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Company restructuring across borders: with or without European Works Councils?

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Key points

- Restructuring is a daily reality across Europe. On average, about three companies a day announce restructuring plans which potentially involve significant job losses.
- 10% of these restructuring measures are transnational in scope, putting jobs at risk in more than one EU Member State.
- In these transnational restructuring processes, European Works Councils (EWCs) and SE-Works Councils (SE-WCs) should be involved to ensure that genuine and timely employee information and consultation takes place at the relevant, European level.
- One in three companies involved in European transnational restructuring in the last three years did not have an EWC or SE-WC.
- Policy can respond by making EWCs obligatory, raising awareness, building local capacity, ensuring enforcement and generally strengthening the rights of EWCs.

Introduction

In the early days of September 2016, European newspapers ran headlines on several high-profile cases of extensive company restructuring. Caterpillar announced a restructuring plan affecting thousands of workers in the [US](#), the [UK](#), [Belgium](#) and [France](#). Alstom released its plans to relocate production and close a plant in [France](#), and the Dutch bank [ABN/Amro](#) announced its intention to reduce its staff levels by up to 1,300 full-time equivalents in the next few years. Restructuring is clearly a daily reality in today's globalised economy. On average, over three large restructuring projects are announced every day in Europe.

Most large-scale restructuring plans can be expected to have a substantial impact on the employees in the company. They concern not only those whose jobs might be at stake, but even the workers who can expect to remain with the company. Thanks in part to EU legislation, there are rules in place in all European countries which ensure that employers must inform and consult with employees and their representatives about the potential consequences of restructuring measures. The idea behind these rules is that employees should be informed and consulted **before** the final decision is taken. Employees should be able to understand and address both the decision itself, as well as its potential consequences in depth.

In transnational companies, however, such national rules might not suffice. When decisions on restructuring are taken at the

supranational level, national information and consultation processes cannot adequately address the transnational strategy underlying them, nor their potentially transnational consequences. The provision for transnational information and consultation via European Works Councils (EWCs) or SE-Works Councils (SE-WCs) is designed to close this gap. It is only by interacting directly with the responsible transnational management that employee representatives can even begin to evaluate a measure and address its potential consequences for the workforce. Furthermore, it is only in this way that employee representatives can respond collectively, by discussing the restructuring amongst themselves and aligning and coordinating national actions and strategies across borders.

It should be noted, however, that the installation of an EWC is not automatic or obligatory. It is only on the initiative of the workforce that a company employing more than 1,000 employees in the European Economic Area, of which at least 150 workers

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are employed in two countries, can be obliged to negotiate the establishment of an EWC. If no agreement is reached over the course of a three-year negotiation period, then a rudimentary EWC is set up according to the applicable default rules. Thus, not all companies which are eligible to have an EWC actually have one in operation. The situation is a bit different for companies applying the European Company Statute (*Societas Europaea*, SE); here, management is obliged to engage in negotiations with the workforce about transnational information and consultation as part of the legal process to register the company as an SE. We refer to these bodies as SE-Works Councils, or SE-WCs.

This policy brief takes as its starting point the fact that as soon as a company engages in European-level transnational restructuring, transnational information and consultation is needed to enable the social partners to consider the cross-border dynamic of the planned measures. The first part of the brief identifies the scope and importance of transnational restructuring, the second part explores the role of the EWC or SE-WC in transnational restructuring, and the third and final section evaluates the coverage of EWCs in companies that have embarked upon European transnational restructuring.

This policy brief thus addresses the following questions:

- How widespread is transnational restructuring in Europe?
- What is the role of EWCs in restructuring processes?
- How extensive is the transnational information and consultation coverage in companies involved in transnational restructuring?

1. How widespread is transnational restructuring in Europe?

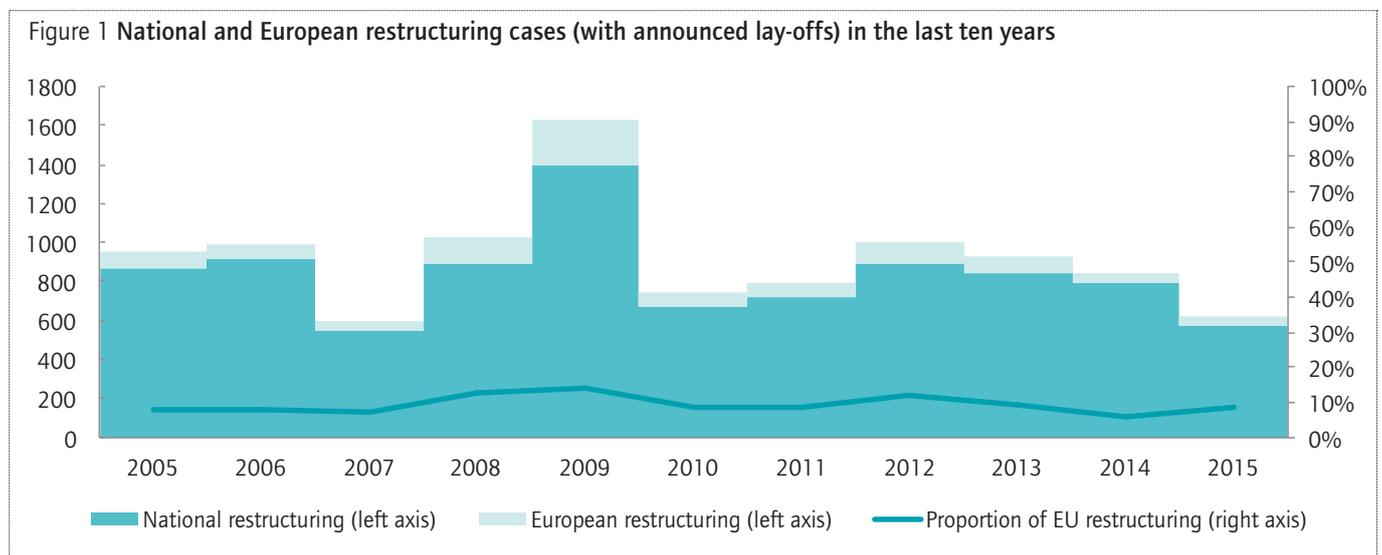
A transnational restructuring case is an event in which a company announces a restructuring measure which involves more than one country. The strategic decision on restructuring is therefore not taken by the national-level management but rather by the cross-border, supranational management of a multinational company. Examples of such transnational restructuring measures include

transfers of production from one country to another, or simultaneous downsizing of operations in several countries.

This policy brief applies a Eurocentric operational definition of transnational restructuring; it covers all restructuring cases which potentially involve job losses in more than one European country. To identify the number of (European) transnational restructuring cases, this policy brief uses data from the European Restructuring Monitor (ERM), a database maintained by the European Foundation for the Improvement of Living and Working Conditions (*Eurofound*). This database monitors announcements of large-scale company restructuring since 2002. Based on press reports, the ERM compiles fact sheets on companies which have announced significant job losses or job gains (at least 100 jobs, or 10% of the workforce at sites employing more than 250 employees). It is important to note that the ERM only monitors job losses and gains as they are announced in the press, not actual job losses or gains that result from the restructuring measure (Hurley *et al.* 2013); obviously, there may be a variation between the preannounced and actual impact of a restructuring measure. A detailed explanation of the data and the selection method of the (European) transnational restructuring cases can be found in the **methodological note** accompanying this policy brief.

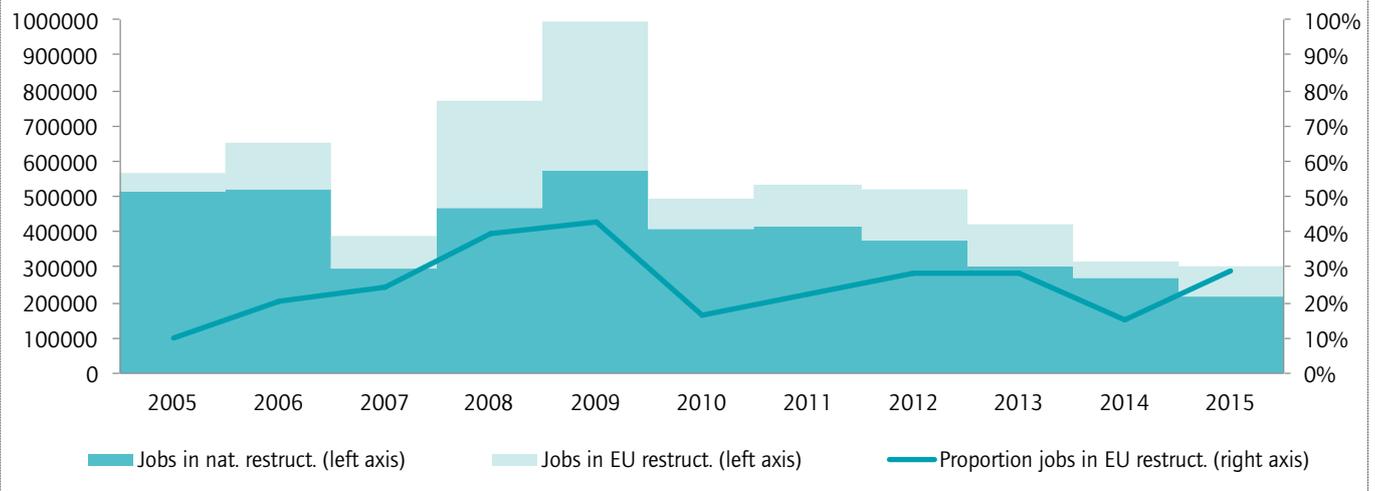
For the purpose of this policy brief, however, the limitations of this data are of less importance, since we focus on the involvement of employee representatives in advance of restructuring processes rather than on the actual employment impact of the measure. As foreseen in the EWC and SE legislation, every announcement of a measure which has potential cross-border consequences should entail the involvement of employee representatives through transnational information and consultation processes, whether they are realised as such or not.

Figures 1 and 2 give an overview of the importance of transnational restructuring over the last ten years in Europe. The bars in Figure 1 refer to the occurrence of announced transnational and national restructuring cases (left axis). The figures clearly show that restructuring is happening on a daily basis across Europe. In the last ten years, the ERM registered that, on average, 1,000 restructuring cases involving potential job losses were announced per year, with 2009 being an important outlier. The line represents



Source: European Restructuring Monitor (Eurofound), author's calculations

Figure 2 Jobs at stake in national and European restructuring cases



Source: European Restructuring Monitor (Eurofound), author's calculations

the transnational cases as a proportion of the total amount of cases (right axis); it shows that of all restructuring cases announced in the past ten years, about 10% have been transnational in scope. This proportion of European-scale restructuring cases remains relatively stable over time.

Figure 2 focuses on the number of jobs which were potentially at stake in the restructuring cases over the last ten years (bars, left axis) and tracks the proportion of employees involved in European restructuring cases out of all restructuring cases (line, right axis). Averaged out over the last ten years, we see that 27% of all announced lay-offs due to restructuring concerned European transnational restructuring cases. Furthermore, this proportion fluctuates significantly from year to year, with a marked hike in the 2008 and 2009 crisis years. When cumulated, this amounts to about 1.6 million jobs in total.

It is notable that, in comparison with the national-scale restructuring cases (as shown in Figure 1), the proportion of jobs at stake in the European transnational restructuring cases is markedly higher (27% compared to 10%). This is only logical: European transnational restructuring cases can be expected to affect more employees, since by definition they cover more than one workplace/country and are likely to occur in larger, multinational companies.

2. What is the role of EWCs in restructuring processes?

As already stated, transnational restructuring is a common reality in the European economy and society. Such restructuring is an integral part of the transnational strategy of a company; by definition, then, ultimate decision-making competence regarding transnational restructuring lies with the supranational-level, rather than national-level, management of a multinational company.

Local information and consultation processes can be triggered under the rules of the collective redundancies directive or through the national implementation of the information and

consultation directive. However, in light of the transnational scale of the restructuring, purely local information and consultation processes cannot suffice 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.

As outlined above, European Works Councils and SE-Works Councils were designed to address precisely this dilemma of a mismatch between company decision-making and employees' rights to appropriate information and consultation. In EWCs and SE-WCs, employee representatives from all over Europe meet the central management of a company to address the transnational dimensions of company policy and strategy. Transnational restructuring is indisputably the core competence of the EWC and the SE-WC.

The obligation to involve the EWC or SE-WC in addressing the potential consequences of transnational restructuring is laid down in the EWC Recast Directive and the SE Directive, which establish EWCs' and SE-WCs' responsibility for information and consultation on transnational issues. According to the Directive, the transnational nature of an issue is defined according to the countries potentially involved, 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. However, even issues only considering one country but important for the whole workforce because of their scope are part of the competence of the EWC. Moreover, as Picard (2010) has aptly put it, an issue is transnational 'whenever it exceeds local management competence'. In other words, every decision taken in another Member State, and by a higher level of management, can be considered as a transnational issue. European transnational restructuring cases in which the impact of a restructuring measure will be felt in different EU Member States therefore clearly lie within the competence of EWCs.

The subsidiary requirements of the EWC Recast Directive clearly stipulate that EWCs are to be informed and consulted

on '(...) transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies'. Similar rules apply for SE-WCs. For the vast majority of the currently active EWCs and SE-WCs, such measures and events are also mentioned in their founding agreements (De Spiegelaere and Jagodziński 2015).

Additionally, most EWCs and SE-WCs are eligible to hold additional meetings in the event of so-called exceptional circumstances, such as relocations, closures or collective redundancies. This right is mentioned in the subsidiary requirements and in almost 90% of all currently active EWC agreements (De Spiegelaere and Jagodziński 2015).

Obviously, EWCs and SE-WCs need to be involved when companies undertake transnational restructuring. But what role can they play in the process? In theory, an EWC that is involved in a timely manner can have several functions (Carley and Hall 2006). The EWC can be instrumental in coordinating the employees' responses to the restructuring and be the catalyst for the creation of a genuinely European strategy or action. The EWC 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. The EWC can bring in the necessary experts to help in evaluating the company's plans and suggest alternatives; it can also support local strategies by exerting influence on management at the European level. In some cases, EWCs, together with the trade unions represented in the company, have also played an instrumental role in negotiating the terms and conditions of the implementation of restructuring measures, or in negotiating agreements about the 'anticipation of change' (Leonardi 2015). Indeed, restructuring is the topic most often treated in all the known European Framework Agreements (Rehfeldt 2013).

In practice, however, the effective impact of an EWC and SE-WC on restructuring is often more limited. Findings from studies on employee representatives of EWCs (Waddington 2010) and on managers involved in EWC activities (Pulignano and Turk 2016) show that most EWCs were only informed and involved after the final decision was taken, and that the impact on the restructuring was therefore mostly limited or non-existent. A recent study on the experiences of EWC coordinators (Voss 2016a) clearly shows that EWCs face many obstacles in adequately addressing restructuring events. The information they receive is often late and incomplete, they have trouble getting access to expertise, and they have few instruments with which to enforce a company's compliance with the rules (see also Voss 2016b).

In conclusion, while EWCs have a clear competence and a genuine interest in addressing European transnational restructuring plans, they clearly lack the instruments and rights to have a significant impact on the restructuring measures in the interests of the European workforce.

Moreover, it should be recalled that establishing an EWC within a company active in more than one European country is not an automatic process. An official initiative from the employees or employer is needed to install an EWC and, as a rule, this step only comes after a lengthy negotiation.

As a consequence, not all the companies eligible to have an EWC (i.e. employing at least 1,000 employees in the EEA, of which at least 150 work in at least two EU countries) have actually set up an EWC. Rough estimations indicate that there is still considerable room for improvement, even though over 900 EWCs and over 100 SE-WCs are currently active (De Spiegelaere 2016). The reasons why a company does not have an EWC despite being eligible to have one are manifold: there could be a limited interest from the side of the employees, a limited knowledge about the possibility to create one, an active disincentive from the management to form one, low levels of unionisation throughout the group, a lack of local information and consultation traditions, etc. The situation for SEs is slightly different: in order to establish itself as an SE, the company must negotiate with the employees about setting up an SE-WC. There are, in other words, no thresholds and there is no need for an employee initiative.

In some cases, one could argue that an EWC has little added value within a company which is almost exclusively run according to decisions made at its local or national organisational levels. In the case of a company involved in transnational restructuring, however, this argument clearly does not hold. When restructuring measures are implemented simultaneously in several European countries, the decisions to do so are taken at the supranational level or, at least for those employees working outside of the home country, by a foreign management who is thus beyond the reach of national and local procedures of information and consultation. In these companies there is, in other words, an obvious need to have a European-level information and consultation institution in place in order to fulfil the Directive's intentions. This brings into focus the question of how many companies involved in such European transnational restructuring cases actually have an up and running EWC.

3. EWC and SE-WC coverage in companies involved in transnational restructuring

To evaluate the EWC and SE-WC coverage of companies involved in transnational restructuring, we compared the entries in the European Restructuring Monitor (ERM) discussed above with the information contained in the ETUI's European Works Councils Database (www.ewcdb.eu), which collects information on all established EWCs and SE-WCs. All companies involved in European transnational restructuring in the last three years were checked on whether or not they had an active EWC at the time of the restructuring. It was assumed that all companies registered in the ERM and involved in European transnational restructuring are eligible to have an EWC as they are involved in restructuring in more than one European country involving at least 100 lost jobs or 10% of the workforce at sites employing more than 250 employees.

The results are presented in Table 1. It should be noted that these figures are based on the ERM and thus on restructuring cases covered by the press on announced job losses. These figures can thus only give a rough idea of the extent of restructuring in Europe, rather than a detailed assessment. Furthermore, the method used to count the jobs at risk in the collected transnational restructuring measures is likely to underestimate the real number (see methodological note).

Of the companies involved in European restructuring in 2013, 2014 and 2015, about 70% had a European Works Council. In other words, in about 30% of the (announced) transnational restructuring cases the employees had no forum to discuss (and possibly prevent) the restructuring at the appropriate, European level. In terms of jobs at stake, the number and proportion fluctuates from year to year. Of all jobs at stake in European transnational restructuring, about one in five is in a company lacking the appropriate transnational information and consultation institutions.

Table 1 EWC coverage in European transnational restructuring

	2013	2014	2015
Transnational restructuring cases			
EWC	58	27	28
No EWC	27	13	15
% no EWC	32%	33%	33%
Estimated jobs at stake			
EWC	77,000	37,000	67,000
No EWC	40,000	11,000	20,000
% no EWC	34%	23%	23%

As we have seen, the establishment of an EWC depends on an employee initiative, while for an SE-WC, it is the management's obligation to enter into negotiation with the employees. Comparing the coverage rate in normal companies and SEs can thus give us an insight into the effects of this different regulation. In the years covered (2013-2015), only five SEs were registered by the ERM as being engaged in transnational restructuring. In all of those five SEs there was an SE-WC in place, which marks a distinctive contrast to the normal companies, of which about 30% did not have an EWC. This excellent coverage may be due to chance (i.e. only five cases found), but it is most likely also due to the different regulatory framework which prescribes the establishment of an SE-WC.

4. Policy conclusion

Restructuring has become a daily reality in the European economy. Every day, several companies announce restructuring plans which potentially put thousands of jobs at risk. When these measures are implemented in one country alone, national rules on information and consultation of employees should guarantee sufficient employee involvement. When restructuring involves more than one country however, employees need information and consultation at the relevant, European level. An EWC is intentionally designed to provide this bridge between European-level information and consultation processes and those which take place at the local or national level. However, the data of the European Restructuring Monitor and the European Works Council Database show that in about one third of all companies involved in European, transnational restructuring, there was no EWC in place to fulfil this role.

Today, 20 years after the adoption of the first Directive on EWCs, the European Commission is currently evaluating the implementation of the 2009 EWC Recast Directive. Now that the Commission has declared the development of 'Social Europe' to be a priority, these findings are more relevant than ever. In the past, restructuring cases

that were implemented with complete disregard for information and consultation rights of employees have attracted ample public attention and provided a significant boost for EU-level policymaking (e.g. Hoover, 1993, and Renault, 1997). The current policy framework developed in order to prevent such scandals from occurring is clearly insufficient. A considerable number of companies continue to engage in transnational restructuring without being obliged to ensure appropriate employee information and consultation institutions at the transnational, national and local levels.

Policy should react to this and could do so in several ways. One approach would be to make EWCs obligatory in companies of a certain size, rather than making their establishment dependent on the initiative of one of the parties. The comparison with SE-WCs – which were present in all SEs identified by the ERC as having been involved in transnational restructuring in the last three years – shows that this might be a valuable policy option. Alternatively, intensive awareness raising about the important contribution that EWCs can make to better anticipating and managing the potential consequences of cross-border restructuring could, combined with efforts to build the capacities of local works councils and trade unions, help in the creation of more and better EWCs. However, it is clear that even once EWCs are up and running, practice shows that they are still rarely capable of really influencing the design or implementation of restructuring measures. Accordingly, numerous studies have already identified the need for a better enforcement of the rules, the need to provide EWCs with better material, legal resources and access to expert advice, and finally the need to ensure trade union involvement.

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Methodological note

1. Data used: European Restructuring Monitor

The European Restructuring Monitor (ERM) is a database that collects information on restructuring events in Europe which involve the loss or creation of at least 100 jobs, or 10% of the workforce at sites employing more than 250 employees.

A network of correspondents based in all 28 EU countries and Norway regularly monitor selection of media sources for new restructuring announcements; a digital scan is also performed using special software. After a manual quality control and cross-check, the data is entered into the database and made accessible to the public in the form of factsheets.

These factsheets contain information on the company name, the country in which the restructuring will take place, the number of employees involved and much more. A full list of variables can be found on the Eurofound website.

As discussed at length in the ERM annual report of 2013 (Eurofound 2013), the data of the ERM is not based on a representative sample, nor is it a complete population database. Caution is thus advised in using this data, particularly as several known biases (in size thresholds, the selection of media sources, cross-national differences in reporting, etc.) make it ill-suited for very detailed cross-national and cross-sectoral comparisons regarding job losses and job gains.

One of the difficulties with the database is the potential difference between 'announced' and 'real' job losses and gains in restructuring events. However, such a difference is of less relevance to this study, which aims to identify cases of restructuring which should trigger transnational information and consultation procedures between employers and employees. We are therefore more interested in the announcement of restructuring events than in their outcomes.

2. Identifying transnational restructuring

2.1. Scope

Information regarding which transnational restructuring cases should trigger transnational employee information and consultation procedures is to be found in the EWC Recast Directive, which outlines the competences of the EWC. According to references in both the core text and the recitals, EWCs should be consulted on

matters that concern the whole undertaking, concern at least two establishments or are of importance to the European workforce in terms of their scope or potential effects. Additionally, the Recast Directive includes a presumption that all company decisions taken in a different Member State from the one in which they are implemented are part of a transnational strategy, and should thus trigger transnational employee information and consultation procedures. For a full discussion on this issue see Picard (2010).

2.2. Only job losses

The scope of this study only covers restructuring events which include job losses (and thus not cases with only job gains) for two reasons. First of all, employee consultation is more relevant in the event of transnational job losses than in the event of job gains. Secondly, the information on job gains in the ERM is less reliable because media coverage tends to be lower, companies are less likely to report it, and when they do it is often in the interest of self-promotion.

2.3. Cases

To identify the number of transnational restructuring cases, the following aspects were taken into consideration:

- If a restructuring is announced as a global or European-level restructuring, it is registered as such in the ERM (direct identification).
- Some restructuring projects are transnational but are reported as different national events. Different national restructuring events in different EU Member States which take place within a period of 90 days are considered to be part of a transnational restructuring measure (indirect identification) and are therefore counted as one transnational restructuring event rather than individually.
- Frequently, a company first announces a global or European restructuring measure and then at a later date discloses the implications of that plan for the different national levels. To avoid double counting, two cases which are indirectly and directly identified and which occur in one company within a period of 90 days are counted as one transnational restructuring case.

2.4. Employees involved

To calculate the amount of jobs that are likely to be lost in a transnational restructuring case, we total the minimum number

of job losses announced in every global, European and national restructuring case identified as being part of one transnational restructuring case. However, when a transnational restructuring case is first announced as a global or European-level project and at a later date as separate national restructuring measures, only the sum of the national job losses is taken into account. This method is likely to underestimate the jobs at stake, as some national implications of a transnational scheme fall under the radar or are simply not covered by the media.

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