

# ANTICIPATION OF THE RESTRUCTURING PROCESS AND ITS PUBLIC AND PRIVATE MANAGEMENT: Role of the European Works Councils

Summary report of the seminar held on 30 January 2015



## THE ISSUES

Our globalised economies are facing **structural changes requiring ongoing adaptations for companies and for all the stakeholders in their environment, workers included**. There is consensus on the need to anticipate these changes, the challenge being to involve more than just executives and shareholders in the change anticipation and management process.

**The employees of multinational companies doing business in Europe should at least be informed and consulted on decisions affecting them**, even when these decisions are made in a different country to where they work<sup>1</sup>. To achieve this goal, European works councils can be created in companies or groups of companies employing **1,000 people or more within the EU or EEA and including at least 150 in two different Member States, at the request of 100 or more workers in two countries or at the initiative of the employer**<sup>2</sup>.

In practice, the role of these councils ranges from simply being “informed and consulted” on any changes in the company that are likely to impact the workforce, to **negotiating transnational company agreements**, including the limitation of the negative impacts of restructuring on employees<sup>3</sup>.

There are today more than **1,000 European works councils** in operation<sup>4</sup>, which means that **40% of eligible multinational companies** already comply with the European directives. The head offices of these companies are most often based in Germany (203), the US (165), France (123), the UK (116) and Sweden (76). European works councils are most common in the metallurgy, chemical, agricultural, timber, building and financial services industries<sup>5</sup>.

**Over half of them are established by firms operating in more than ten countries**. Their membership includes more and more people from Eastern and Central Europe, yet they are still rarely created by companies whose head office is based in a new Member State.

Twenty years after the 1994 directive on European works councils, **they have become the most common arrangement for transnational employee consultation and information**. They have also inspired the creation of “world group councils”, ushering in an extension of the European social dialogue to the global level. There are also some 2,200 “European companies”, including 51 with information/consultation structures and 54 with information/consultation/participation structures.

The boundaries are blurred between information-consultation and negotiation. The question of extending the remit of European works councils from employee information and consultation to negotiation must be addressed. **In practice, more than a hundred transnational company agreements** have been reached in 40 or so very large companies based or developed in Europe, affecting 7.5 million workers across the world<sup>6</sup>. 40% of these agreements are linked to restructuring.

**There is no European legal framework for these agreements, which would help identify their authors and clarify the legal impacts in the different Member States and the dispute resolution process**. Hence, the involvement of European works councils in negotiating agreements is incompatible with national systems that distinguish the advisory role of elected bodies (works councils) from the negotiating mandate given to unions (France), and with those that have only one union channel for

<sup>1</sup> “The EWC landscape on the eve of the transposition deadline of the recast directive 2009/38/EC”, Romuald Jagodzinski, Irmgard Pas, 2011.

<sup>2</sup> The European Commission’s DG for Employment, Social Affairs and Inclusion.

<sup>3</sup> Ibid, Romuald Jagodzinski, Irmgard Pas, 2011.

<sup>4</sup> Concerning more than 1,000 companies. European Trade Union Institute (ETUI), EWC database, 12/2014.

<sup>5</sup> European Trade Union Institute (ETUI), EWC database, 12/2014.

<sup>6</sup> SEC(2008)2155: “The role of transnational company agreements in the context of increasing international integration”, European Commission, 2008. The other transnational company agreements focus on health/safety, data protection, the principles behind HR policy and corporate social responsibility.



worker representation (there is no obligation to negotiate with unions at the European level<sup>7</sup>). Conversely, the involvement of trade unions in restructuring negotiations is problematic in national systems where works councils have sole responsibility for such matters (Germany). Since 2011, the number of restructuring agreements has slowed down<sup>8</sup>, while the number of restructurings has risen.

**The most effective European works councils are those that:**

- **Take preventive measures at a very early stage in the restructuring process.** This requires regular dialogue within European works councils between employee and employer representatives (who often have very different labour relations cultures) in order to establish the mutual trust necessary to conduct restructuring negotiations.
- **Focus on long-term strategies to anticipate future human capital requirements in the branches** in which they work and to prepare for the changes that will affect these branches going forward, for example the impacts of digitisation and/or the energy transition. However, for the European works councils to take such proactive action, information and consultation procedures must be observed. There is still room for improvement in this area, due more to **problems in the flow of information to and from the European works councils** than to non-compliance with the formal deadlines set for these procedures.
- **Successfully coordinate national and European labour negotiations.** Many European works councils **struggle to do this, primarily because it means adopting forward-looking approaches tailored to the labour markets and labour rights in different countries.**

## AVENUES FOR MAKING EUROPEAN WORKS COUNCILS MORE EFFECTIVE:

- **Promote discussion between European works councils on major industry trends and on training and skills needs.**
- Strengthen **national and European coordination between unions/European works councils.**
- **Improve the flow of information to and from European works councils.**
- **Reflect on potential relationships between European works councils and subcontractors.**
- **Involve other players, such as regional bodies, in the dialogue on economic and social challenges during restructuring processes.**
- **Determine how European works councils can foster more consensual labour relations** and help to develop a common European approach to challenges.
- **Establish an optional legislative framework at the European level on “transnational company agreements” to consolidate the results of transnational negotiation** (identify the actors and clarify the impact of texts and the dispute resolution process) **and help companies and sectors meet the challenges of labour organisation, employment and training.**

<sup>7</sup> Udo Rehfeldt, presentation for the seminar of 30 Jan 2015, hosted by Confrontations Europe.

<sup>8</sup> Renault, Solvay, BNP Paribas, Air France KLM, Valeo, Total and Alstom have signed European agreements.