

# 5. Collective bargaining and the economic crisis

## Introduction

That the financial crisis dealt a very hard blow to workplaces is fully evident. Irrespective of whether or not there is a willingness to respond proactively, and no matter what measures have been applied at the macro-level, the crisis has had a direct and substantial impact on working conditions and labour relations at the micro-level. Interest representatives – more often than not the local trade unions – have been under pressure to tackle the outcomes generated by plunging demand and/or banks' unwillingness to grant the loans necessary to launch new investments.

Apart from the financial dimension of the crisis, it has entailed serious social consequences for employees. Economy measures introduced by companies in times of crisis can include cuts to the workforce and mass layoffs, the reduction of working time or reorganisation of corporate structure, or the relocation of production for the mere purpose of short-term cost-cutting. Such measures have led, in general terms, to increasing levels of job instability (Blum 2009; European Foundation for the Improvement of Living and Working Conditions 2009a).

All this has represented a tremendous challenge to industrial relations in general and relations between the two sides of industry at company level. This

chapter describes examples of typical roads taken by social partners in the field of collective bargaining. It also investigates how far the trans-national level has become involved and been used as a reference or platform for promoting solutions which transcend local or national borders. In this latter respect, the use of European Works Councils (EWC) is exemplary.

One of the striking features of the current crisis might indeed be that, in order to be overcome, it requires trans-national cooperation and action. EU member state governments have in general shown mutual understanding in relation to this challenge. The President of the EU Commission, José Manuel Barroso, has underlined, in several speeches given on the occasion of the European Commission renewal, the major importance of social issues, including unemployment, insofar as they have been exacerbated by the crisis (e.g. Barroso 2009). Notably, he highlighted a possible way out of crisis, based on strengthening the industrial basis of Europe by the creation and application of new technologies, while also taking account of the ambition to reverse climate change. At the same time, however, it is highly noticeable that the European political level flagrantly underrates the potential of social partnership to achieve change and improvement. It is to the

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### Introduction

social partners, indeed, that has fallen the task of keeping companies running under adverse circumstances. It was employees who agreed on concessions regarding pay, short-term work or the at least temporary detachment of employees from their workplaces and their delegation to training schemes funded mainly by external labour authorities as a means of stabilising a company's financial situation without the need to resort to mass redundancies. This – as a means of retaining a qualified workforce until the advent of better days – has been one form of action conducted on the ground by way of implementation of the high-flown political objectives.

The ETUC showed more awareness than the political world of the tried and tested problem-solving capacities of industrial relations. In its first response on the crisis entitled “Towards a new social deal in Europe” (ETUC 2009b), the ETUC stressed six major social and employment fields for mutual action. Two of these are “Better pay: stronger collective bargaining” and “Stronger workers' rights”, the second of which includes the demand for a “Social Progress Protocol” designed to give priority to social rights and collective action in order to stem the tide of rising inequality.

Industrial relations systems within the EU continue to differ fundamentally

from one another in so many respects that the emergence of a single European industrial relations system is currently nowhere in sight. Consequently, the responses to crisis phenomena have been devised to fit the specific national contexts. There are only a few and rather out-of-the-way signs to suggest that the crisis has triggered more trans-national cooperation or, at least, some increase in cross-border coordination.

The following reactions to the crisis are some of the most noteworthy of those to have been observed:

- An increased role of collective bargaining in addressing effects of the crisis (employment, decreased demand for industrial output and labour).
- The important role of collective bargaining in implementing statutory provisions on short-time working and partial unemployment on the company level.
- The ‘crisis-related’ provisions of many collective agreements concluded in the October 2008 – October 2009 period, dealing mainly with issues such as:
  - A flexible reduction of working time, typically based on legal provisions and guaranteeing the full or partial compensation of losses in workers' incomes.

- More ‘defensive’ job-preservation agreements, sometimes entailing far-reaching concessions from workers (e.g. no financial compensation for cuts in working time).
- Partial decentralisation of wage-setting (e.g. ‘incremental’, step-by-step wage increases taking into account the specific economic situation of the company).
- Stronger links between training and short-time working (training measures having been included in only rather few collective agreements in numerous EU member states before the crisis, with possible continuing shortcomings in this respect).
- Engagement of interest representation bodies, together with the employers' representatives, to devise and implement socially acceptable solutions – short of redundancy – for employees over a longer time period.
- No remarkable increase in the involvement of European Works Councils despite their design and function as trans-national platforms for processing restructuring from an employee point of view.

Finally, it has to be stressed that, for the time being at least, it is not possible to present any generalisations or final conclusions concerning the effects on the industrial relations systems and their role in solving crisis-related problems. Further attention should certainly be paid to the capacities of collective bargaining and interest representation as direct routes of problem resolution.

## 5.1 Collective bargaining and the economic crisis

### Collective bargaining responses to the economic downturn

In addressing the effects of the economic crisis on collective bargaining, three aspects are of particular relevance:

First, the existence of statutory (law-based) short-time working arrangements, aimed at maintaining employment by setting a framework for the collective reduction of working time and by providing workers and employers with financial compensation from public (unemployment) funds;

Secondly, the role of collective bargaining parties in concluding collective agreements addressing the effects of the economic downturn;

Thirdly, the contents and measures included in collective agreements on the (inter)sectoral, sectoral and company levels in order to tackle the decline of demand for industrial output and labour.

In a number of countries (such as Germany, Austria, the Netherlands, Belgium, France and Italy) statutory arrangements for short-time working and partial unemployment existed prior to the crisis, their purpose being in most cases to cope with seasonal fluctuations in employment in particular sectors. Against the background of the crisis, eligibility for and duration of such schemes have been extended by governments (Glassner and

**Figure 5.1 Short-time working schemes and their implementation via collective bargaining**

National short-time working arrangements	Country/countries	Based on labour law (LL) or on inter-sectoral collective agreement (CA)	Implemented by collective agreement	
			on sectoral level	on company-level
Short-time working ( <i>Kurzarbeit</i> )	DE, AT	LL	**	**
Partial unemployment ( <i>Chômage partiel</i> )	FR	LL	*	**
Temporary economic unemployment	BE	LL	**	**
Reduction of working time ( <i>Werktijdkorting</i> )	NL	LL	**	**
Short-time working, reduction of working time, wage subsidies for companies	PL, BG, HU, SI	LL	-	*
Wage Guarantee Funds ( <i>Cassa integrazione guadagni</i> )	IT	LL	*	**
Temporary lay-offs	SE	CA	*	**
Work-sharing	DK	CA	*	**

\*\* predominant level(s)  
 \* important level  
 - bargaining level marginal or non-existent

Sources: Glassner and Galgóczi (2009); Glassner and Keune (2010).

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### Collective bargaining responses to the economic downturn

Galgóczy 2009; European Foundation for the Improvement of Living and Working Conditions 2009b), while in other countries (i.e. Bulgaria, Hungary, Poland and Slovenia) legal provisions for short-time working have been newly introduced. Arrangements for the collective reduction of working time differ between countries in terms of duration of entitlement, workers eligible (e.g. temporary and fixed-term contract workers), the level of pay compensation for working hours 'lost', etc. In general, however, these arrangements have in common one important feature which is that they have to be implemented via collective agreement on the company and/or (inter)professional level. In almost all the countries considered in Figure 5.1, provisions for short-time working are based on labour law, the only exceptions being Sweden, where a collective agreement on temporary lay-offs was concluded in March 2009, and Denmark, where 'work-sharing' provisions are stipulated in a collective agreement for the industrial sectors.

The link between collective bargaining and statutory short-time working schemes is shown in Figure 5.1 (see previous page).

Social partners have played an important role in promoting the introduction

or extension of short-time working and partial unemployment schemes. Even more important has been their role in implementing these provisions on the sectoral and – in particular – the company level. In countries such as Austria, Germany, Belgium and the Netherlands, a number of sectoral collective agreements contain provisions on the implementation of short-time working schemes. This is particularly the case in Germany, where in sectors such as metals, chemicals, public services, textiles, banking, construction and retail trade, agreements have been concluded to implement statutory provisions on short-time working. Some of these now specify, for example, top-ups of the statutory short-time working benefits (Bispinck 2009).

In other countries – mostly those where collective bargaining is predominantly carried out on the company level – partial unemployment provisions are primarily implemented through company agreements. In some of these countries characterised by decentralised collective bargaining and weak representation of workers on the company-level, i.e. Bulgaria, Hungary and Poland, collective agreements on short-time working have been implemented primarily in large and multinational companies. In Slovenia the provision on wage subsidies for cuts in the full working time

(i.e. 40 hours per week) requires a collective agreement at the company level.

In Italy the two Guarantee Funds (see Figure 5.3 on page 64) that allow for the reduction of working time or the temporary total suspension of activity by compensating workers for losses in income resulting from cuts in working hours are implemented via collective agreement on the company/plant level.

The Swedish multi-sectoral agreement on temporary lay-offs covers exclusively companies in the manufacturing and technical (engineering, architecture) sectors (blue-collar workers and professional technical staff).

## 5.1 Collective bargaining and the economic crisis

### Issues and measures of collective agreements

Collective agreements concluded at sectoral or multi-sectoral level in response to the effects of the economic crisis include a wide range of topics. One important issue in these agreements concluded between September 2008 and September 2009 is the flexibilisation of wage-setting (see Figure 5.2).

In this respect, three topics are typically encountered, examples being as follows. First, the collective agreements on pay in the Finnish technological manufacturing allow for the case-by-case implementation of pay increases, depending on the economic situation of the company. Furthermore, wage increases settled in the sectoral agreements may be suspended if the company is facing economic difficulties, or the total pay increase may be phased over a certain period (i.e. September 2009 and January 2010) in two or more steps ('incremental pay increases'). The agreement for academically trained and managerial staff provides for the re-negotiation of wage increases in 2010 and 2011, subject to the economic situation of the company.

Secondly, in Sweden two collective agreements for employees in the technological sector (i.e. engineers, architects and other professional technical staff) secure a general pay increase of

**Figure 5.2 Examples of innovative (multi-sectoral) agreements allowing for the flexibilisation of wage-setting**

Country	Name of the agreement	Signatory parties to the agreement	Main provisions of the agreement
Finland	Three-year pay agreement for the technological manufacturing sector (August 2009)	Metalworkers' Union (Metallityöväen Liitto) and Confederation of Finnish Industries – EK Later (September 2009) adopted for academically trained and managerial staff in the technological manufacturing sector (concluded by the Federation of Professional and Managerial Staff – YTN and EK)	<ul style="list-style-type: none"> <li>– Possibility to set pay increases on a company-by-company basis, depending on the economic situation of the company</li> <li>– Increasing flexible wage-setting in line with economic developments by allowing for step-wise ('incremental') increases of salaries</li> <li>– Suspension of wage increases only in the case of a continued demand crisis, where growth in labour costs is not bearable for the company and pay rises would threaten jobs</li> </ul>
Sweden	One-year national collective agreement on pay for professional technical staff (September 2009)	Unionen and Almega STD	<ul style="list-style-type: none"> <li>– Collectively negotiated wage increase of 2.3 % that can be undercut at company level if economic conditions require it</li> </ul>
Sweden	Two-year agreement on pay (September 2009)	Sveriges Ingenjörer and Sveriges Arkitekter, and Almega STD	<ul style="list-style-type: none"> <li>– Collectively negotiated wage increase of 2.3 % that can be undercut at company level if economic conditions require it</li> <li>– For 2010 no general wage norm in the agreement, wages set exclusively at company level</li> </ul>
Germany	Collective agreement metal sector (November 2008)	IG Metall (Baden-Württemberg) and the employers' association Gesamtmetall	<ul style="list-style-type: none"> <li>– Phased general pay increases (2.1% bi-annually in 2009)</li> <li>– Lump-sum payment of €510 to compensate for three months without pay increase (November 2008 to January 2009)</li> <li>– Contributions by employees (0.4% of monthly wages between January and April 2010) to finance pre-retirements.</li> </ul>

Sources: Glassner and Keune (2010).

## 5.1 Collective bargaining and the economic crisis

### Issues and measures of collective agreements

2.3 % for a period of one year that may, however, be undercut if the company faces economic difficulties. In contrast to the agreement concluded by the Swedish white-collar multi-sector union Unionen, the agreement for architects and engineers does not include a general wage norm for 2010, and pay increases are set exclusively at local level.

Another exemplary agreement is that concluded in the German metal sector in November last year. The agreement – which had an important ‘signalling function’ for wage bargaining in other sectors in the last bargaining round – stipulates, besides a lump sum and a special one-off payment, a general pay increase of 2.1 % in two steps that can be suspended in the event of the financial situation of the company being under severe strain.

Collective bargaining responses to the economic crisis by company-level social partners have proved decisive as the sudden and – in some sectors – continued decline in demand is felt foremost and primarily at the level of the company. The most important issues addressed in micro-level collective agreements are the flexible reduction of working time, internal restructuring (mobility procedures, job-sharing via solidarity contracts) and training (see Figure 5.3).

**Figure 5.3 Company-agreements and measures dealing with effects of the crisis**

Issues/measure	Examples (instrument, country, company)
<b>Flexible reduction of working time</b> with <b>partial or full compensation</b> of losses in income, based on <b>statutory short-time working</b> or financed by public unemployment benefit funds	<ul style="list-style-type: none"> <li>– CIGO – Ordinary Wages Guarantee Funds, applicable for a maximum period of 12 months: (IT): <i>Ilva</i>, <i>Powertrain</i>, <i>Fiat</i></li> <li>– CIGS – Special Wages Guarantee Funds, applicable for a period of between 12 and 24 months (IT): <i>Indesit</i>, <i>ThyssenKrupp</i>, <i>New Case Holland</i></li> <li>– Temporary lay-offs (SE): <i>Volvo</i>, <i>Scania</i></li> <li>– Short-time working (‘<i>Kurzarbeit</i>’) (DE): <i>Schaeffler</i>, <i>Daimler</i></li> <li>– Short-time working (NL): <i>DAF Trucks</i></li> <li>– Maintaining workers’ net salaries through establishment of company ‘crisis funds’ at <i>Renault</i> (FR)</li> <li>– Work-sharing (DK): <i>Danfoss</i>, <i>Grundfos</i></li> </ul>
<b>Internal restructuring</b> and reorganisation (‘Mobility procedures’, ‘Solidarity contracts’)	<ul style="list-style-type: none"> <li>– Mobility procedures, internal transfers of workers (IT): <i>Indesit</i>, <i>Telecom Italia</i>, <i>Powertrain</i>, <i>Fiat</i></li> <li>– Solidarity contracts (IT): <i>Telecom Italia</i>, <i>Italtel</i></li> </ul>
<b>Training programmes</b>	<ul style="list-style-type: none"> <li>– ‘Restructuring Agreement’: <i>Telecom Italia</i> (IT)</li> <li>– Agreement on ‘Training and compensation during partial unemployment’: <i>PSA Peugeot Citroen</i> (FR)</li> <li>– Job-saving agreement: <i>EON</i> (DE)</li> </ul>

Source: Own table, based on Glassner and Keune (2010).

## 5.1 Collective bargaining and the economic crisis

### Issues and measures of collective agreements

One of the most frequent measures has been the flexible reduction of working time on the basis of statutory provisions and instruments to regulate and financially support short-time working. For instance, in Italy in companies such as the steel manufacturer Ilva, the Fiat-affiliate Powertrain and at the Fiat plant in Naples, agreements on the use of the Ordinary Wages Guarantee Funds (CIGO) have been concluded by metal sector unions and the companies' managements in order to maintain employment through the reduction of working time. Similar agreements have been concluded in companies such as the steel producers Indesit and ThyssenKrupp as well as at the producer of agricultural machinery New Case Holland. Collective bargaining has, however, not always been conflict-free. For instance, the management at a Fiat affiliate in the province of Emilia Romagna accepted the need to negotiate the introduction of short-time working only after strike action had been taken by the workers. Similarly, collective action by workers at the producer of household appliances Indesit led to the resumption of negotiations by the management and the avoidance of a plant closure that saved 600 jobs.

In Sweden, the multi-sectoral agreement on temporary lay-offs has been implemented via job-saving

agreements such as those concluded at Volvo and Scania. At Volvo, jobs have been saved by reducing working time mainly via flexible working time accounts with wages having been almost fully maintained. Likewise, at Scania a similar agreement that limits losses in pay to 10 % (while working time is reduced by 20 %) has been concluded, including the adoption of a training programme funded by the European Social Fund.

Collective bargaining aimed at the conclusion of 'job-saving' agreements, including an extensive use of short-time working measures, has been more conflict-ridden at two companies particularly hard hit by the crisis, namely, Schaeffler and Daimler. At Schaeffler, workers' wages have been 'adjusted' in line with the reduction of working hours and one-off payments have been cut. The 'cost-cutting package' concluded at Daimler does not provide for pay compensation of working hours lost. The general pay increase of 2.1 % set by collective agreement has been postponed, and a job guarantee settled in a previous agreement has been made conditional on the company's economic situation in 2010.

This contrasts with collective agreements negotiated at the Dutch subsidiary of DAF Trucks and at Renault in France

where reductions in working time entail no losses of income for workers. At Renault, net wages and salaries have been maintained through the establishment of a 'solidarity crisis fund' funded by executive and managerial staff.

Measures aimed at maintaining employment through the reorganisation of working time in companies facing economic difficulties have been adopted in Denmark via the instrument of 'work-sharing'. Job-sharing measures – financed through the public unemployment fund – can be adopted for a period of 13 weeks, as stipulated in the collective agreement for the manufacturing sector. This period can be extended to 26 weeks through company agreements, as has happened, for instance, at the national engineering company Danfos and at the multinational Grundfos.

Internal restructuring measures are likely to increase during an economic downturn. Mobility procedures that regulate the transfer of workers within companies have in many cases been combined with the introduction of short-time working. For instance, mobility procedures have been adopted at a number of companies in Italy, such as Indesit, Telecom Italia, Powertrain, and Fiat. At the Fiat plant in Naples the introduction of job placement measures ('mobility procedures') has been

criticised by unions as representing 'unilateral postings' of workers by the management from one plant to another. Another instrument aimed at maintaining employment through job-sharing is the 'solidarity contracts' that have been increasingly applied in Italy. At Telecom Italia, for instance, a two-year agreement sets conditions for working time reductions and training measures in order to save 470 jobs. Furthermore, at the Italian telecommunications provider Italtel, an agreement has been reached on working time reduction via solidarity contracts that will save 90 out of 250 jobs.

In contrast to 'emergency' agreements aimed at avoiding large-scale redundancies or mitigating the social effects of redundancies, training programmes for temporarily unemployed or inactive workers tend to be included in certain company agreements on restructuring, generally with a longer-term perspective. For instance, the restructuring agreement at Telecom Italia and the Agreement on 'Training and compensation during partial unemployment' at PSA Peugeot Citroen provide for training measures for employees on short-time working. The job-saving agreement concluded at the German energy provider EON includes – among other issues – training measures for a large section of the labour force.

## 5.2 European Works Councils (EWC)

### Restructuring in EWCs

The scale of the crisis as it has impacted upon employees and their representatives is measured by the most practical and concrete consequences that directly affect their interests. Given the transnational dimension of the crisis and its effects, its repercussions are clearly a matter on which employees in multinational companies should be informed and consulted. The prerogatives exercised by employee representatives in regard to restructuring measures on a cross-border level are enshrined in the existing legislation on EWCs (see, for example, Subsidiary Requirements, Annex 1 to Directive 94/45/EC, Article 2, and Annex 1 to Directive 2009/38/EC, Articles 1 a) and 3). Both the 'old' EWC Directive 94/45/EC and the new, recast Directive 2009/38/EC provide for EWCs' competence in anticipating and managing change and its impact on workers. Involving employee representatives in corporate decision-making by means of information and consultation is not only a legal requirement, but also, as has been shown by research, a sound management strategy. Researchers in this field emphasise that, as soon as any restructuring entailing possible job losses is contemplated, advance warning, information provision and consultation are the key to minimising the effects of job losses on the workforce and local economy (Morley and Ward 2009).

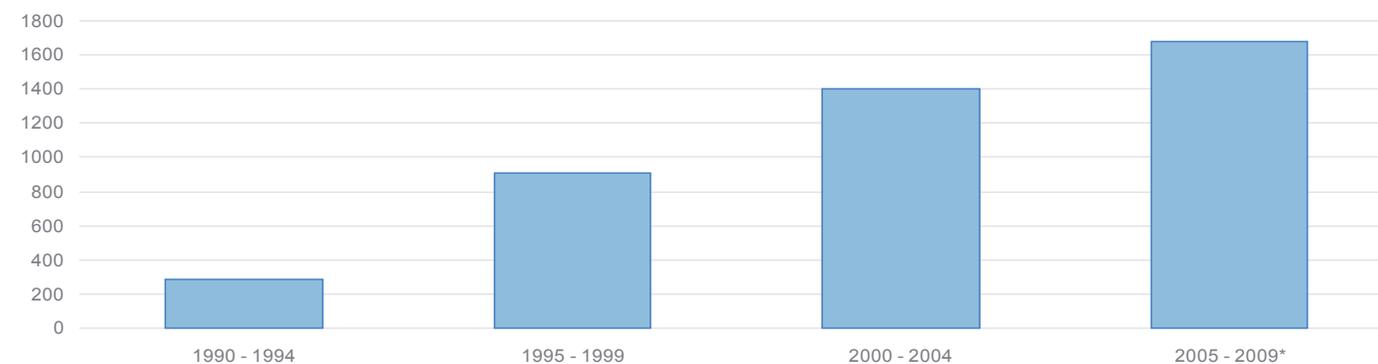
Accordingly, the question of the role of EWCs in tackling the current crisis can be assessed by examining the nature and extent of their involvement in the restructuring decided in the wake of the crisis. It must be mentioned from the outset, however, that solid statistical data or case studies on this matter are not yet available. Information on EWCs' involvement in handling the outcomes of the recent crisis is, as such, necessarily fragmentary.

The EWC database managed by the ETUI ([www.ewcdb.eu](http://www.ewcdb.eu)) provides information on companies with established EWCs that have undergone merger or acquisition, these being forms of

restructuring that necessitate obligatory reporting and permission by the EU Commission (Council Regulation 139/2004). Figure 5.4 shows that the number of these merger and acquisition cases has been rather stable over the last five years. It is necessary, however, to bear in mind that merger and acquisition cases notified to the EU Commission and requiring an obligatory consent as not potentially causing distortions of competition on the EU single market relate exclusively to the largest companies (see Council Regulation 139/2004). As such, the statistics do not cover all the cases in which EWCs have been affected by restructuring processes. By reference

to other sources, however, it is possible, to a certain extent, to complete the picture of the degree to which EWCs are affected by restructuring. Firstly, a survey by Waddington (2006) found that 80% of the surveyed EWC members had, in one way or another, been faced with restructuring in their undertaking within the three years preceding the study. The constantly increasing pace of – broadly defined – restructuring processes is corroborated by records of the European Restructuring Monitor Quarterly (European Foundation for the Improvement of Living and Working Conditions 2009a) and further research (e.g. Voss 2006).

**Figure 5.4 Number of merger cases notified with DG Competition of the European Commission (1990-2008)**



Data source: <http://ec.europa.eu/competition/mergers/statistics.pdf>. Note: Data for 2009 incomplete.

## 5.2 European Works Councils (EWC)

### Restructuring in EWCs

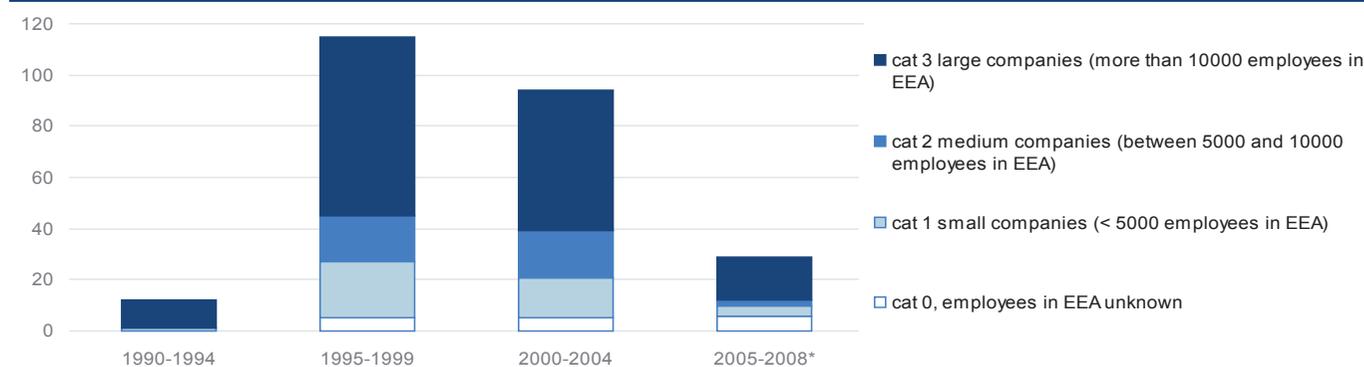
Unfortunately, statistical evidence on EWC involvement in restructuring is rather scarce. Even though mergers and acquisitions as a phenomenon appear to be relatively easily measurable (Demetriades 2002: 60), the link between company involvement in restructuring and the interaction of EWCs is by no means straightforward (Carley and Hall 2006), due to the fact that the empirical evidence, insofar as it is fragmentary, needs to be treated with caution.

For the period 1990 to 2008 the ETUI database reports about 2260 cases, in 554 companies with a (currently) active EWC, of application to the Commission for authorisation to perform a merger or acquisition. As illustrated in Figure 5.5, a vast majority of notified cases involved multinational enterprises with employment figures of above 10,000 in the EEA (296 or 53.4% of companies in 1647 proceedings). Smaller companies of 5000-10000 employees with a functioning EWC in place were meanwhile involved in only 251 such reported cases of restructuring (99 companies or 17.8%). A high ratio of smaller multinationals with an active EWC and with overall EEA employment of less than 5000 staff (145 firms or 26%) was involved in 330 merger cases. These figures, when compared with

the numbers of currently active EWCs broken down by company size in terms of workforce, contradict the popular belief that only the largest multinational companies are affected by the implications of restructuring. While it is indeed the case that the biggest firms (with active EWCs) have been consistently involved in the majority of restructuring cases (Figure 5.5), a slight decrease in their share has nonetheless been observed in the last decade (70% and 71%) compared to the 1990 – 1999 period (75%). In other words, multinational companies with fewer employees have been faced with restructuring to a greater extent than in the 1990s.

The abovementioned evidence allows the conclusion to be drawn that restructuring, for many EWCs, is not an exceptional, but rather a continuous circumstance under which they operate and one which represents an important, if not a pivotal, challenge for EWCs. This observation is supported by the fact that, for multinational companies, restructuring has become a permanent feature of their internal operations and one of the main means of increasing their efficiency, not necessarily associated with crisis situations alone, but occurring also in times of prosperity (Madura 2006: 448).

**Figure 5.5 Multinational companies with active EWCs involved in mergers and takeovers reported to the DG Competition of the European Commission (2005 -2008), by size of employment (in EEA)**



Data source: <http://ec.europa.eu/competition/mergers/statistics.pdf> and ETUI EWC database (2010). Note: period 2005 – 2008 covers only 4 years as data for 2009 is not yet available.

## 5.2 European Works Councils (EWC)

### Quality of EWCs involvement in restructuring

In the 2009 edition of *Benchmarking Working Europe*, we drew attention to a certain ambivalence that is characteristic of the discourse on EWCs and restructuring. On the one hand, the European Commission places emphasis on the EWCs' 'essential role' in anticipating and managing restructuring operations (European Commission 2002 and 2005) and has financed numerous projects and initiatives on this topic. Similarly, according to a survey by Waddington (2006), restructuring (in its various aspects) was reported by employee representatives to be the most important issue on EWC agendas. These results are consistent with the outcomes of debates with employee representatives highlighting that '*Company restructuring and its impact on employees was seen by many as the single most important issue for EWC consultation*' (NSZZ, GMB, SIF 2007) as well as with other research findings on EWCs' involvement in restructuring (Voss 2006). Eurofound research highlights that EWCs' potential role in restructuring depends on the general role ascribed to these bodies and that specific provisions tailored to allow EWCs to contribute to handling structural change are rather scarce, being present in only 14% of Article 13 agreements (pre-directive voluntary agreements) and 11% of Article 6 agreements (those signed after entry into force of directive 94/45/EC; Carley

and Hall 2006). At the same time, the respondents in Waddington's survey (2006) reported at great length on the insufficient quality of information and consultation in EWCs (Jagodzinski *et al.* 2008), confirming that, despite employees being affected by restructuring, their EWCs often obtain scant information about its reasons and consequences. 'Consultation' of EWC representatives only *after* the decision has been finalised is, reportedly, a widespread practice (Waddington 2006), it being claimed in a certain number of other cases that the information provided was useless or completely irrelevant.

And yet EWCs do have the potential to become one of the central plant-level actors on the employee side supporting socially responsible management styles. They are in a position, for instance, to decrease enterprises' operational costs by coordinating employee and trade union responses to restructuring on a transnational scale (Moreau and Paris 2008). This capacity has been confirmed, for example, by the 147 EWCs, in at least 89 multinational enterprises, in which transnational agreements between employee representatives and management have been signed (Jagodzinski *et al.* 2008), some of them dealing with the social implications of restructuring measures (European Commission 2008a).

As regards EWCs' involvement in restructuring and dealing with adverse effects of the recent crisis, the available empirical evidence is, for several reasons, scarce. This can be explained, above all, by the fact that EWCs' meetings take place, in the vast majority of cases (68%), only once a year. Thus any research on the presence of crisis-related items on the EWC agenda will appear with a significant delay. Even so, there are significant indications that the involvement of EWCs has taken a number of forms. Here once again, as in the case of reactions to the crisis on the collective bargaining level, it has been the micro level that has played the most important role. Figure 5.6 provides information on some recent crisis-related EWC activities.

Some EWCs have been involved in signing framework agreements in response to the crisis (Arcelor Mittal GM Europe). In other cases, EWCs have been reported to give opinions on measures proposed by companies in the wake of the crisis (Fiat, HP, Dexia, Pinault Printemps Redoute). Alongside individual EWC actions of which knowledge is incidental, a more coordinated approach has been undertaken by UNI Europa. The European trade union federation for services and communication on 01/10/2008 asked its representatives on 51 European

works councils in the finance industry to request extraordinary meetings without delay to discuss the impact of the financial crisis. This proposal was immediately taken up by – for example – two very hard-hit banks, Fortis and Dexia. On the other hand, cases have been reported in which EWCs' rights have been ignored. This was true of Anheuser-Busch InBev where on 15/10/2009 the sale to a financial investor of all of its subsidiaries in nine Eastern European countries was announced by central management. The management took this decision without informing the EWC, resulting in involvement of the European trade union federation for the food industry, EFFAT, which examined the possibility of taking legal action (EBR Newsletter 2009).

## 5.2 European Works Councils (EWC)

### Quality of EWCs involvement in restructuring

Due to the fragmentary character of the evidence, it is difficult at the present time to draw conclusions. More information and studies will certainly become available on this topic in the future, once more data has been collected. It is probable, however, that, just as in the past, it has been the group of most active and efficient EWCs that has contributed to curbing the effects of crisis rather than EWCs taken as a whole. These more active and efficient EWCs are, presumably, the project-oriented and participation-oriented ones defined by Lecher (Lecher *et al.* 1999: 64-72), i.e. those that have developed their involvement beyond basic information and consultation and reached the stage of preparing opinions, making recommendations or otherwise participating in the decision-making processes. Should this hypothesis prove correct, it would again emphasise the relatively greater importance of experience and development of EWCs over and above mere compliance with the letter of the law.

**Figure 5.6 Examples of EWC involvement in managing restructuring in the period of 2008-2009**

Company	Form / content of involvement
Arcelor Mittal	Framework agreement on social dialogue in times of crisis (July 2009)
General Motors	<ul style="list-style-type: none"> <li>– Framework agreement on reduction of working time, in exchange for management’s guarantees not to apply mass layoffs or site closures in Europe (January 2009; unilaterally terminated by management in July, 2009)</li> <li>– During September - October 2009 the select committee of the General Motors’ EWC was in negotiations with Magna (potential investor in Opel at the time) on the extent of the planned layoffs (workforce reduction of 10.500 jobs, of which 4,500 in Germany).</li> <li>– Protest demonstration organized by the European Metalworkers’ Federation (EMF) together with the EWC (23/09/2009) at the Antwerp Opel site. Demands: halt to all redundancies and plant closures.</li> <li>– During the meeting of EWC (12/03/2009) claims were issued concerning no site closures and no economic layoffs, and plans for capital-sharing for employees, fair divide of production between European sites and partial unemployment to save jobs were submitted to management.</li> <li>– EWC’s announcement that employees would be ready to give up their Christmas and holiday bonuses to save the investor EUR 265 million / year in exchange for a 10% financial participation.</li> </ul>
Fiat	EWC’s protest on lack of information on the group’s mid-term industrial strategies (November 2009); in 2008 demands to strengthen EWC’s prerogatives, especially on strategy decisions in times of crisis, were aired.
HP	EWC’s opinion criticising management’s proposal to cut wages (April 2009)
EDS	EWC’s opinion criticising management’s proposal to cut wages (April 2009)
Dexia	EWC involved in discussions on a reorganization plan including site closures, the global reorganization of the group and internal mobility (since January 2009, ongoing)
Pinault Printemps Redoute	EWC members object to “the extensive savings plan announced by PPR” providing job cuts in France and throughout Europe (April 2009)
Areva	Coordinated actions throughout eight European countries against the planned sale of their energy transmission and distribution division (15/09/2009). The EWC, together with trade unions, organized a central demonstration in Paris.
Whirlpool	EWC-piloted agreement with management to avoid job cuts (December 2008)
RioTinto	An extraordinary meeting of EWC with management was held (January 2009) concerning 2000 job cuts in Europe.

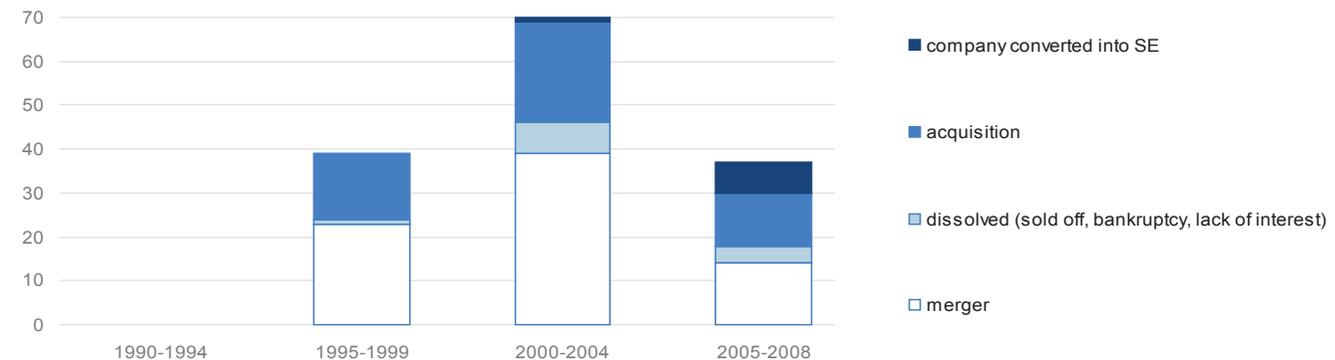
Source: EIRO Online ([www.eurofund.europa.eu/eiro/](http://www.eurofund.europa.eu/eiro/)), EBR News ([www.ebr-news.de](http://www.ebr-news.de)), Planet Labor ([www.planetlabor.com](http://www.planetlabor.com)).

## 5.2 European Works Councils (EWC)

### Consequences of restructuring for EWCs – Dissolutions of EWCs

It is not simply that company restructuring represents one of the core contents with which EWCs need to deal. A company acquisition, merger with another undertaking or acquisition may actually lead to the dissolution of an EWC. These processes are, indeed, one of the main reasons why EWCs cease to operate: a total of 193 EWCs have been dissolved for various restructuring-related reasons (Figure 5.7). The dissolution of an EWC, as an immediate consequence of a merger or acquisition, represents a serious problem for employees who, precisely during this most turbulent period of restructuring in their company (including mass lay-offs, organisational changes, etc.), are deprived of their sole channel of access to transnational information and consultation. Unfortunately, the 'old' directive 94/45/EC did not contain provisions regulating EWCs transition and continuity of operation in restructuring circumstances, an omission that has been (partially) remedied by the recast directive 2009/38/EC (art. 6.2 g).

Figure 5.7 EWCs dissolved per reason between 1995 and 2010



Data source: ETUI EWC database (2010). Note: period 2005 - 2008 covers only 4 years as data for 2009 is not yet available.

## 5.2 European Works Councils (EWC)

### Recast directive 2009/38/EC – a new tool to handle restructuring?

Restructuring had been one of the main drivers behind the proposal for and adoption of the EWC Directive (Carley and Hall 2006; 9<sup>th</sup> recital of Directive 94/45/EC). Looking at items of information and topics on which EWCs must be consulted, as stipulated in Directive 94/45/EC, it becomes apparent that restructuring processes, in their various forms, were, indeed, expected to form the staples of EWC practice, or even their *raison d'être*. According to law (Annex to Directive 94/45/EC, Subsidiary Requirements, Article 2), EWCs must be informed and consulted on, amongst other things, '*substantial changes concerning organisation, introduction of new working methods or production processes, transfers of productions, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies*'. Due to the shortcomings in definitions of 'information' (missing entirely) and 'consultation' (weak), EWCs have, in practice, tended to exert limited influence on managerial decisions (Waddington 2006; Jagodzinski *et al.* 2008).

During (unofficial) bargaining preceding the adoption of the long-awaited recast Directive 2009/38/EC, great hopes were entertained for qualitative progress in EWC operation (ETUC and ETUI 2009). However, it must

be conceded that the new law does not contain any amendments that directly and specifically enhance EWCs' capacities to deal with restructuring. Nonetheless, some of the changes may help EWCs to contribute to discussions on restructuring in companies.

First of all, a potential in this direction may be found in the improved definitions of information and consultation (art. 2 directive 2009/38/EC). Where 'information' is concerned, emphasis is placed on its timeliness, mode of transfer and content that must be such as to enable in-depth analysis by the EWC and preparation for consultation. This new provision makes it clear that the EWC must be informed *before* decisions are taken and must have time to assess the impact of, for example, the restructuring processes under consideration by management. Consultation is defined as an exchange of views that includes the EWC's right to issue an opinion that can be taken into consideration in the decision-making process. All of this requires that both information and consultation be considered inherent components of the decision-making process and not, at best, a mere stage between adoption of a decision by management and its implementation.

Secondly, in line with the provision of Article 6.2 g) requiring that, '*where*

*necessary*', arrangements be made to form a "Select Committee" (responsible for coordination and steering the work of EWC), a part of an EWC agreement may also extend the EWC's capacity to react quickly and efficiently to extraordinary situations, such as these resulting from restructuring or crisis. At the present time, a Select Committee (an internal body within the EWC facilitating liaison and organising work) would seem to be still lacking in approximately 43% of cases (ETUI database of EWCs 2009). Select Committees may, where they exist, play the role of liaison body between management and the EWC plenum, thereby facilitating and speeding up information flow and consultation processes (Lecher *et al.* 2001). From this point of view, EWCs that have failed to set up a Select Committee are deprived of an important structure capable of boosting their efficiency and, consequently, suffer from a disadvantage that impairs their efficiency and the quality of their work.

Thirdly, the recast directive offers the possibility of stronger links between EWCs and national or plant-level employee representation bodies. Articles 10.2 and 12.2 stipulate respectively that EWC members must communicate with the local level representatives on the content of information

and consultation and also that arrangements for this cooperation must be made in the EWC agreement.

These new rules, combined with the reinforced entitlement of EWCs to be provided with the means necessary to exercise the rights stemming from the directive, can result in an overall improvement of EWCs' capacities to handle restructuring more effectively.

At the same time, the new recast directive suffers from at least two major shortcomings in relation to the need to improve EWCs' capacity to handle restructuring. First, a major disappointment consists in the fact that the minimum frequency of EWC meetings has not been increased. By 2009, almost 70% of the EWCs were holding only one plenary meeting per year (ETUI database of EWCs 2009). It has to be conceded, however, that 81% of Article 13 agreements and 97% of Article 6 agreements do provide for some form of extraordinary meeting in exceptional circumstances (SDA Database quoted by Carley and Hall 2006: 14). The fact that the new recast directive did not increase the minimum number of EWC meetings seems to be at dissonance with the goals set for EWCs, especially in the context of restructuring. In view of the high (and growing) number of restructuring cases affecting

## 5.2 European Works Councils (EWC)

### Recast directive 2009/38/EC – a new tool to handle restructuring?

companies with EWCs (Jagodziński *et al.* 2008), this can indeed be considered a shortcoming of the recast directive. Secondly, the excessively hazy definition of old Directive 94/45/EC concerning what constitutes a ‘transnational issue’ (*Benchmarking Working Europe 2009*) was not amended by the recast. This very general definition has all too often resulted in EWCs being hindered in their consultation activities because of the management’s unilateral classification of restructuring measures as purely ‘national’ or ‘local’.

The above findings on EWCs’ involvement in restructuring are in line with the critical assessment of the European Commission (2009). Insofar as the final outcome of the revision process granted EWCs no new or significantly extended competences for tackling restructuring (for further details see Jagodziński and Pas 2010 forthcoming), an enhancement of their overall efficiency in this regard is likely to be restricted.

## 5.3 Conclusions

Collective agreements, as well as interest representation by shop stewards, works councils and employee representatives in company boardrooms, are essential components of an intermeshing system of interest representation and collective bargaining with employers, mainly at the micro level. Both levels supply evidence of the extent to which social interests are taken into consideration in the situation of crisis and to which flexible and also innovative responses have been found by the social partners. While we have gathered a considerable number of experiences and examples, we are certainly in no position to assess the developments accurately. Nor are we able to draw conclusions about the meaning of these experiences and social partners' responses to the crisis for future industrial relations, the position of the social partners, and forms of interest representation. From a European point of view, it clearly appears appropriate to pay close attention to the question of the extent to which the trans-national level has been involved in crisis solutions and to whatever role may have been played by European provisions and platforms such as European Works Councils.

All the agreements including responses to the crisis that have been presented in this chapter were concluded between

industrial actors such as trade unions, works councils or shop stewards, on the one hand, and employers' federations and company human resource departments, on the other. Insofar as these have been the industrial parties most directly concerned, they have come up with recipes for taking effective steps at short notice. Overall, pragmatism and adaptive reaction rather than systematic reflection have guided the involved parties in almost all of the examples found. Collective bargaining and interest representation systems have been used as tools to avoid the worst, which means redundancies, extensive job losses and company closures. The agenda has been driven by the particular situation at the local or the national level and, at these levels at least, the various systems seem to have proved resilient in tackling the consequences of the crisis in a socially responsible and, at the same time, economically supportive manner. These observations would seem to prompt the provisional conclusion that, in cases where laws were respected, the system of industrial relations has proved robust and appropriate to contributing to conflict resolution in the wake of crisis.

It is necessary, however, to be quite honest and to state that it is much too early to draw any final conclusions concerning trends and impacts for the

future structure and role of industrial relations beyond the crisis. This is due, not least, to the as yet incomplete state of the relevant data (concerning, for example, the role of EWCs). At the moment, we do not know whether we will emerge from the crisis with a continuation of earlier industrial relations developments – such as the decentralisation of collective bargaining or individualisation as a phenomenon challenging collective interest representation – dating from pre-crisis days. We have, in fact, observed a number of counter-developments such as a strengthening of company-level bargaining that has tended to be accompanied by an increased importance of higher level bargaining on the (inter) sectoral level (in systems of multi-level bargaining as in most EU countries). This was as a result, for the most part, of the existence or introduction of public short-time working schemes that had to be implemented by collective agreement.

At the same time, however, there can be no doubt of the fact that, in the absence of supportive governmental measures to foster collective bargaining by stabilising the position of the negotiating parties, collective bargaining at the national or sectoral level cannot contribute to the functioning of a proper industrial relations system.

Similarly, without proper governmental support and guarantees, workers' interest representation will not be capable of constructively participating in the resolution of crisis situations. This is true, in particular, of most of the EU new member states, where, in all likelihood, many small and vulnerable plants have been overwhelmed by the crisis and failed to survive its repercussions.

With regard to interest representation at transnational level through EWCs, it might be assumed that an appropriate European framework for coordinated action now exists. Yet in actual fact the agendas of interest representation bodies have been profoundly shaken by the crisis. At the same time, these bodies have sometimes become overloaded by issues that exceeded their information and consultation competences and the tools and resources available to deal with them. And so it is important to point out that we failed to discover any significant evidence suggesting increased recourse to the transnational level in times of crisis. According to our own observations, supported by the information on agreements gathered in the ETUI EWC database, only in exceptional cases have agreements between employees and management, concerning information and consultation on special measures triggered by the crisis,

## 5.3 Conclusions

been concluded at the transnational level. Much more frequently it would seem that crisis-related problems were first of all tackled on a case-by-case basis by the national level of interest representation. Yet the improved rights on information and consultation – and on providing information to all levels of interest representation – provided by the recast of the EWC directive may have created a modicum of extra stimulus to develop cross-border interest representation under these extraordinary circumstances.

In conclusion, a key question arising from the presentation in this chapter relates to the imminence, or otherwise, of a re-nationalisation of industrial relations and collective bargaining. This question arises necessarily, due to the fact that, in many cases, national responses have proven to be the most obvious, most effective and most appropriate form of reaction to the crisis at micro-level. Consequently, the question prompts further queries about relationships between re-nationalised industrial relations and transnational institutions such as EWCs. However this may be, and even if we are as yet unable to describe or explain what has happened, changes to industrial relations systems have indeed been triggered, bringing them into a state of transition, and these changes will

inevitably impact upon the future of the European industrial relations and collective bargaining system.