained below:

- ▶ EWC obligation to debrief national bodies: *“The members of the EWC shall inform the workers’ representatives in each of the countries covered by this agreement of the content and outcome of the information and consultation procedure, while respecting the provisions on professional secrecy and the obligation of discretion”;*
- ▶ The management verifies that the national bodies are informed a posteriori of the EWC’s activities: *“The HR directors at national level ensure that the EWC members appointed by that country have been regularly informed of the debates and exchanges at local level in addition to the mechanisms established by national legislation”;*

- ▶ National management should meet with national EWC representatives prior to meetings: *“Human Resources Managers at national level are invited to meet with the EWC members appointed by that country in advance of EWC meetings”*;
- ▶ These meetings are in addition to the usual national information-consultation processes: *“These meetings are not intended to replace the social dialogue bodies established by each national legislation”*.

7.10.4 Articulation in the context of restructuring

In 2021, a French EWC member requested information-consultation on the sale of establishments in his country. The extensive definition of transnationality did not allow this request to be met. However, it turned out that other sales were being organised in different countries, although the EWC had not been informed of them. According to the interviewees, the EWC consulted a lawyer from LBBA who confirmed that the transnational dimension of the operation gave the right to information-consultation. The support of a lawyer seems to be a good experience, provided that he is called upon quickly enough, as managerial projects are often rapid.

On the initiative of a German representative, the EWC requested an extraordinary information-consultation, but in the end, management only involved the EWC office. The management apologised for not having informed-consulted the EWC in time.

7.10.5 Conclusions and assessment

The forthcoming negotiation of a European Company Works Council agreement seems to be an opportunity to negotiate more operational resources and time available and above all a system for monitoring the implementation of the agreement.

The current agreement is a good agreement in terms of the links established between the national and the European level as it provides for interaction between local management and employee representatives in addition to the existing legal mechanisms. EWC members could better take ownership of the mechanisms provided for in their agreement.

The EWC has been active on specific issues (health and safety) and has working groups that can contribute to an improvement in the cohesion of the Group’s social policy. This is important because the Korian Group is in a sector of activity in which deteriorating working conditions are highly publicised. At Korian, we see a passive EWC and a simple information-consultation procedure, even if the management does not always seem to play it straight during restructurings. The EWC could take a step further by including Due diligence it is yearly activities, as the EWC agreement preamble refers to the French legislation of 2017.

However, the tensions between French trade union delegations partly paralyse the functioning of the EWC. Individuals’ opinions on the good or bad functioning of the EWC are very different. A rebalancing of seats in favour of the smaller countries could perhaps make it possible to Europeanise the debates further. The EWC should be accompanied by an economic expert and a lawyer, or even an external coach, to objectify the debates and focus on a collectively agreed roadmap to identify achievable goals.

7.11.1 Background, context and evolution

ÖBB is the main railway company in Austria providing all relevant activities in infrastructure as well as passenger and freight transport. During the last decade, ÖBB has expanded significantly across border, in particular in the field of rail freight transport. A first major and so far, largest acquisition was the takeover of the cargo division of the Hungarian state railways, MÁV Cargo (today Rail Cargo Hungaria) in 2008. Since then, ÖBB has developed a number of activities in central and eastern European countries such as Czech Republic, Romania and Slovenia where the ÖBB freight transport division ÖBB Rail Cargo has established own cargo terminals along the main transnational corridors and developed services that serve the whole region. For a number of years now, Rail Cargo is also present in Northern Italy with an own rail operating company as well as two freight terminals along the important corridor connecting the Trieste port with the industrial centres in Northern Italy, Austria and Southern Germany. ÖBB is also present in Germany with an own logistics company and port/rail services in Hamburg and Bremerhaven.

In 2021, the ÖBB group had a workforce of 44,000 of which around 10% were working outside Austria. With 18,700, most of the workforce was employed by the ÖBB infrastructure management division, followed by the Rail Cargo group with 9,300, the ÖBB Holding and other entities with 8,400 employees and ÖBB passenger transport with 7,000 employees.

As one of quite few railway companies, the internationalisation of ÖBB has resulted quite early in the establishment of an EWC. In fact, the agreement to establish a European Works Council was concluded between the ÖBB Executive Board at the time and the Group Works Council ten years ago in 2011 when the Hungarian MÁV Cargo (today Rail Cargo Hungary) became part of ÖBB.

Today, the EWC has 15 delegates from Austria, Hungary, Czechia, Romania, Italy and Germany.

The ÖBB EWC has a presidency consisting of the chairperson and two vice-chairs that run the EWC secretariat that is responsible for the everyday business between meetings.

In order to take into account the specific conditions of the different divisions within the ÖBB Group, the EWC of ÖBB has also established different divisions in agreement with the central management. There are four divisions (freight transport, passenger transport, workshops/maintenance and carriers, as well as train drivers and on-board personnel). The size of the divisions differs from 10 (freight) to 3 (workshops/maintenance). Each division elects its own chair.

It should be noted that the EWC agreement foresees only one general meeting per year (more than one is possible if the EWC and the central management agrees) and two divisional meetings per year for the EWC divisions.

EWC delegates have a right to training and it is possible that the EWC engages external experts (after consultation with central management).

The working language of the ÖBB EWC is German.

7.11.2 Social dialogue, workers participation and trade unions

Social Dialogue within the ÖBB Group as well as in the different branches or divisions is characterised by the Austrian model of social dialogue and cooperation. This model is based on a strong role of company level works councils with close linkages to highly representative sectoral trade unions. Strong membership and sectoral collective bargaining in Austria are backed by the system of obligatory membership in the social partners chamber system (*Arbeiterkammer and Wirtschaftskammer*).

By contrast, the situation in Hungary and Italy is different as regards company level and sector level social dialogue and collective bargaining

- ▶ Though social dialogue in Hungary is much weaker, union representatives within the MÁV company are well organised and have a good relationship with the management. Among the different trade unions organising within the company, VSZ and VDSZSZ Szolidaritás (both ETF affiliates) are represented in the ÖBB European works council. Thus, in contrary to Austria both in Italy and in Hungary several trade unions represent workers;
- ▶ Whereas the main arena of social dialogue and bargaining in Hungary is the company level, the Italian system of industrial relation is shaped much stronger by trade unions at the sector level and sector level collective bargaining is more important. It should also be noted that in contrast to both Austria and Hungary, there is more than one trade union organising railway workers.

When it comes to board level employee representation, the situation in the three countries is quite different: In Austria, social dialogue and workers voice and influence is also facilitated by board level representation of employees and the fact that senior employee representatives not only have key functions in the ÖBB central and divisional works councils but also are represented in the supervisory board. According to the Austrian corporate governance law, one third of the supervisory board members are employee representatives. It should also be noted that ÖBB is an important employer in Austria (and the largest provider of apprenticeship training) and therefore, several company level employee representatives are also leading actors within the vida trade union (the same situation relates to Hungary as regards MÁV).

While no employee board level participation exists in the Italian system of corporate governance, the legislation in Hungary provides for employee representation in supervisory boards. Therefore, both at the MÁV as well as the ÖBB subsidiary Rail Cargo Hungaria, there are employee representatives in the supervisory board (2 members out of 6 at MÁV and 2 members out of 5 at Rail Cargo Hungaria).

7.11.3 Interaction and coordination

According to the representative of the EWC secretariat / office, interaction and coordination within the ÖBB Works Council functions very well. The main reasons for this are the following:

- ▶ The close link between senior EWC members and national trade unions in Austria, Hungary, Italy and other countries involved in the EWC. This is facilitated by the fact that railway companies are strongholds of trade union policy with high membership rates;
- ▶ The direct and good relationship and close exchange between the trade unions across borders. Following the close economic and labour market related linkages, Austrian unions including the vida trade union have established close ties with their counterparts in the central and eastern as well Balkan regions as well as with Italian trade unions. This also facilitates good cooperation and trust between workers representation bodies at company level;
- ▶ All railway trade unions involved in the ÖBB EWC are also quite actively engaged at EU level in sectoral policies and projects carried out and coordinated by ETF. Also, this provides for exchange and cooperation as well as trust building and the development of joint understanding of challenges and needs;

- ▶ In this context it should also be noted that the European sectoral social dialogue in railways certainly is amongst the most pro-active of the more than 40 SSDC with a number of autonomous framework agreements that have a direct impact on working conditions and employment of the sector (e.g. Agreement on working conditions and working time of staff engaged in cross-border railway services which was transposed to the whole sector by EU Directive or the autonomous agreement on promoting of women in railways of 2021);
- ▶ Against this, a lively interaction and coordination within the level of the ÖBB EWC is facilitated by good practices at the level of EU social dialogue as well as trade union sectoral policies;
- ▶ At least from the perspective of the interviewed EWC representatives from Austria, Italy and Hungary, the ÖBB EWC provides a clear added-value for the delegates:
 - For the Austrian members that already have some influence in the company policies by strong works councils and workers participation at board level, the involvement in the EWC brings additional insights about the situation of workers outside Austria;
 - For EWC delegates in Italy and Hungary, the main added value is the access to information and the involvement in transnational processes of consultation;
 - A concrete added value has been for example the Memorandum on Telework that was signed in November 2021 and provides for company wide minimum standards and conditions.

7.11.4 A specific example of articulation in the context of restructuring / reorganisation

According to the interviewees at ÖBB EWC, a good practice case of restructuring has been the role of the EWC right at the beginning of its lifetime in the context of the integration and restructuring of MÁV Cargo.

The European works council had a role in the peaceful structural adjustment – having still a very significant reduction of headcount (from 3.000 to 2.000). At the end of this process an agreement was concluded with employment guarantees.

Another good practices example highlighted by interviewees in Austria has been outsourcing:

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

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

Such examples illustrate the concrete added value of cooperation and coordinated trade union and works council action in order to fight for good working conditions of the ÖBB employees.

Working conditions as well as issues related to job security and fair wages are also key concerns of the Italian member of the ÖBB EWC. The interviewee (also a member of the trade union FILT CGIL) acknowledges the added value of being involved in the EWC in this context in relation to receiving information on the situation of the whole group and also activities of workers representatives in other countries involved in the EWC. The involvement in the EWC contributes to a better understanding of the company and strengthens the position vis-à-vis the Italian management. This is important because the relationships with the local management in Italy are not easy and the integration of the Italian subsidiaries in the whole ÖBB group still is comparatively weak.

Against this, the Italian workers representatives would be in favour of a stronger integration of Rail Cargo Italy into the ÖBB freight division as this would have the likely effect of positive impacts on the working conditions

of workers representatives (time-off for works council work, training, facilities, etc.) and would also create opportunities for an improvement and certain harmonisation of working conditions, including convergence in the field of remuneration.

A more recent case that has been highlighted as good practice by EWC representatives relate to telework and its rapid increase during the Covid pandemic.

The following is a quote from a press statement on the Memorandum of Understanding on Telework between the ÖBB Holding Executive Board and the EWC:

“The Covid-19 pandemic has brought everyone within ÖBB closer together, demonstrating how ÖBB is one big family. Steps were taken centrally to ensure that all the necessary safety measures were put in place for all employees, personal protective equipment was distributed and hygiene measures were implemented beyond the Austrian border. Everyone played their part and continues to do so today.

The switch to home and remote working also took many by complete surprise. Now that staff have become accustomed to this new way of working, ÖBB has decided to use the pandemic as an opportunity to make its working practices fit for the future and to improve job satisfaction. With this in mind, the Executive Board of ÖBB-Holding and the European Works Council have prepared a joint declaration which lays down Group-wide principles for hybrid remote working.”

“Over ten percent of ÖBB’s staff members are employed outside of Austria. New ways of working together will play an increasingly important role across the entire ÖBB Group to make it easier for staff to communicate efficiently across the various companies and borders and to work together to achieve our goals. The opportunities provided by remote working are remarkable at breaking down barriers,” says CEO Andreas Matthä.

‘On signing the Memorandum of Understanding on Remote Working on 19 November 2021, ÖBB’s central management and European Works Council take joint responsibility to ensure that the Group’s values are embraced universally across national borders and are clearly reflected in employees’ actual working conditions,’ explains Roman Hebenstreit, Chair of the European Works Council.”

7.11.5 Conclusions and assessment

The ÖBB case illustrates quite well that there can be real added value of an EWC for working and employment conditions on the ground, if the coordination and collaboration of different level of interest representation from local works councils to the supervisory board combined with strong trade union coordination at national, cross-border (between unions involved in the EWC) and European level (between the involved unions and the European sectoral trade union federation) works well, and if there is trust and joint understanding of challenges and needs.

Mutual trust of all employee parties and structures involved and a strong feeling of solidarity at ÖBB EWC are quite remarkable, even more when it is considered that the ÖBB case brings together trade union traditions and industrial relations frameworks that are quite different. Therefore, the ÖBB case is an important case of good practice in our sample.

7.12.1 Background, context and evolution

Philip Morris International (PMI) is the largest tobacco manufacturer in the world after China National Tobacco Co. PMI is headquartered in the U.S. but since the spin-off of the US-business under the Altria Group, the international business is managed from Lausanne in Switzerland. PMI today has a workforce of about 70,000 of which around 12,000 are working in European countries. The largest European subsidiaries are in Poland with around 3,000 employees with two factories and the PMI Service Centre (created in 2005 for financial, HR, IT and procurement services), Germany (2,000 employees in two production sites), Italy (2,000) that hosts the Philip Morris Manufacturing and Technology Bologna (PMMTB) as the Centre of Excellence for staff training, prototyping and large-scale production of smoke free tobacco products. One of the largest growing countries in Europe is Romania with around 1,200 employees in Otopeni, one out of three sites in Europe for “reduced risk products”, such as the PMI product IQOS, a smokeless system that only heats but not burns tobacco. The largest non-EU country in Europe is the Ukraine with around 1,200 employees.

Like other larger multinational tobacco producers, PMI has responded to the increasing pressure on the tobacco industry by adjustments in the business model and the search for new products such as the tobacco heating system IQOS that is marketised as an alternative to traditional cigarettes. Products for a “smoke free future” are part of a new business strategy and vision that also includes targets on green transition and decarbonisation (achieving carbon-neutrality across PMI direct operations by 2025 and the full value chain by 2040 and on sustainability and on corporate due diligence and responsible sourcing).

Against the backdrop of the problematic profile of a cigarette manufacturer and in view of issues of human and labour rights violation in its supply chain, PMI today places very high value on compliance with global standards as developed by the ILO, UN and other institutions. The company has adopted a number of global corporate standards and commitments that are in line or even go beyond international standards on labour relations, workplace integrity, diversity or gender.

According to the 2021 annual report, PMI states that

“Our businesses are subject to a number of laws and regulations relating to our relationship with our employees. Generally, these laws and regulations are specific to the location of each business. We engage with legally recognized employee representative bodies and we have collective bargaining agreements in many of the countries in which we operate. In addition, in accordance with European Union requirements, we have established a European Works Council composed of management and elected members of our workforce. We believe we maintain good relations with our employees and their representative organizations.”⁴¹

The establishment of the “European Council for Employees of Philip Morris European Union Region Tobacco Companies” dates back as far as 1996 when the company formed a mixed management – employee body.

Since then, the agreement has been renegotiated for several times, bringing it also in line with the provisions of the EWC Recast Directive in 2009; the last time in 2020.

⁴¹ Philip Morris International: Annual Report 2021, p. 4.

7.12.2 Social dialogue, workers participation and trade unions

PMI and the European Council illustrate the approach a multinational company to find a model of transnational social dialogue that fits into the corporate culture of global companies that are “footloose” in the sense of absence of any specific national cultures and models of social dialogue and industrial relations that would shape central management’s behaviour and practice. In terms of corporate governance, PMI neither at central nor at national level has any supervisory board.

While formalism in terms of respect of national legal requirements of information, consultation and other provisions as regards workers’ rights and working conditions may characterise the global approach of the company, the PM European Council is an interesting example in itself as it tries to find a way of combining the existing diversity and variety of national level systems of industrial relations and social dialogue with a supplementary tier of transnational social dialogue that is quite ambitious. According to the Agreement, the Council has three main objectives:

- ▶ First, to *“strengthen the process of information and consultation in the form of a dialogue and an exchange of views between the PM management and its employees”*;
- ▶ Secondly, to *“promote a mutual understanding between PM and its employees about the business of PM, its performance, its operating environment and its marketplace for its products and their relationship to the interests of PM’s employees”*;
- ▶ Thirdly, to *“enhance or further improve the mutual interests of both PM and its employees.”*

While these provisions go beyond an approach of transnational social dialogue that is limited to information and consultation of employees, the Agreement states that the PM EU Council will *“supplement, but not substitute, existing rights, respectively, of management, employees and unions at local, national or transnational level”*. Furthermore, *“the PM EU Council, while at all times maintaining its right to dialogue and an exchange of views, will recognize and respect diversity and autonomy in local operations, local structures and organisations, cultures, traditions, and social concepts...”*

It has to be noted that the PMI of local, national, and transnational social dialogue acknowledge the important role of trade union organisations along other forms of employee representation bodies. At transnational level, PMI regards the global union federation IUF as the main partner of global dialogue and at EU level this is the European sectoral union federation EFFAT. In fact, and quite remarkable, the agreement on the establishment of a European Council for Employees has been signed by EFFAT along with the other members of the European Union Council.

The strong role of EFFAT has also contributed to the contents of the agreement by a number of characteristics

- ▶ The mixed EU Council consists of employee representatives as well as representatives of the Philip Morris management;
- ▶ Besides, the agreement also provides for union representation – it is foreseen that 4 members of the EU Council are trade union representatives that are nominated by EFFAT and selected by the group of PM employees in the EU Council;
- ▶ The agreement stipulates that the Philip Morris Regional Vice President of Human Resources for the European Union will act as the chair of the EU Council and the Vice-Chair will be elected from the employee representatives in the Council, whereby from the beginning of the EU Council, this position is held by EFFAT;
- ▶ The Chair of the Council is also chairing (jointly with the Vice-Chair) the so-called Liaison Committee which consists of up to 6 employee representatives, including up to 2 trade union representatives. The Liaison Committee is the main body for ad-hoc exchange and information and consultation on behalf of the EU Council between the two annual meetings of the Councils.

Though the workers group in the PM European Council was able to achieve improvements on consultation procedures and the anticipation and management of restructuring, consultation still is regarded as a weak point – also because of the ambiguous provisions of the EWC Directive. According to the Vice-Chair of the EU Council, it would be necessary to regulate more exactly the start and end of the consultation process as well as the aim of consultation in the context of restructuring and change. As regards the latter, the suggestion would be to orient the EWC Directive closer to the Directive on collective redundancies and the concept of “socially responsible solutions”. Furthermore, it would be important to have the obligation that the results of any consultation are documented in a joint record or protocol to provide guidance and orientation for local level negotiations and dialogue. And finally, it should be clearly stipulated that no measures should take place before the consultation process has ended.

7.12.3 Interaction and coordination

The PM European Council has employee representatives from PM subsidiaries in the EU with at least 100 employees and currently consists of delegates from Belgium, the Czech Republic, France, Germany, Greece, Hungary, Italy, Lithuania, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Spain, Sweden, the UK and Croatia. There are one (from countries with less than 1,000 employees), two (1,000 – 2,000 employees) or three (more than 2,000 employees) delegates per country.

The interaction and coordination of the PM European Council works very well in particular because of the following aspects highlighted by the interviewees (Vice-Chair of the Council and delegate from Romania, who also is a member of the Liaison Committee):

- ▶ The EWC agreement that acknowledges the diversity of national employee representation, respects the important role of trade unions and regards the EU Council as an important arena of transnational social dialogue vis-à-vis the central European HR management;
- ▶ An understanding of social dialogue at transnational level that goes beyond information and consultation but seeks develop joint solutions for the whole EU area of PMI. This is illustrated by the achievement of concrete results on issues of common interest such as stress/wellbeing; employability; working and employment conditions of the sales force; leadership culture or data protection where also high-level management representatives are involved.⁴² Focussing on certain social challenges and priorities is essential;
- ▶ Support for the EU Council, including training of delegates, time-off and the possibility to engage experts;
- ▶ A Vice-Chair of the EU Council who can concentrate on the work of coordinating and moderating the employee representatives of the EU Council, the Liaison Committee and provide support for national level employee representatives and trade unions;
- ▶ The fact that a key role of the PM European Council is carried out by a senior trade union representative closely linked to EFFAT has facilitated coordination of different trade union expectations, interests and cultures within the EWC and the orientation towards a results-based policy of the EWC;
- ▶ A close linkage between the EWC and national level trade unions from the perspective of the interviewees is very important because national unions are crucial to provide support for individual EWC delegates. Therefore, it would be important that national level unions involved in PMI subsidiaries are aware of what is happening in the European Council, participate in decision making processes and follow up and monitor its implementation;
- ▶ There is no real functioning of the EWC if the local and national social dialogues are not working well. That is why monitoring and ensuring a well-functioning social dialog on local level is one of the main tasks and responsibility of the EWC;

⁴² The discussions and agreements with the central management in such thematic working groups are documented in joint minutes that will also shape local practices. In the case of data protection there is also a European “Agreement on the international exchange and protection of human resources data” that has been renegotiated and adjusted in the light of the EU General Data Protection Regulation” (GDPR). See section on restructuring below.

- ▶ The involvement and participation of the local HR management in the EWC is essential for the follow up of its decisions;
- ▶ Crucial for a well-functioning EWC are also permanent working structures like the Liaison Committee, working groups and regular MS Teams meetings;
- ▶ The close linkage between the Philip Morris EU Council, European and national level trade union organisations have also contributed to a joint understanding about the added-value of the EWC that goes beyond pure information and regards consultation and social dialogue as an opportunity to (co-)shape company decisions and implement own demands.

7.12.4 Articulation in the context of restructuring / reorganisation

An example of the added value of the PM European Council that was highlighted by the interviewees has been the negotiation of a European Agreement on the international exchange and protection of human resources data. The demand for such a European agreement that regulates minimum requirements of the protection and treatment of PM employee personal data in the EU was made by the EWC when the decision was taken by the central management to relocate a number of HR and back-office functions (skip: to Poland) in- and outside of Europe where shared service centres were established. The initial agreement was already signed in 2006 and was renegotiated in 2019 to align with the EU Regulation 2016/679 (GDPR).

Such a European agreement was also in the interest of the central European management because it avoided lengthy and costly negotiation in each of the EU Member States where PMI has subsidiaries. On the other hand, the European Council or the Liaison Committee was able to negotiate provisions on monitoring the implementation of the agreement, being informed regularly about external service providers that have access to employee data and changes in the scope and purpose of processing of PM EU employee personal data as well as becoming immediately informed about any personal data breaches.

The active and co-shaping role of the PM European Council has also been highlighted on other issues and examples that are not limited to purely information and consultation procedures in the context of transnational restructuring. For example, when the PM central management decided in 2019 to close the tobacco factory in Berlin, resulting in job losses of most of the 1,000 employees, the EWC provided support in the context of the local negotiations between the management of the company, local works councils the sectoral trade union. This also included the participation of the Vice-Chair of the PM European Council in the negotiation of a social plan.

As highlighted by the Romanian delegate in the PM European Council, the support from the EWC has been very important not only because of improved information and knowledge about the company's development, but also in different situations of conflict with local management in Romania, against a positive economic development of the PM subsidiaries in Romania (over the last five years, PMI has invested significantly in the greenfield factory site in Otopeni and the manufacturing of non-smoke products). The EWC delegate who is also a senior figure in the company-level trade union appreciates very much the support received from the PM European Council and in particular the Vice-Chair of the Council. According to him, this support has also improved the relationship and the development of social dialogue as well as collective bargaining practices with the Romanian management.

7.12.5 Conclusions and assessment

Philip Morris European Council can be described as a good practice case in terms of quality of the agreement, going beyond formal information and consultation procedures as well as coordination and interaction between different types and levels of workers participation and social dialogue. A striking feature of the case is the strong position of European and national level trade unions that is provided for in the agreement and includes a certain number of delegates of the EWC being nominated by the European sectoral trade union federation EFFAT.

The case also illustrates the direct added value of strong and intensive trade union coordination not only for local level employee representatives and trade unions, but also the added value for the European central management, including not only HR but also senior management in operational business areas.

7.13.1 Background, context and evolution

Stellantis N.V. is a company headquartered in Amsterdam that operates as a worldwide multinational automotive manufacturing corporation. It was formed in 2021 as a result of a merger between the French PSA Group and the Italian American conglomerate Fiat Chrysler Automobiles (FCA).

- ▶ The company is listed on Euronext Paris and on Milan's Borsa Italiana. This transaction has been the biggest merger in the history of the automotive industry. In 2021, Stellantis was the world's fifth largest carmaker behind Toyota, Volkswagen, Hyundai, and General Motors, in terms of global vehicle sales;
- ▶ Stellantis sells 16 brands (Abarth, Alfa Romeo, Chrysler, Citroën, Dodge, DS, Fiat, Fiat Professional, Jeep, Lancia, Maserati, Mopar, Opel, Peugeot, Ram and Vauxhall);
- ▶ In early 2021, the group employed approximately 300,000 people in more than 130 countries, with manufacturing facilities in 30 countries.

Following the merger, the CEO, Carlos Tavares, has announced about €5 billion in synergies, which set a lot of pressure on costs reduction. Regardless of Stellantis' building process, the automotive industry is under constant restructuring due to the shift from thermic engines to electric engines.

As a result of previous mergers and acquisitions, there are currently three active EWCs at Stellantis

- ▶ The PSA's EWC, which is settled according to French law;
- ▶ The Opel-Vauxhall's EWC under German law;
- ▶ The FCA's EWC on an Italian law ground.

A special Negotiation Body (SNB) was created and ongoing negotiations are taking place since last year in order to build a single merged EWC. This new EWC should be settled according to the labour law of the Netherlands.

- ▶ The SNB consists of 30 employee representatives;
- ▶ There is a Steering Committee of three chairpersons and the trade union coordinator from industriAll.

The three EWCs have a different history and cultural habits, but the three chairmen discuss almost monthly (through teams meetings) in order to share information and show a unified line in front the management. All interviewees reported satisfaction about these regular exchanges.

7.13.2 Social dialogue, workers participation and trade unions

The three current EWCs function differently, but all interviewees agree that the social dialogue quality decreased due to main concerns of the management about costs reduction and the introduction of top-down management hierarchies and culture within the group.

The French EWC

- ▶ Has a new chairperson for 2 years who has been very active in coordinating activities. He has chosen not to be a full-time works councillor and to keep his former position to stay in touch with the field;
- ▶ The EWC meets once a year on ordinary ground and an extraordinary meeting is possible if needed. All meetings were held virtually since the Covid era;
- ▶ 13 countries are represented.

The German EWC

- ▶ The chairperson is working full-time for his duties as employee representative;
- ▶ The so-called European Employee Forum was established in 1996 and renegotiated in 2000 and 2009, following the recast Directive;
- ▶ IG Metall is strongly involved, there is a strong history of union battle;
- ▶ The EEF consists of 6 members (Austria, Germany, Hungary, Poland, Spain, UK), there is currently no member for Benelux;
- ▶ There is no predefined budget, but the members can decide to hire an external expert or get legal advice, and there is a full-time employee serving as the EEF secretariat;
- ▶ The forum meets four times per year, but since the outbreak of the pandemic, all meetings were held virtually, which had a negative impact on informal exchange of information among the members. Due to the joint history and continuity of membership, close personal ties play an important role in the functioning of the body;
- ▶ Employee representatives serve as members of the supervisory board, as it is stipulated by German legislation, but exchange of information is hindered by confidentiality.

The Italian EWC

- ▶ Is not functioning properly since the former chairman left the company following a spin-off of activities;
- ▶ The national trade union coordinator, who is national secretary for the Italian automotive industry and in charge of collective bargaining at national level, has been given by IndustriALL the mandate to animate the Italian EWC. It is a temporary mandate that was created in a situation of emergency;
- ▶ When the FCA's EWC was still working, the exchange of information was seen as satisfying, especially between Italy and Poland that were the two main important countries.

7.13.3 Interaction and coordination

The French EWC

- ▶ The chairman sees his role as mainly devoted to coordination and information exchanges. The meetings agenda are decided collegially;
- ▶ Negotiations are held according to the principle of subsidiarity;
- ▶ National union coordinators from all representative unions coordinate activities in France. In all other countries, this role is taken by the respective EWC members and/or national trade union coordinators;
- ▶ The EWC chairperson holds 3-4 annual virtual meetings with representatives from each represented country;
- ▶ Coordination between levels of representation is played by trade union coordinators and national delegates.

The German EWC

- ▶ Strong history of German-style coordination and access to comprehensive information at national level, but severe tensions and conflict as a result of massive restructuring and plant closures;
- ▶ Since the integration into PSA and now Stellantis, and the introduction of a global matrix organisation, Opel management has been weakened significantly. Consequently, the quality of information has deteriorated recently. When Opel was part of General Motors, there was a European management level that was able to make decisions and provide information. At Stellantis, the organisation is global;
- ▶ All national delegates share information with local bodies supported by the trade union coordinator.

The Italian EWC

- ▶ When it was working the national secretary of the main federations concerned were allowed to attend the EWC's meetings as guests;
- ▶ Among all the missions of the temporary mandate of the trade union coordinator, he must find a solution about which Italian trade union (there are several) would be able to be represented at EU level, on which ground and for how long.

7.13.4 Articulation in the context of restructuring / reorganisation

All interviewees expressed fear to see the representative body they were used to be dissolved in a new body representing a huge number of employees and countries.

The three EWC's chairmen, accompanied with their national coordinator and an expert from industrial created an informal group to share information and joint forces before the final settlement of the new merged EWC.

All interviewees seem to agree on the priorities for the future joint EWC. Among the most quoted points:

- ▶ Information & consultation on all major issues and at an early stage (when still useful).
- ▶ Precise definition of transnationality to capture the great number of ongoing and future projects of restructuring. The inclusion of the UK, Serbia and Turkey although they are not EU member States because they represent a lot in terms of employees;
- ▶ More than one annual meeting and right to several steering committee meetings;

- ▶ Right to expertise;
- ▶ Recognition of trade unions' role in the agreement;
- ▶ Peripheric rights (interpreters, legal assistance, training...).

The first management proposal fell short of expectations, the three chairpersons are currently working on a counterproposal.

7.13.5 Conclusions and assessment

Before the conclusion of a new agreement and the setup of a new EWC, the structure of employee representation at Stellantis does not match the structure of the company as all decisions are taken at global level. In this context, effective transnational employee representation cannot play an effective role.

This is why the three chairpersons have set up an informal group for the exchange of information that meets regularly.

On the whole, it was reported that employees' representation at EU level was weaker than employers' representation.

Regarding the legal framework, the interviewees express several points that would need to be improved

- ▶ A clear definition of the timeframe for information and consultation;
- ▶ A clear definition of transnationality is of particular importance in sectors such as the automotive industry, in which companies are constantly restructuring;
- ▶ A threshold for when the EWC has been informed properly, the process of information or information and consultation can be considered to be concluded and the project can be implemented;
- ▶ A clarification of legal remedies for all countries. There should be a clear and easy access to court in each country in order to guarantee the respect of employees' rights;
- ▶ It should not be always possible to use confidentiality to infringe exchanges between different levels of employees' representation, and exchanges between board level employee representation and traditional employee representation should be fostered.

7.14.1 Background, context and evolution

Uniper SE is a listed company that was created in 2016 by spinning off conventional power generation from coal and gas (including hydropower but excluding nuclear power in Germany) and global energy trading from E.ON. In the context of the separation, Uniper also became the operator of the E.ON activities in nuclear power generation. In 2016, the company had around 15,000 employees but the workforce was reduced by a number of divestments, e.g. the sale of a stake in a Russian gas field 2017 and the sale of all activities in France. In 2021, Uniper employed 11,500 employees in over 40 countries according to the annual report, whereby around half of the workforce is employed in Germany.

Soon after the establishment of Uniper, Fortum, a Finnish energy company, became increasingly engaged in the company; in 2019 became the major shareholder and in 2020 held 80% of the Uniper shares. Fortum is the third largest energy provider in the Nordic countries. 51% of the company is owned by the Finnish state.

Fortum has only 5,000 employees, of which around half work in Finland. Other countries the company is involved in are Sweden, Norway, Poland and the Baltic Countries. As a direct employer, Fortum has less than 100 employees in Germany.

Whereas the trend of a merger and Uniper becoming integrated in Fortum as the dominating company was quite a logical development and foreseen by all stakeholders for 2022, the Russian invasion in March 2022 changed everything: While Fortum's management in May 2022 announced that it would withdraw from Russia and divest all business in the country, the situation of Uniper was much more dramatic. This results from the strong dependency of Germany from Russian gas delivery (in May 2022, Finland received only 5% of its gas supply from Russia) and Uniper being the main provider of gas in Germany and having major stakes in the North Stream 2 gas pipeline. Furthermore, Uniper is the majority owner of Russian Unipro, that owns several power plants in Russia. Though at the end of last year it was announced that Uniper would start a divestment process of Unipro, this is not going to happen in the current situation.

The war in Ukraine not only has destroyed the Germany energy policy, which has been massively dependent on cheap Russian gas supply, but also resulted in a sudden and substantial financial crisis of Uniper's business model. At the time of writing (July 2022), the company's survival depended on massive financial support from the Finnish and German governments.

Against this, it is not possible to predict the near future of Uniper and the planned merger of the two companies.⁴³

⁴³ In July 2022, Fortum and the Finnish government indicated the option to put the crisis-ridden gas activities of Uniper under state control. This however was criticized by the German trade union ver.di and the Uniper works council as it would open the door for massive job losses.

7.14.2 Social dialogue, workers participation and trade unions

Uniper SE in the tradition of E.ON and other large companies in Germany is characterised by a strong tradition of co-determination, including a parity workers representation in the company supervisory board.

The supervisory board consists of twelve members. Six members are elected by the general meeting and six members are elected by the employees in accordance with the election procedure set out in the agreement on the involvement of the employees in Uniper SE. The Uniper supervisory board includes two employer representatives from Finland and one worker representative from Sweden – all other supervisory board members are from Germany.

When Uniper was created out of the E.ON SE in 2016, an agreement on the participation of workers in the Uniper SE was signed. The agreement reflects the strong role of trade unions, social dialogue and co-determination in the company and therefore workers representatives and trade unions are quite satisfied with it. The following aspects have been highlighted by the SE Works Council chairperson:

- ▶ The preamble of the SE agreement 2019 notes that *“The formation of Uniper SE is also driven by the conviction that the company’s economic success is closely linked to the commitment and satisfaction of its employees. The prerequisite for this is an intensive dialogue between the management, representatives of the employees and their trade unions.”* (Uniper SE Agreement, Preamble);
- ▶ Based on this, the Uniper SE Works Council is respected by the Uniper management as a negotiation partner in the context anticipating and managing transnational change processes, reorganisation and their social impacts;
- ▶ The SE Works Council and the management have negotiated transnational agreements providing for European minimum standards and procedures in the context of reorganisations programmes, working conditions of expats and on digitalisation;
- ▶ Own resources and support provided by the management are regarded as sufficient. The agreement foresees at least two annual meetings per year. The number of extraordinary meetings is not limited;
- ▶ The SE works council has the right to involve external experts and to create temporary working groups on topics of specific interest;
- ▶ Before the Covid pandemic, the select committee had at least six meetings per year. During the Covid years 2020 and 2021, much more virtual meetings of the select committee took place;
- ▶ The Uniper SE Works Council has been quite pro-active in the context of decarbonisation and the green transition as well, e.g. there have been joint meetings with the EWCs of RWE and Engie to discuss the decision of coal phasing out in the Netherlands;
- ▶ Finally, the SE Works Council is actively involved in activities of the two European trade union federations EPSU and industriAll as well as national trade unions.

7.14.3 Interaction and coordination

The Uniper SE WC currently has 15 delegates from eight countries (DE, UK, SE, HU, CZ, FR, NL, IT), The Select Committee consist of four countries: Germany (chair), Netherlands and the UK (deputy chairs) and Sweden, i.e. those countries with the largest shares of employees in the EU countries.

- ▶ Key features as regards interaction between the different levels of workers interest representation and coordination of practices are the following:
- ▶ Composition of the UNIPER SE WC favours good coordination and interaction: Policies and practices are strongly shaped by national industrial relations with a strong trade union / works council tradition of “co-leadership” and social dialogue (DE, NL, SE);
- ▶ This is also illustrated by the provision of the SE Works Council Agreement that besides information and consultation on transnational matters, the SE works council together with the company’s management board may agree on transnational guidelines, in particular in the field of health and safety;
- ▶ At national level, high trade union membership rates and strong trade unions in the energy sector also favour coordination and interaction with sectoral trade unions, this also holds true for Hungary and the Czech Republic;

- ▶ As a pro-active EWC/SE WC, Uniper works with national as well as European level sectoral trade unions and has a good relationship that could be described as a win-win-situation – as other larger EWCs in the energy sector, Uniper contributes actively to sectoral policies at EU level and sectoral social dialogue with employers;
- ▶ Uniper illustrates a case of “self-organised coordination and interaction”: Good relationship with Uniper management, well established social dialogue at company level and mutual respect create a situation where there is no stronger need for national or EU level trade unions to play a stronger role in providing help and support in order to support coordination and interaction between different level.

7.14.4 Articulation in the context of restructuring / reorganisation

At the time of conducting this case study (December 2021 – February 2022, i.e. before the Russian invasion in Ukraine), Uniper and the Uniper SE WC were going to experience a substantial change and transition process with the perspective of full integration of the Uniper SE WC into the Fortum EWC.

This process from the perspective of industrial relations and comparative EWC research is extremely interesting as Fortum has quite a different corporate culture and a different approach to social dialogue.

The following aspects should be highlighted in this context

- ▶ The Fortum European Council (FEC, created 1999 with agreement renegotiated in 2006 and 2019 following mergers and company change) differs quite significantly from the UNIPER SE WC, e.g. in terms of national composition (strong presence of Nordic countries with FI, DK, SE, NO on the one hand and CEE countries Poland and Estonia on the other hand);
- ▶ The Fortum European Council is chaired by the company’s CEO and co-chaired by a workers representative elected by the workers group. To carry out everyday activities the Council has established a FEC Working Group that also is composed of representatives of the management (2-3) and 5 workers appointed by the employees in the Council;
- ▶ There is only one general meeting of the Fortum European Council per year, but additional meetings are possible. The Working Groups shall meet at least 3 times;
- ▶ The Working Group is responsible for developing the activities of the FEC and keeps contact to the FEC members between meetings. It is also the first to be informed by the management in case of any significant changes and exceptional developments. The working group may decide to invite local FEC members to its meetings and bring in external experts;
- ▶ The employee group within the FEC Working group consists of employee representatives from FI, SE, NO and PL
- ▶ The EWC agreement includes the provision that members of the Council should have a reasonable knowledge of English. While simultaneous translation might be provided, there is the clear expectation that the working language of the Council should be English.

As an appendix, the agreement includes a quite detailed job description of members of the Fortum European Council addressing questions such as the “*main purpose of the job*”, “*objectives of the position*” and the “*framework within which the position functions*”.

The description also includes a passage of “job requirements” of individual EWC delegates

- ▶ *“A true sense and passion for the international Work Councils work and unselfish work for the benefit of all employees within the Group regardless of country or company;*
- ▶ *The FEC member role includes extensive communication – both verbal and in writing – between Steering Group members and the Work Council members, with management of Fortum companies as well as representatives from different associations both on a national and international level;*
- ▶ *Skills in handling negotiations and acquiring documents and statements and when needed ask for help to understand their content in them are of great importance as well as social skills;*
- ▶ *Knowledge of labour legislation and how a EWC functions is an advantag;*
- ▶ *Dynamic attitude and experience of project work and networking;*
- ▶ *Willingness to take on tasks and share the workload.”*

As a further appendix of the agreement, a country-by-country description of the “information flow” from the Fortum European Council and the select committee to the company level has been added to the agreement. It is worth to note that national specificities of industrial relation, namely the role of trade unions vis-à-vis works councils / shop stewards are considered. This means that in countries such as Poland not only the company level chair of the employee representation has to be informed and involved, but also the respective trade union structures in the company. Thus, for interaction, information and consultation with local employee representatives, shop stewards and/or trade union committees, the national EWC delegate(s) play(s) a main role.

The agreement also includes an adaption clause in case of changes of the Group due to significant changes, mergers, acquisitions or division, clarifying specific procedures that should be applied. In case the company acquired by Fortum also has an EWC, it should remain in place until a new agreement has been reached or the maximum adaptation period has ended (18 months).

According to the vice-chair of the Fortum European Council, the relationship with the management is based on a joint understanding and respect of the added value of the Council. However, there have been also issues and conflicts as regards the timing of information and consultation procedures, i.e. a later information and/or provision of respective data and more detailed information.

In this context, the interviewee highlighted the need of close interaction with the Finnish trade union coordinator and the support by legal and other advice. The trade union coordination is also an important link to the European trade union structures.

Also, the coordination with and interaction between workers within the select committee / FEC working groups works well according to the EWC co-chair.

Since 2019 and the acquisition of Uniper, the Fortum EWC is working closely with the Uniper SE WC. Apart from regular joint meetings and direct exchange, the Uniper SE WC chair has been participating in the Fortum EWC workers group/select committee.

It should be mentioned that the corporate governance model of Fortum does not foresee any workers representation either at the Board of Directors nor in the executive management.⁴⁴

7.14.5 Conclusions and assessment

The Uniper SE WC can be described as good practice case in terms of quality of the agreement, workers participation at board level as well as trade union coordination practice.

The company case also illustrates the added-value of a good functioning EWC/SE WC for the management: The company navigated quite well – so far – through uncertain times and periods of transition and change as well as takeover and pressure from activist investors.

By contrast, the Fortum EWC reflects a quite different character of industrial relations and also a different corporate governance culture that is rather based on the idea of “cooperation” and clearly defined rules of information, consultation and decision making. This is illustrated by the character of the FEC as a joint management – employee council and the important role of the Working Group.

Against this, an important learning from the case study has been that the close cooperation of two EWCs from different corporate governance and culture systems can work quite smoothly, if it is based on good quality EWC or SE agreements and on close collaboration of senior representatives in close liaison with all relevant structures of the EWC as well as national and European trade union structures.

⁴⁴ Though there is a legal right for employees to participate in company decision making (Act on Personnel Representation in the Company Administration, 725/1990) in Finnish companies with more than 150 workers, the mechanism for doing so however, depends on a number of conditions, including that the majority of at least two employee groups (manual, non-manual, and more senior staff) must demand a representation and that a cooperation agreement is negotiated with the management on details. It is also up to the management to decide whether employee representatives will participate in the board of directors, at the management level of the company's operating units or a supervisory board.



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