03
How to prepare for company change
Today's world of business is one of continuous change, and restructuring is one of the most prevalent approaches adopted by companies in response to this reality. The impact of globalisation, improvements in information and communication technologies and new trends in the workplace and sector-specific markets, along with other factors such as changes in the regulatory frameworks, are all contributory elements of this change,
determining the need to adjust and restructure.

In the context of transnational corporate restructuring cases, European Works Councils (EWCs) play an important role. They are at the heart of European worker representation and social dialogue in multinational companies as well as being the only genuinely transnational bodies for information and consultation in the workplace.

The purpose of this manual is to provide EWC representatives and members of Select Committees with background information and practical tools and checklists for dealing with various forms of restructuring. The manual contains information on legal frameworks, guidance and practical tools that improve the capacity of EWCs to respond to and influence restructuring plans at the company level.
1. What is restructuring?

There is no standard definition of restructuring. It is a general umbrella term that describes all forms of change in organisations that shake up existing structures and routines. Typical forms of restructuring include relocations, outsourcing of single functional entities, closures of local sites, mergers and acquisitions, as well as many forms of internal reorganisation processes.

**Major trends in restructuring:**
- an increase in **mainly financial and cost-driven short-termism** in corporate strategies and adjustments;
- an **increasing amount of bankruptcies** declared by management to replace relatively secure contracts with cheaper ones and to circumvent labour law requirements;

Restructuring comes in many guises:
- **Outsourcing:** when an activity is subcontracted to another company in the same country.
- **Relocation:** when an activity stays within the same company but is relocated within the same country.
- **Offshoring/delocalisation:** when an activity is relocated or outsourced outside the country’s borders.
- **Closure:** when a company or an industrial site is closed for economic reasons not directly connected to relocation or outsourcing.
- **Bankruptcy:** when a company goes bankrupt for economic reasons not directly connected to relocation or outsourcing.
- **Merger/acquisition:** when two companies merge or when an acquisition involves an internal restructuring programme aimed at rationalising an organisation by reducing personnel.
- **Internal restructuring:** when the company undertakes a job-cutting plan that is not linked to another type of restructuring defined above.

- a growing number of companies that are restructuring, closing or moving to other countries in order to dodge consultation requirements;
- a **significant increase in highly flexible and often precarious forms of employment** (e.g. agency work) as an effect of internal restructuring.
Reasons for restructuring
A prime motive is cost reduction, be it by reducing staff through outsourcing or offshoring to other and cheaper countries, by reducing staff following an acquisition or a merger, or simply by replacing the existing personnel with cheaper labour.

The need to reduce costs is also often caused by a lack of anticipation of changes in the business environment and the company’s specific market. Some of the above examples are closely related to technological developments, specifically in the field of information and communication technologies, that could have been anticipated. Examples of this are Nokia not anticipating the changes triggered by the first iPhone or Kodak missing the boat on digital photography. Often, this lack of foresight and management failure in strategic decisions go hand in hand.

2. Legal rights when facing restructuring

The European Union provides several tools for workers to intervene in restructuring, such as:
- fundamental rights to information and consultation;
- regulations regarding the social protection of workers affected by restructuring;
- workers’ rights in the context of economic and company law regulations; and, of course
- information, consultation and participation rights as laid down in the EWC and SE Directives.

The initial EWC Directive aimed at closing a legal gap in workers’ information and consultation rights in the context of a company going through an intensified process of internationalisation. The ultimate decision-making no longer lay with the national but with the supranational level. Therefore, EWCs and later SE Works Councils were introduced to ensure employee-interest representation at the European level. A further role of the Directive relates to the impact of transnational restructuring measures. These affect different countries simultaneously, so there is the need to co-ordinate local information and consultation processes for workers’ representatives.

The transnational nature of decisions

According to the EWC Directive, the transnational character of an issue is determined by the number of countries concerned, the scope of its potential effects and the level of management involved. All matters concerning the whole company or at least two countries are therefore transnational.

The question of whether an issue is of a transnational nature is often debated between management and employee representatives. Management tends to limit transnationality to situations in which there are significant effects on workers in at least two countries. However, issues that concern only one country can also impact the whole workforce and thus fall within the competencies of the EWC. Moreover, an issue must be regarded as transnational whenever it exceeds the competence of local management. In other words, every decision taken in another Member State, and by a higher level of management, can be considered a transnational issue. European transnational restructuring cases whose impact will be felt in different EU Member States clearly lie within the competencies of the EWC.
**Information and consultation rights**
Having established an EWC or SE-WC, multinational companies are obliged to inform and consult employee representatives regarding the following:
- the employment situation and its likely development, investments, and substantial changes concerning the organisation;
- transfers of production, mergers, cutbacks or closures of undertakings (or important parts of them);
- collective redundancies;
- new working and production methods and work organisation.

- It can also support local strategies by exerting influence on management at the European level.

**... be aware of the management culture in your company**
Corporate management culture has a strong impact on the involvement of employees in the decision-making process. Therefore, your EWC should realistically assess whether management is taking the existing legal obligations regarding employee interest representation and workers’ rights seriously.

You may ask yourself:
- Are the information and consultation rights of workers generally respected?
- How are employees and their interest representation bodies involved in change projects in the company?
- When and to what extent does management provide information about planned changes at the workplace level and above?
- Does central management discuss issues of strategic orientation and long-term planning with employee representatives, for example within the supervisory board?
- Do local interest representation bodies exist? Do they have regular discussions with the local employers?
- Are the provisions of legal requirements and collective agreements respected?
- Have there been any conflicts with the management because the legal provisions or other obligations were not met?

**3. Before restructuring...**

**... realise your potential!**
EWCs can play an active role in transnational company restructuring that complements and links with local and national employee interests. The Directive provides for many tools, which often seem to be underused. An EWC that is involved in restructuring in a timely manner can have several functions:
- It should 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 should 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.
- It 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.

**... understand the transnational decision-making process in your company**
In multinational companies, it is often difficult to make direct contact with the relevant decision-makers. It is useful to identify who has which competencies. If the real headquarters are located outside of the EU, it would be good to know how much power the European management really has. The same exercise should be done on the workers’ side: which body at what level is best suited to take responsibility?
With regard to management, the EWC should be clear about:

- Who is the initiator of the change process? Who made the decision?
- Which business line and/or type of activities is affected?
- Which decision-making bodies are responsible (executive board, management board, supervisory board, annual general meeting, steering committee for projects, etc.)?
- What decisions need to be made and which procedures must be followed (for example, a general assembly decision to approve a merger)?

With regard to worker representation, the EWC should be clear about:

- Which local sites are affected by the decision?
- In which decisions and at which stage are the works councils or employee representatives in those locations involved?
- What kind of contacts with relevant management bodies do worker representatives already have, and what are their responsibilities?
- Who are the key representatives and how can they be reached?
- Which trade unions could help to establish contacts?

The European Trade Union Federation can play a key role in identifying local contacts and in supporting the network of EWC members and national worker representatives. The EWC should develop an overall strategy, including a communication plan, possible actions to strengthen their position, and initiatives to ensure both internal (between EWC members) and external (with local representatives and unions, the European Federation, experts, etc.) coordination.

... be aware of your strengths, but also your weaknesses

The practice and influence of the EWC is determined by its composition, its mode of operation, its qualifications and its relationship with the workforce and the company. In addition, previous experiences with restructuring as well as the ability to use resources and all possible means of pressure at the right time are decisive factors influencing the role of the EWC.

To establish a realistic assessment of your EWC’s capacity, the following questions should be seriously considered:

- To what extent do the EWC and the Select Committee act as a team?
- Are all types of company activities addressed on the EWC?
- To what extent does the EWC have experience with a structured approach that includes the development of goals and strategies and the monitoring of success?
EUROPEAN COMMISSION

LEGAL RECOURSE

COORDINATION WITH LOCAL LEVEL

Next step

2005/56

mergers

98/59

redundancies

2001/86

2009/39

European Works Council
EUROPEAN COMMISSION
LEGAL
EXPERTS
COORDINATION WITH LOCAL LEVEL DIRECTIVES
INFO
CONSULTATION
UNION ACTION

next step

2005/56
mergers
2009/39
2001/86
2009/39
redundancies
What is the position of the EWC regarding the actual restructuring plan? Are there differing viewpoints?

Do the EWC members have sufficient qualifications to assess change processes or do they have access to external resources (experts) to assist with this?

Does the EWC have a trade union coordinator representing the European Federation?

What is the relationship between the EWC and local interest representation bodies (in both bottom-up and top-down dialogue via national EWC delegates)? What works well and where is there room for improvement?

What kind of relationship does the EWC have with management at both transnational and lower levels (including different divisions or business areas)?

Does the EWC have connections with other EWCs where similar restructuring projects have taken place?

What role do the responsible trade unions play at company level? What is the trade union density rate in the different countries represented in the EWC?

The impact of restructuring is always local

Restructuring first and foremost affects the workplaces and working conditions of workers on the shop floor. Therefore, the EWC should continue to actively address the needs of the local workforce and its representation bodies throughout all change and restructuring processes. This can be the ultimate opportunity to demonstrate the usefulness of the EWC and its capacity to deal with concrete matters that directly affect the employees.

To gain and act with strong support from the workforce, the EWC should ask the following questions:

- Does the affected site have its own EWC member? If not, is an EWC member from that country in touch with the employee representation of that site?
- Apart from back-and-forth reporting by local EWC delegates, has your EWC established direct channels of communication with local employees and their representation bodies, for example via a newsletter?
- Do key members of your EWC (e.g. the Select Committee) regularly visit local sites and attend workers’ meetings?
- Are you aware of the mood and atmosphere amongst local staff?
- Are you aware of the expectations of those parts of the workforce that are both directly and indirectly affected by a restructuring project?

The right of the EWC to meet to consider and respond to restructuring measures does not compete with the rights to information and consultation at the national or local level. On the contrary, the activities and strategies of employee representatives must complement each other. It is not a question of ‘who is informed first’ but rather of what each level can gain by using their access to information to aid their deliberations on the consequences of restructuring measures. It is therefore even more important that EWC members regularly exchange information about what is happening at the local or national level, and that they try to contact each other directly as soon as they suspect that a cross-border measure may be planned.

Too often the EWC is only notified during the final stages of a decision and the announcement of restructuring comes like a bolt from
are often cited as goals, but hidden motives could include moving jobs to companies with worse working conditions and lower salaries, weakening the influence of workers or evading co-determination rights.

The EWC has several ways of ascertaining the aims and objectives of the employer; the most obvious being that, ideally, the EWC should receive the complete business plan and detailed answers to all its questions. Other approaches could include brainstorming and exchange of information within the EWC, and between local union, employee and board-level employee representatives. ‘Googling’ the name of your company from time to time may also lead to surprising insights.

As a preliminary assessment of the aims and objectives of a restructuring plan, your EWC should ask the following questions:

- Are the strategic and operational objectives of the project known to the EWC?
- What overall strategy is the company aiming at, and what are the goals pursued in the implementation process?
- What possible ‘hidden’ motives exist?
- What advantages and disadvantages might the restructuring plan have for the employer?
- Are the goals of the restructuring plan already fixed or are they still ‘negotiable’?

Gathering meaningful information
To avoid an overload of often useless information and to gather significant and relevant information, the EWC should play an active role in the definition of the agenda for meetings with management and be clear on what information will be expected to be provided.

4. How to face and influence changes

Understand the situation of the company
In situations where signals are indicating a restructuring operation, the EWC must obtain information about the economic data and the pressures for change as well as the motives and objectives of the management. To understand the company situation and assess the plausibility of a restructuring plan, it is crucial that the EWC demand from management a detailed explanation of the reasons and objectives justifying the planned project, and of why the intended measures are suitable for achieving the defined objectives.

In practice, change projects are often carried out without first defining precise and verifiable goals. However, there may be hidden or undiscovered goals and motivations. Knowledge about all these aspects is an important prerequisite for the development of one’s own strategy. In the case of outsourcing, for example, improving customer service and optimising processes
Key requirements regarding the quality of information

- Information should be provided in sufficient detail. Total figures should be broken down according to site, products or product ranges, etc. This will enable a clearer understanding of the developments within the company and at local site level.
- Figures should always be provided for the preceding year(s) to be able to make comparisons and determine trends.
- Additional background information should be given regarding current developments and future plans and intentions.
- Information should be distributed sufficiently in advance of the EWC meeting to enable examination of the (often substantial) material and to give time for preparing questions and observations.
- EWC meetings will be most productive if both parties come prepared. Make sure to collect information from local representatives and employees as well as insights about relevant developments well in advance of the meeting in order to determine which issues should be brought up before management.

Creative information gathering and cross-checking

Information that cannot be obtained from management can perhaps be gathered through alternative channels (e.g. annual reports, press releases, interviews with senior management representatives, etc.). Also, make sure you check what information must be disclosed by the company according to the legal requirements accompanying mergers, takeovers or collective redundancies. Such alternative sources should in any case be used to cross-check the information delivered in EWC meetings.

Extended employee information and consultation rights in cases of cross-border mergers and takeovers

In addition to the EWC legislation, the European Union introduced specific rights for the involvement of workers in cases of takeover bids and mergers. Directive 2004/25/EC stipulates that workers have the right to receive comprehensive information on a takeover bid and gives them the right to issue their own opinion/recommendation.

In cases of cross-border mergers, according to Regulation EC No 139/2004 worker representation bodies have the right to be heard during the investigation procedures conducted by DG Competition. These rights are not very well known, but definitely worth exploring.

Important information and assistance can, moreover, be obtained from external sources, such as the European Trade Union Federation or national trade unions. These may also provide support in identifying business experts, works councils of other companies of the same sector or region, or industry associations.

Key factors in the consultation process

The following aspects are important when starting, and becoming engaged in, a meaningful consultation process:
- the EWC agrees on its own objectives;
- the roadmap and the division of tasks are clarified;
- local worker representation bodies are involved in the examination of the expected results, objectives and work processes;
- internal and external experts are involved;
- the timetable is co-ordinated with that of the employer.
**Involving local worker representatives**
The examination of a restructuring plan cannot be handled by the EWC without the involvement and support of local representatives. This is not only to facilitate information gathering or to assess the impact, it is also necessary for the acceptance of the EWC’s activities by the workforce.

To determine the different forms of involvement of local worker representatives, the EWC should be clear on the following questions:
- Which areas of the company and local sites are involved in the restructuring?
- Which areas and sites are affected indirectly, for example due to supplier relationships or other knock-on effects?
- How are sites connected to each other? Is there competition between sites?
- What is the expected impact on jobs? Have economic dismissals or redundancies been announced?
- What differences of interest and orientation exist within the EWC and between employee representation bodies of local sites across countries?

**Assessing the restructuring plan**
Before examining and critically validating any calculations provided by company management, the EWC – together with representatives of the affected divisions, areas and sites – should assess whether the restructuring plan can be regarded as a meaningful part of the corporate strategy, contributing positively to the stabilisation of jobs, income and the company’s competitiveness in the context of market requirements, the competitive environment and what the company’s key competencies are.

Key questions the EWC should ask itself to assess the plausibility of restructuring plans or projects are the following:
- Did management provide a convincing answer on the strategic significance of the restructuring plan?
- After closer examination, does the intended restructuring plan seem meaningful in the economic sense?
- Do the objectives and targets set by the employer seem realistic?
- What impact will the restructuring operation have on employment?
- What will the impact be on the competitiveness of the company?
- What risks to the company’s competitiveness has management identified in the restructuring plan? What measures is the company taking to mitigate these risks?

**Towards a joint strategy on restructuring: a practical exercise**
On the employee side, the best way to be prepared for the moment when transnational restructuring will be announced is to develop a joint strategy of action that includes a detailed overview of the roles and responsibilities of the key actors involved: the EWC and Select Committee, local employee representatives, trade unions, the European Trade Union Federation and experts. For each of these actors, their role can be identified with regard to four main fields of responsibility: information and consultation, negotiation (of social plans, framework agreements, etc.), communication, and different types of action (press releases, joint declarations, demonstrations, strikes, etc.).

You can use the following table to present this visually by filling in all the boxes with the appropriate information. Where possible, you can also add a timeline and indicate priorities.
Bear in mind that the purpose of this exercise is to develop a common strategy for the EWC and local employee representatives to deal with restructuring.

**5. After restructuring: reflect on the lessons learned**

A critical review of a restructuring operation and its outcomes, as well as of the EWC’s own role within the process, should be a constituent part of a thorough assessment post restructuring. The review should be a joint exercise of management and the EWC but, more importantly, it should also be conducted by the EWC in collaboration with local worker representatives and the European Trade Union Federation as a separate process.

In fact, such a review basically comes down to three simple questions:

- What went well?
- What did not go well or what failed?
- What could we do differently next time?

It is important to identify the different views on these questions from different local sites or business areas, as well as the reasons for such differences.

Based on such reflections, the EWC should determine what could be done in the future to improve its engagement in restructuring and avoid a repeat of any mistakes that were made.
6. Setting the example

In dealing with restructuring, there is no one-size-fits-all best practice. If the EWC has a good and transparent dialogue with management, clear rules in the agreement may suffice. If, however, the relation is rather troubled, management refuses to give full disclosure of their plans and hundreds of jobs are at risk, industrial action or even judicial procedures may be considered. Here are a handful of examples from practice.

**Example 1** Ecolab & Nalco European Works Council, 21.05.2015

‘Central Management shall give all the necessary information to the EWC. The information needs to be complete and on time at least one week before (...) Central Management shall take the EWC’s opinion and recommendation into account in its decision-making process and shall give a reply within 15 days to the EWC with a reasoned opinion (...) Consultation shall take place between the Parties with the intention to reach mutual understanding.’

**Example 2** ABB Employees Council Europe, 12.04.2013

‘In the event that at least 50 employees are affected by a measure, the President and Vice-President of the ABB ECE shall be informed before the measure is announced and the subsequent information and consultation steps agreed. In the event that at least 100 employees are affected by a measure, the Select Committee and the representatives of the affected countries shall be informed and the subsequent information and consultation steps agreed.’

**Example 3** Equens SE

During a three-day training activity that took place in 2011 and involved all members of the SE Works Council as well as all local representatives from the Netherlands, Germany and Italy, their respective union officials, and a policy officer from UNI Europa, the link between European- and local-level representation in the event of restructuring was discussed intensively. This resulted in a flowchart model, subsequently accepted by central management, which provides for a step-by-step approach involving constant feedback between the local and European representative bodies, eventually leading to a formal opinion from the SE-WC, after which the final decision will be taken.

**Example 4** General Electric

GE became a major player in the European energy industry after its takeover of Alstom Power in November 2015. Just three months after closing the deal, GE announced its intention to save €3 billion by cutting 6,500 jobs across Europe. In response, the industriAll trade union coordinating group of GE organised a day of action for 8 April 2016, which took place simultaneously at the company headquarters in Paris and at company sites all over Europe, with thousands of workers rallying around the same demands: to halt job cuts, to provide a long-term industrial project, to respect information and consultation rights, and to consider the alternatives proposed by worker representatives.

**Example 5** RWE

On 10 March 2010, the EWC and central management signed a transnational framework agreement, ‘On the application of minimum standards for restructuring in the RWE Group’. It provides for a definition of restructuring measures, minimum standards to be respected throughout the whole group, and rules for the involvement of the EWC, as well as some principles on how to minimise the social consequences for individual employees in the event of restructuring.
This booklet was developed by the European Workers’ Participation Competence Centre (EWPPCC). It is the third of a series of practical and helpfully illustrated manuals for workers’ representatives in transnational information and consultation bodies.

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