

How EWC members see it

European works council members are dissatisfied. They feel particularly sidelined when their companies undergo restructuring. What is needed to improve the quality of information and consultation? The results of a current survey suggest some possible solutions.

The survey

Just under 800 companies have a European works council (EWC), around one third of all the companies that could be required to have them under the terms of the EWC Directive. The survey of EWC representatives was conducted in 2005 on behalf of the ETUC in companies whose EWCs are co-ordinated by six European Industry Federations. The questionnaire was distributed to 2,392 EWC representatives in 196 different companies, and 473 have been returned to date - a response rate of 19.8 per cent. The respondents come from 24 countries and 84 per cent are men. On average, they are 50 years old and have been employee representatives for 15 years. At the time of the survey, each held more than two positions in their national system of industrial relations.

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■ The adoption of the European works council (EWC) Directive in September 1994 marked the end of a lengthy and hard-fought campaign by the European Commission. This campaign's immediate objectives were to establish transnational information and consultation rights, and to encourage the creation of new industrial relations institutions. In addition, the Commission believed that transnational companies were able to evade nationally defined rights in the areas of information and consultation, and that the establishment of a system of information and consultation rights at transnational level would make this less likely. It also wanted to make the operations of multinational companies

more transparent - an issue that became more pressing after the Single European Act in 1986. The Commission anticipated an increase in company restructuring as the Single European Market developed, and argued that it was necessary to involve employee representatives in this process.

The promised revision

Article 15 of the Directive required the Commission to review the Directive in 1999, with the object of proposing revisions that would improve EWCs' performance. The result was a report published in April 2000, which →

→ acknowledged that the Directive was unclear in some areas - particularly in its definitions of information and consultation - but did not propose any revisions. Anna Diamantopoulou, the then European Commissioner for Employment and Social Affairs, justified this position in two ways. First, she argued that revising the Directive would hamper progress on two other draft directives (on the European Company Statute and on national information and consultation), the adoption of which she argued would make it easier to

revise the EWC Directive at a later stage. Secondly, she claimed that a revision of the Directive would not have any immediate effect on existing EWC agreements.

The Commission's 2003 legislative and work programme included a commitment to consult employer organisations and trade unions on a revision of the Directive. This was linked to a request by the Commission for a formal opinion on EWCs from the European Economic and Social Committee (EESC). The consultations with social partners scheduled for 2003

eventually took place from April 2004, and were followed by a second round of consultations during 2005. The results included a communication from the Commission - 'Restructuring and Employment' - which sought to establish closer connections between company restructuring and EWCs; a request to the social partners to find a negotiated way forward; and a Draft Opinion from the EESC which sought revisions to the Directive with the intention of improving the performance of existing EWCs.

The social partners' responses were mixed. The Union of Industrial and Employers' Confederations of Europe (UNICE) argued that revision of the Directive was unnecessary as EWCs were maturing, and that it would be more useful to concentrate on monitoring the implementation of the Directive in new member states. Although it acknowledged the role that EWCs might undertake during company restructuring, UNICE took the view that responsibility for improving their functioning of EWCs lay with those directly involved.

In contrast, the European Trade Union Confederation (ETUC) - which since 1999 has consistently lobbied for a revision of the Directive - welcomed the inclusion of company restructuring as a key item on the policy agenda. But it argued that the Commission's proposal for a direct link between EWCs and restructuring was ill-judged, as dealing with company restructuring was only one of a wide range of activities that EWCs undertake. To support this position, the ETUC commissioned a survey of EWC members in 2005

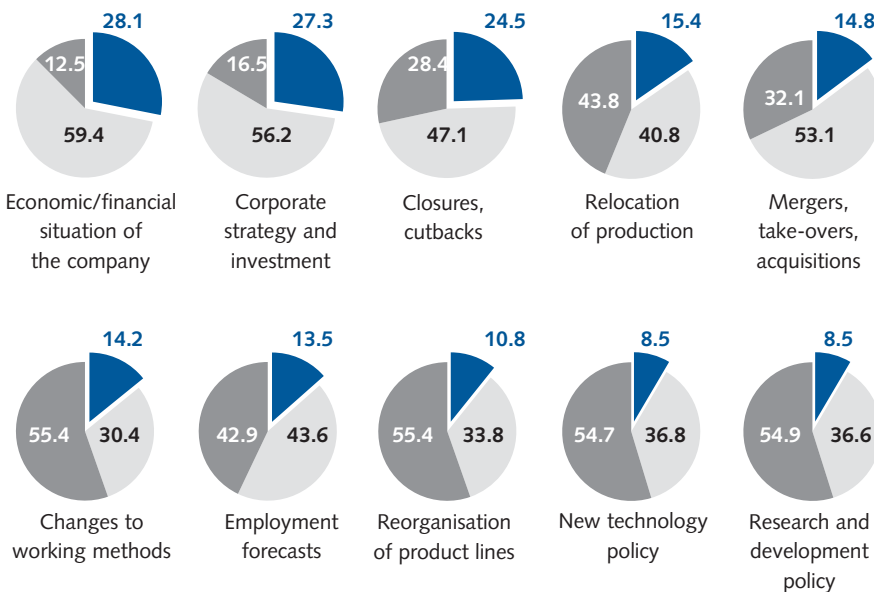
Article 2 of the Directive requires management to inform and consult the EWC on a range of issues relating to company performance and strategy. In principle, the

Still no proper voice

The quality of information and consultation and the importance of agenda items
All EWC representatives in per cent

■ Useful information and consultation ■ not raised or useless information
■ useful information, but no consultation

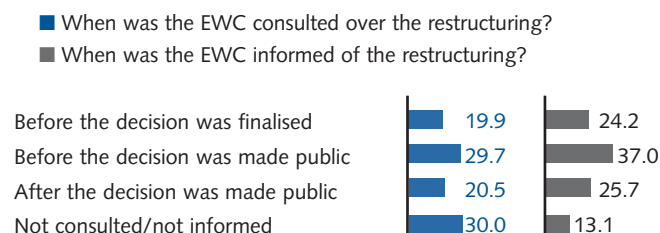
Agenda items according Article 2 of the EWC Directive



Source: Waddington 2006

A question of timing

The EWC and company restructuring in percent



Source: Waddington 2006

overwhelming majority of EWC agreements adopted the terms of Article 2 – see table on page 42.

Fewer than one third of the EWC representatives surveyed thought that there was ‘useful information and consultation’ on all items included in Article 2. In fact, more than 40 per cent reported that items such as ‘changes to working practices’, ‘re-organisation of production lines’ and ‘new technology policy’ of representatives had not appeared on the agenda of their EWC. With, on average, each respondent having attended four plenary meetings of the EWC, it is clear that these issues had failed to appear over a long period. These results indicate that the Commission’s intentions are not being met in practice within many EWCs. Information disclosure and consultation is not taking place on the range of topics identified by the Commission as key to a successful system of European employee participation.

Some EWC representatives reported that information was made available on agenda items based on Article 2, but that consultation did not subsequently take place. In some cases, the EWC representatives succeeded in putting items on the agenda that have either been prominent in recent European trade union bargaining agendas, or are the subject of an EU directive.

However, there was only one topic drawn from the trade union agenda – ‘health and safety’ – where more than half of the respondents reported they received ‘useful information’. This shows that EWC representatives have been unable to extend the agenda substantially beyond the items identified by the Commission.

Interestingly, representatives who hold an office – such as chair or member of a select committee – were more positive about the quality of information and consultation than were those who served only as EWC members.

Overall, only a tiny 1.7 per cent of representatives thought the EWC was ‘very effective’ as a means of influencing management, compared to 16.9 per cent who took the view that EWCs were ‘not at all’ effective in this role. The quality of information and consultation is thus failing to meet the objectives for EWCs as originally laid down by the Commission.

EWCs and company restructuring

The Commission originally saw EWCs as providing a mechanism for involving employee representatives in the process of company restructuring, which accelerated

with the development of the Single Market. Restructuring has certainly been widespread. Four out of five (81 per cent – 385) respondents indicated that their management had restructured the company to some degree in the three years prior to the survey – see Table on the left. But the survey results demonstrate that the original expectations of the Commission for EWC involvement are not being met.

As well as high-profile cases, such as those at Renault, Otis and Marks and Spencer, where management was able to exclude EWC representatives from decision-making, the survey shows that less than a quarter of EWC representatives were informed of the company restructuring before management finalised its decision, and just under 20 per cent were consulted.

In other words, over 75 per cent of EWC representatives were either informed by management about restructuring after the decision had been finalised or were not informed at all. And over 80 per cent of EWC representatives were in the same situation regarding consultation. This severely restricts the opportunities of the EWC to influence the nature of restructuring, and in practice precludes the participation of EWC representatives in the manner envisaged by the Commission.

A majority for revision

The ETUC, supported by the European Industry Federations, has drawn up its own programme for the revision of the Directive, and the survey sought EWC representatives’ views on this – see Table on page 44. The results show overwhelming backing for the ETUC, with up to 80 per cent of the EWC representatives either →

Making EWCs work better

Issues for inclusion in the revision of the EWC Directive
All EWC representatives agree and strongly agree

1. Consultation before decisions are implemented	96%
2. Specific rights in cases of merger or take-over	94%
3. Training for EWC reps	93%
4. Set time limits on the provision of information	89%
5. Negotiating and codetermination rights	89%
6. Set time limits for consultation	87%
7. More meetings other than the formal EWC meeting	85%
8. Information on a wider range of issues	81%
9. Help in understanding management information	79%
10. Extending Directive to more companies	74%
11. Guarantee a union role	73%
12. Extending Directive to joint ventures and franchises	72%
13. Guaranteeing a trade union seat on the EWC	70%
14. Gender balance of EWC according to workforce	51%

Source: Waddington 2006

→ ‘agreeing’ or ‘strongly agreeing’ with each of the items in the revision programme.

The survey indicates that EWC representatives have a set of priorities for the revision of the Directive. At the top of this list are measures to improve the performance of existing EWCs. In particular, ‘consultation before operational management decisions implemented’, ‘specific rights for EWC in cases of company merger or take-over’ and ‘specified time limits on the provision of information by management’ all receive significant support.

Looking at areas for ‘extending’ the Directive, support is strongest for the introduction of ‘negotiating/co-determination’ rights to supplement those on information and consultation. Estimates suggest that 65 EWCs have negotiated transnational agreements with management, with the number increasing since 2000, so introducing negotiating rights would simply consolidate what is already current practice in many EWCs. The

strong support for the inclusion of these rights in a revision of the Directive confirms the extent of disenchantment among EWC representatives with an institution based solely on information and consultation.

There is less support for measures intended to extend the Directive to more companies. As the respondents were already EWC representatives, it is not surprising that they should prioritise improvements to current EWCs rather than the creation of new ones. It should also be noted that only one third of the companies falling within the scope of the current Directive have set up an EWC, so extending the scope of the Directive would place a considerable burden on the trade union organisations that co-ordinate EWC activities and would certainly require them to put in additional resources.

But there was wide-ranging support among EWC representatives for a series of procedural improvements to the Directive. This was particularly marked in the

areas of training, meetings in addition to the plenary meetings, and a more formal relationship between trade unions and EWCs. The extent of support for these revisions among EWC representatives highlights the specific areas of weakness in current EWC arrangements. The proposal attracting least support was that for introduction of the principle of gender proportionality. But no fewer than 84 per cent (397) of the respondents were men. All of the women EWC representatives ‘strongly agreed’ with introducing the principle of gender proportionality into a revised Directive.

Time for the Commission to act

In the directive on employee involvement in the European Company Statute, the Commission met several of the points mentioned above by including more detailed and demanding definitions of information and consultation. But the question remains: will the Commission act on Commissioner Diamantopoulou’s earlier recommendation that the most appropriate time to revise the EWC Directive would be after the adoption of the directives on information and consultation and on the European Company Statute? The views of EWC representatives indicate that a failure to thoroughly revise the Directive will make it more difficult for EWCs to achieve the very objectives that the Commission originally outlined. ■

Further reading

Peter Kerckhofs: European Works Councils - Facts and Figures 2006. European Trade Union Institute, Brussels 2006.

Jeremy Waddington: Contesting the Development of European Works Councils in the Chemicals Sector. In: European Journal of Industrial Relations, Vol. 12, No. 3, forthcoming.



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