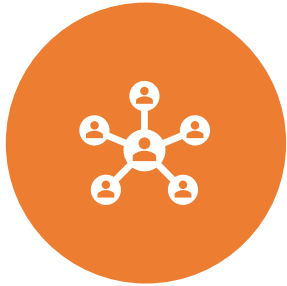


Setting an early warning system in
case of global restructuring
*and keeping solidarity between
countries in time of restructuring*

Cyprian Szyszka, Florence 2022

Why this topic?



1. Situation: you are under restructuring. If not yet, you will be.



2. Problem: you are not being informed nor consulted properly by mgmt. If you are, consider this an exception



3. Implications: tensions grow, possible frontal clash with management, conflicts in the company



4. Need: you should achieve more control through targeted know-how how to handle the restructuring crisis



A "restructuring" generally refers to a business re-organisation or plant closure involving collective redundancies.

Why companies restructure?

- The prime motive: to become more profitable, or to pretend they are doing something
- The common measure: to cut down costs (optimization); reduction of staff
- How many of you are (or will be) affected next year?: all of you...(?)
- The impact of restructuring is always local: affects the workplaces and working conditions of workers on the shop floor
- Restructuring is a permanent: it is a company response to 'change'



How management prepare to restructuring?

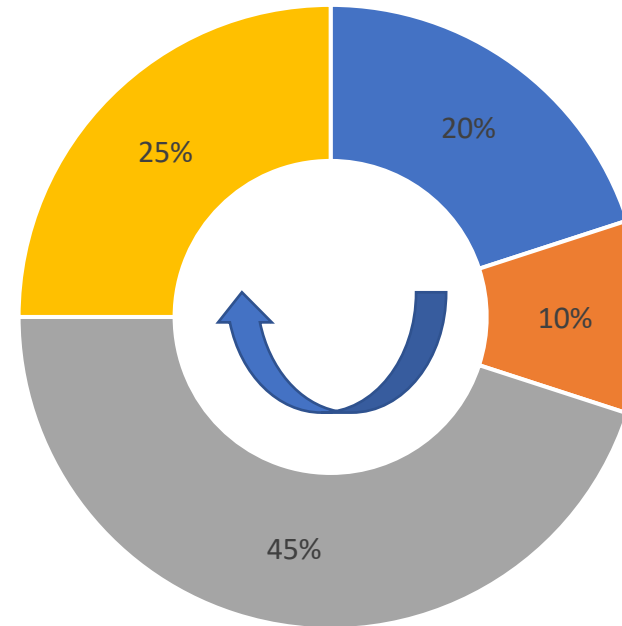
- Define the objectives of a restructuring and prepare a "business case" (this is the 'reason' for attempting to justify the restructuring)
 - Developments in the relevant product or geographic market.
 - Strategic approaches from central management.
 - Particular business weaknesses or threats to the local operations.
 - Plan a communication strategy (both internal and external)
 - must include I&C with any European Works Council withing the group
 - it is useful mechanism to improve employees' understanding of the cross-border business case via EWC
 - Design the key features of a social plan.
 - Anticipate and address the risk of conflict.
-

EWC role?

issue	not raised %	raised, but useless information %	useful information, but no consultation %	useful information and consultation %
corporate strategy and investments	8,3	6,4	52,6	32,8
changes to working methods	37,4	11,0	33,7	17,8
closures or cutbacks	16,1	11,2	44,5	28,1
mergers, take-overs or acquisitions	23,2	6,8	53,3	16,6
transfers/relocation	30,8	5,4	43,3	20,5

source : "The views of EWC representatives" survey by prof. Jeremy Waddington 2005

Distribution of management reaction towards EWCs on restructurings



- No information, no consultation
- Useless information, artificial procedure
- Quality information, no consultation
- Quality information and consultation

source : Cyprian Szyszka (ETUI) training survey, 2020

Research: EWCs having limited impact on restructuring

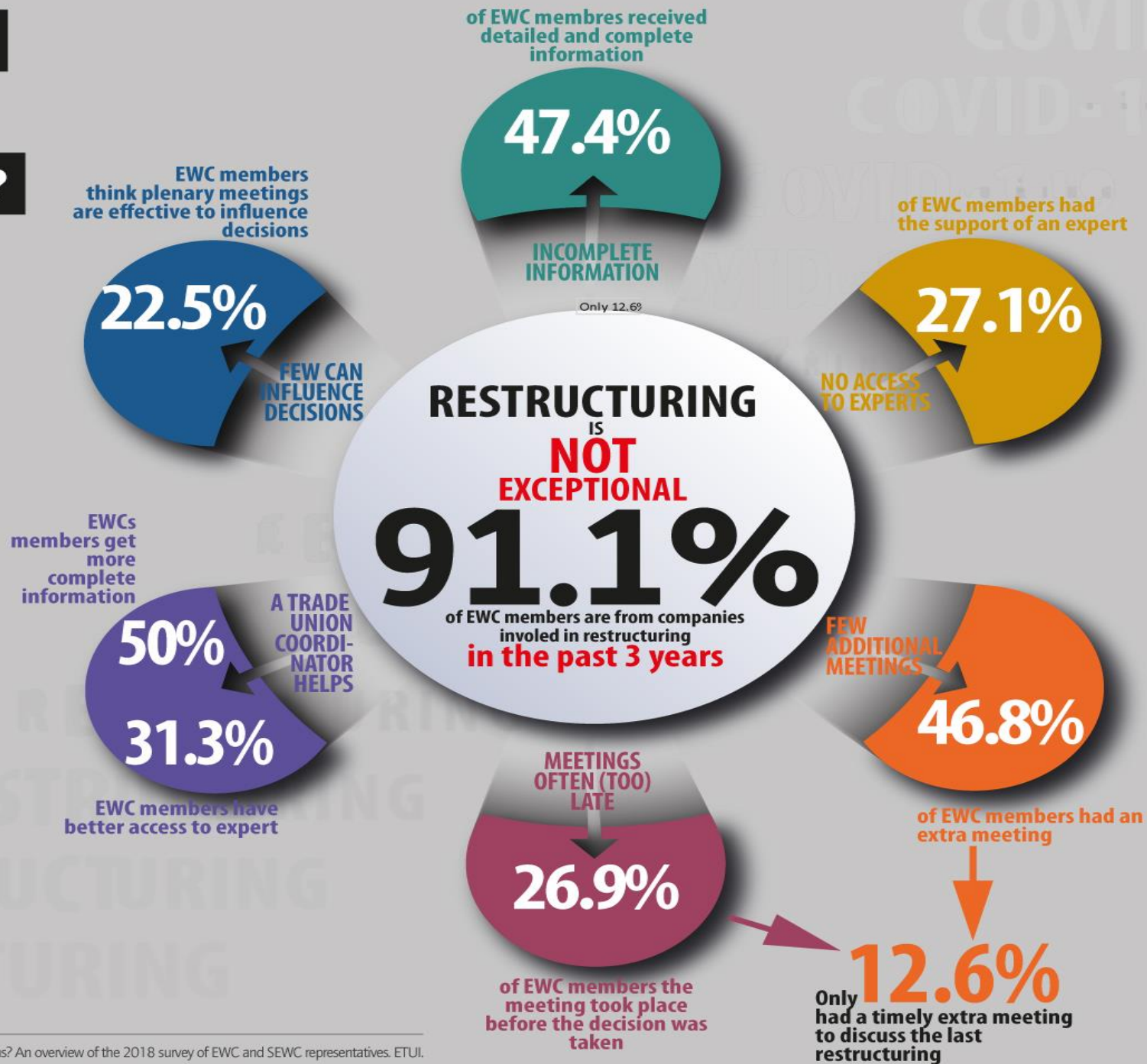
- PERMEWC project KUL & CeSo
 - 1/3 consultation when decision has been taken
 - 4 out of 56 before the final decision
 - if I&C: 61% no impact ; 10% marginal impact, 29% impact
 - conditions for impact:
 - good quality debate between EWC and management
 - strong engagement of EWC members in HR activities
 - management engagement in EWC training
 - serious attitude of management, developing participatory relations
 - high level of trust and mutual respect
 - timely and good quality I&C
- ETUC report 2011 on multinational company restructuring
 - *“Companies **almost systematically** tend to enact elusive practices of information and consultation procedures. Management sometimes informs the EWC only **partially and very late** on the measures that are going to be taken, making the conception of a **meaningful consultation** very difficult.”*
- ETUC – EFFAT – industriAll - UNI Europa – EFBWW joint project on restructuring 12.2012 – 06.2014
 - *“The existing frameworks of anticipating and cushioning the effects of corporate restructuring too often **don’t work in practice** because of their voluntary nature, ‘build-in’ faults or other shortcomings. Too often **existing rules are not obeyed** or even **actively undermined** by employers’ and management.”*

KU LEUVEN

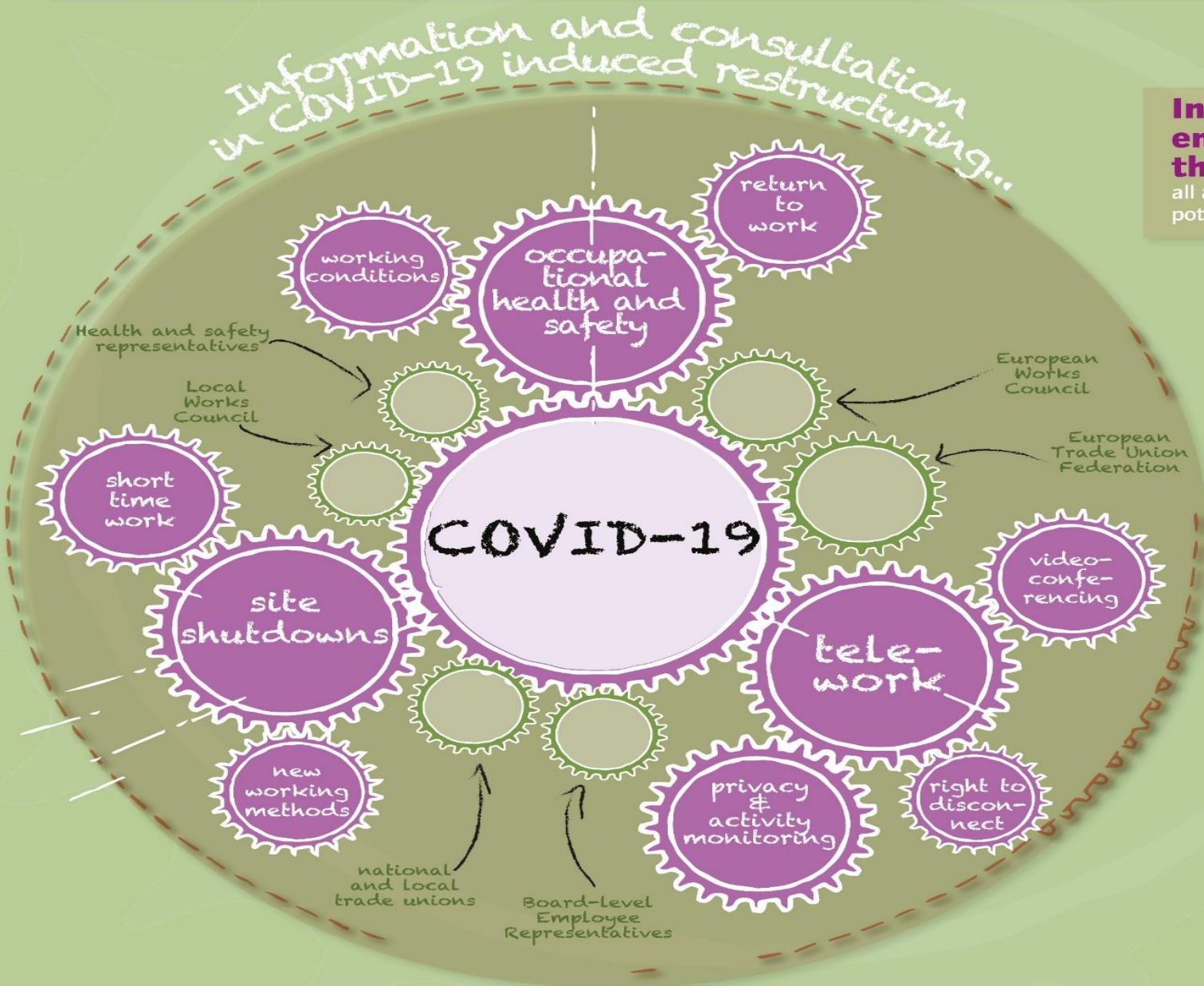
CEISO



How do EWCs deal with restructuring?



COVID-19 induced restructuring and workers' rights



In restructuring, also pandemic induced, employee representatives have the right to know

all about the restructuring plans, the steps, health and safety measures and their potential consequences, especially concerning working conditions.

COVID-19 cannot mean a quarantine of workers' rights to information, consultation and participation

etui.



EWC tools in restructuring

- Many tools possible: publicity&media, EU competition authority in case of mergers, responsible restructuring charters, mobilise all resources: unions local national and European, local government, etc.
 - Our recommendation: concentrate on three basic tools of the EWC
 - Effective information
 - Meaningful consultation
 - Articulation (*EWC as a network of employee representatives, inform, coordinate and support local employee bodies*)
-



Tell me your company recipe

- How is your company restructuring?
- What do you know (in few sentences)
- Is there a plan or random actions only?
- Is it physical business restructured or capital only?

The background of the slide features a photograph of a classical building's entrance. It shows several large, fluted columns made of light-colored stone, likely marble. In the foreground, there are wide, shallow steps made of the same stone, leading up towards the columns. The lighting is bright, suggesting a sunny day. A large, solid blue shape is overlaid on the left side of the image, containing the main title text.

Legal background & standard clause

Big picture: Directive

EWC was intended to be the answer for international restructuring

- The initial EWC Directive aimed at information and consultation rights in the context of a company going through an **intensified process of internationalisation.**
 - EWCs and later SE Works Councils were introduced to ensure employee-interest representation at the European level
- Directive as seen today relates to **the impact** of transnational restructuring measures
 - EWCs and SE WCs need to coordinate local information and consultation processes for workers' representatives.

Standard clause: change management

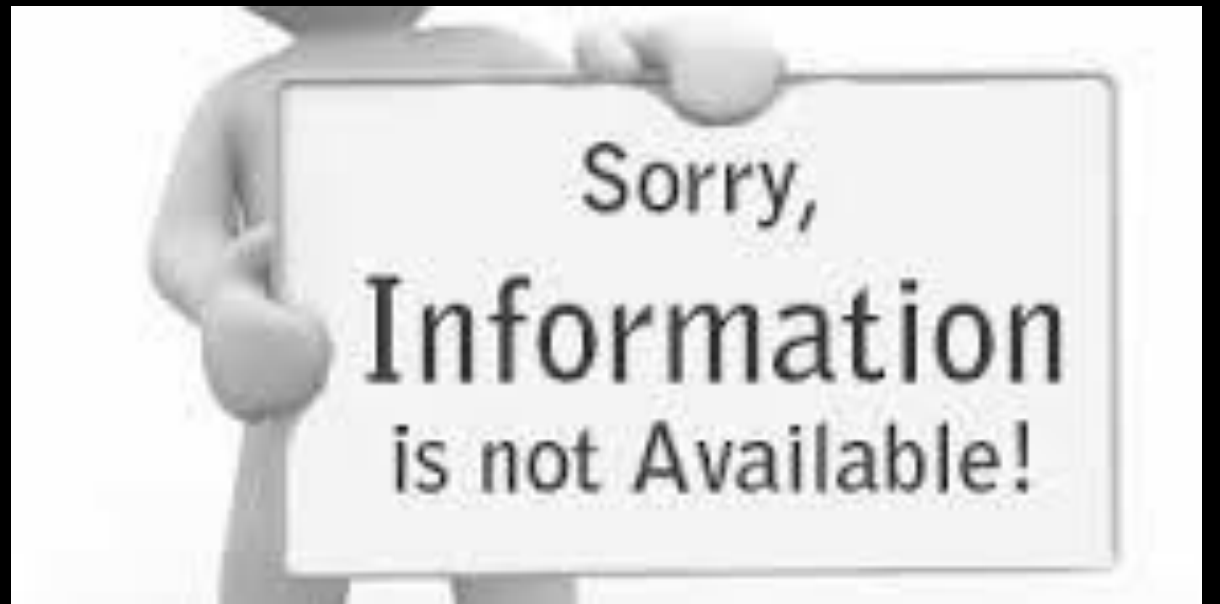
- directive 2009/38 EWC preamble
 - Effective information and consultation process and a dialogue on the right level make possible the anticipation and managing of change by the employee representatives
 - Linking national and transnational level should respect the competences of employee rep bodies, with regard to anticipating and managing change

Standard clause: I&C

- directive 2009/38 EWC definitions
 - Information = transmission of data
 - appropriate time, fashion and content that allows to get acquainted with the matter, examine it, undertake an in-depth **assessment of the possible impact**
 - Consultation = exchange of views, establishment of dialogue
 - appropriate time, fashion and content that enables to **express an opinion** about proposed measures which may be taken into account

Information & Consultation in real life

These European meetings are really just a waste of time



The background of the slide is a dark, abstract composition of colorful geometric shapes and lines. These shapes, including triangles and polygons, are interconnected by thin lines, creating a complex, network-like structure. The colors used include vibrant blues, purples, pinks, oranges, and greens, all set against a black background. The overall effect is reminiscent of a digital network or a molecular structure.

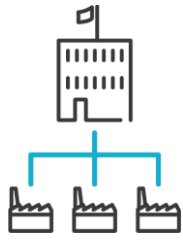
Topics & transnationally

Check it first in your Agreement
Who can tell by heart?

Standard clause

- Directive
 - Transnationality: all matters concerning the whole company or at least two countries (by the scope of the effects or the level of management involved) are transnational
- I&C topics:
 - 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

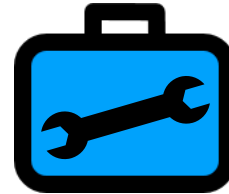
Recast competences of EWC (information rights)



structure of the group



changes in the organisation



transfers of production



investments



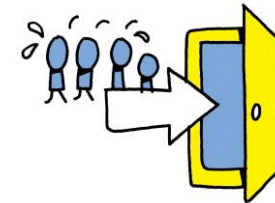
economic and financial situation



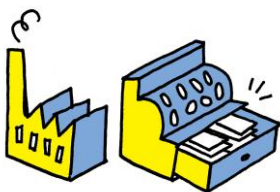
situation and trend of employment



mergers, cut-backs or closure of undertakings



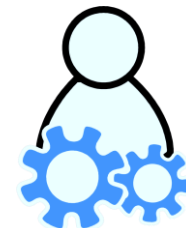
collective redundancies



development of activities, production and sales

But... if it isn't in the agreement, you don't get it!

“it is for the representatives of employees and the management ... to determine by agreement the nature, composition, the function, mode of operation, procedures and financial resources of European Works Councils”

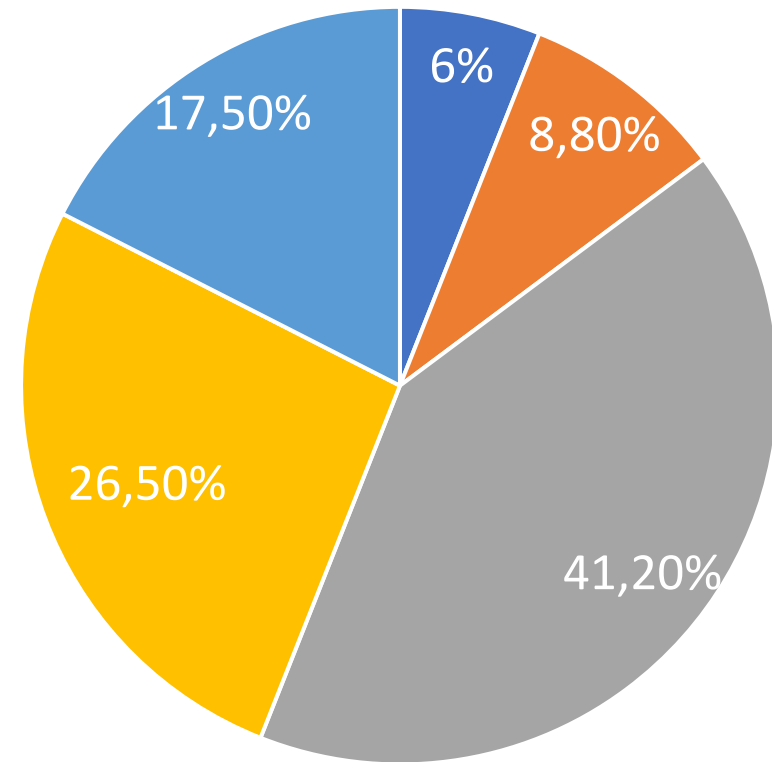


new working methods

'We didn't get what we wanted'

Only 1 out of 4 got the information they requested

Have you been asking for additional information on restructurings?



- No, we relied on information sent by the management
- No, we didn't know what information to ask
- Yes, but we didn't get what we wanted
- Yes, we've got what we've asked for
- Other answers

source : Cyprian Szyszka (ETUI) training survey, 2020



I&C recommendations

1. I&C on restructurings included in agreement & rules of procedure (topics/operation)
 - Make it regular (restructurings are usually ongoing) and ad hoc (extraordinary measures if it's huge)
 - Make 'transnationality' and 'confidentiality' rules clear
 2. Make basic information standard
 - on the planned changes in company activities and foreseen consequences in economic situation (the plan)
 - details of the employment situation, especially if jobs are at risk (risk assessment), incl. management plans to deal with job losses or to changes work organisation or contractual relations
 3. Make basic consultation standard
 - with the appropriate level of management, in good time
 - Workers' reps must be able to meet with employers, get a response to their questions and opinions, and receive an explanation of company thinking
 4. Timely manner!
 - The company must pass on information early enough and in a way that enables employees' reps to study the data and prepare their case; same with the meetings
 5. Multilevel approach
 - Collect & coordinate information at local, national & European levels
 - EWC is a 'spider in a network', waiving the 'early alert system'
-



The EWC is supposed to only deal with matters of transnational relevance and focus on transnational issues only

Can single-country issues be transnational? How to avoid 'salami' restructurings?

Transnational matter: an easy way out

The question whether a management decision has a transnational character or not is all too often a source of conflict and prevents an EWC from functioning properly



- (decision affecting at least) 2 countries at the same time or a group as a whole
- Such understanding results in the '**salami tactics**' or '**crawling restructuring**'
- => strategy of implementing changes in countries one by one, not informing EWC
- => informing EWC itself is a confirmation of transnationality for the court and the penalties are small (it is viable not to inform)

Recital 12:
every foreign
decision
transnational?
(already existed
under the old
Directive)

- the EWC must be *'properly informed and consulted when decisions are taken in a Member State other than that in which they are employed'*.
- Presumption: every decision taken in another MS than where it will be implemented is part of a transnational strategy affecting the global conduct of the enterprise.
- E.g. a decision to close a plant in a given country implies a decision to continue activity in another country.

Recital 16: level of decision-taking body determines its transnationality? Or a 'potential effect'?

- *„The transnational character of a matter should be determined by taking account of both the scope of its potential effects, and the level of management and representation that it involves. For this purpose, matters that concern the entire undertaking or group or at least two Member States are considered to be transnational. These include matters which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States.’*
- Decisions affecting the whole company, but in practice implemented in different stages in individual MS
- Not only decisions negatively affecting employees

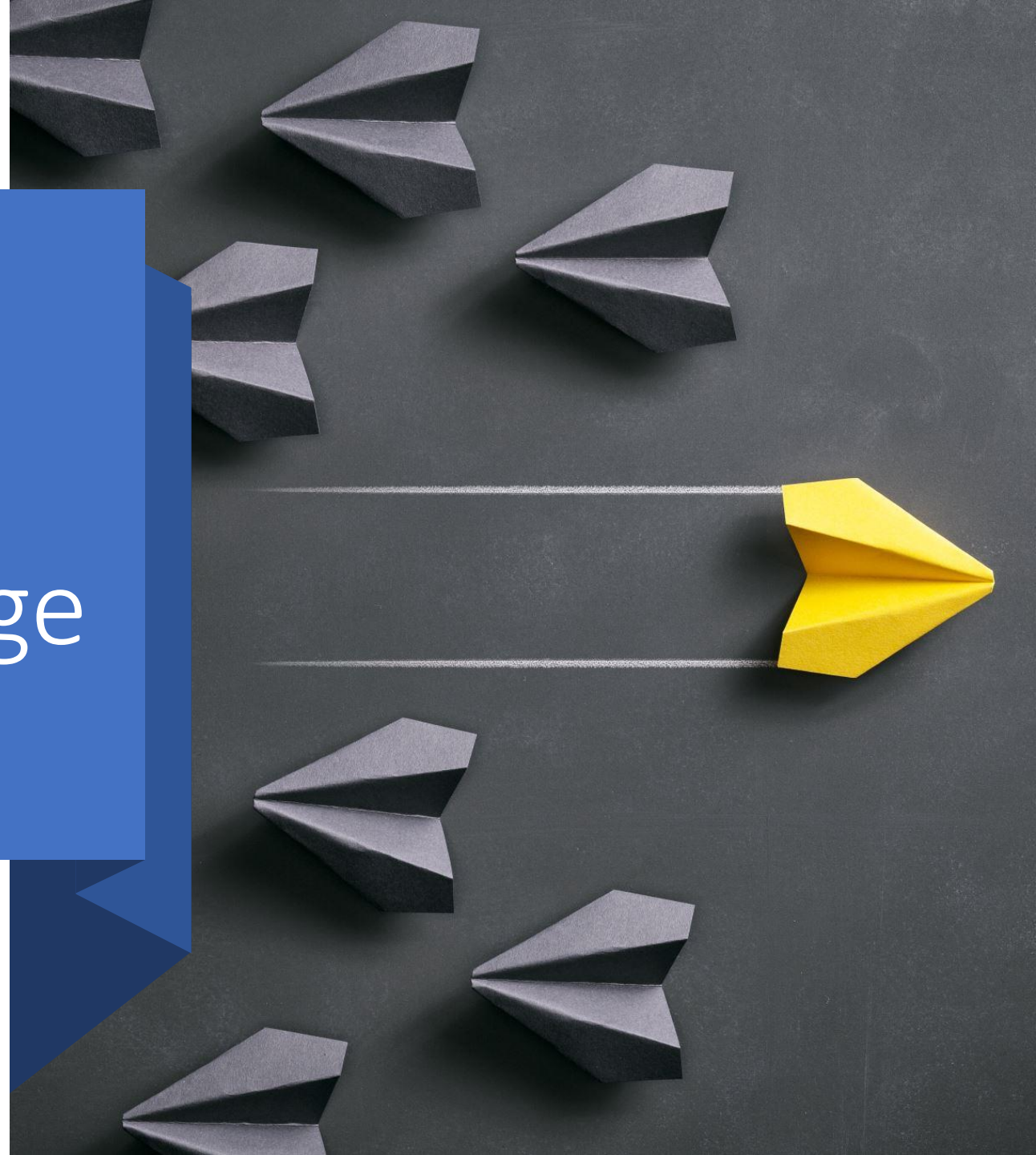


Recommended interpretation of transnationality of information in restructurings

- Single country decisions may be transnational in 6 situations:
 1. the impact / effects of the decision might be broader than 1 country
 - (e.g. lay-offs in one country resulting in transfer of activities to another)
 2. the significance of the decision is likely to be international
 - (e.g. a % of a total company headcount affected seems noticeable for the whole picture)
 3. the manager taking the decision holds international position
 - (e.g. a CEE director took the decision for Czech Republic only)
 4. the decision was taken in another EU country
 - (e.g. German HQ decided about restructuring local plant in Belgium)
 5. The decision was taken outside of EU, and the agent resides in a different country than the one affected by the decision
 - (e.g. US-based global HQ through their EU HQ/agent in Ireland closed the factory in Spain)
 6. Decision is the effect of a multinational strategy
 - (e.g. as an effect of a global digitalization strategy the Italian branch will be closed)
-

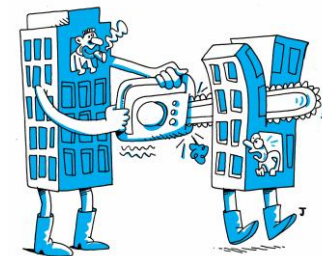
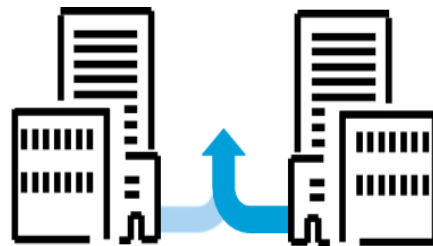
Substantial change & impact

Define it, to avoid an attempt to
narrow the field of I&C



Standard: restructuring as a reason for renegotiating EWC agreement

- ‘significant structural changes’: mergers, acquisitions and creation of subdivisions of the company are pointed in the Recitals of the Directive as valid reasons to renegotiate the Agreement, but that is not their only role
- In practice a substantial change is often brought as a reason for triggering extraordinary meetings due to restructurings
- Details of significant structural changes is open to debate and sometimes used to narrow the field of I&C only to it
- Define what are the substantial changes and what do you need them for



Exceptional circumstances

SC enters the play
Define it on the base of SR, what happens if EC appear



+

•

○

Exceptional circumstances in subsidiary requirements

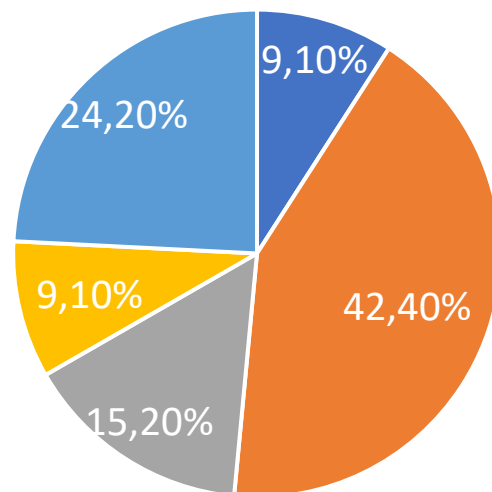
- directive 2009/38 EWC
 - subsidiary requirements (art 3)
 - Where there are exceptional circumstances or decisions affecting the employees' interests to a considerable extent, **particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies**, the SC or, where no such committee exists, the EWC shall have the right to be informed. It shall have the right to meet, at its request, the central management, or any other more appropriate level of management having its own powers of decision, so as to be informed and consulted.

Extraordinary meetings

Another important restructuring tool



Have you been requesting extraordinary meetings for restructuring?

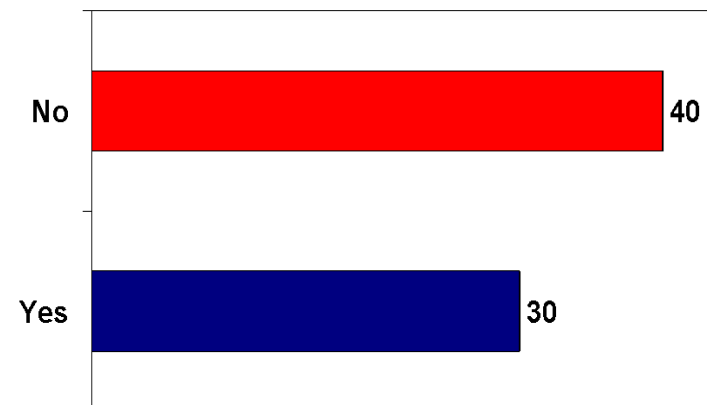


- Yes, we have it regularly
- Yes, we had at least one
- No, we didn't know we can
- No, we didn't find it necessary
- Don't know

source : Cyprian Szyszka (ETUI) training survey, 2020

Extraordinary meeting convened?

Absolute figures; n=70



source : IG Metall survey 2005 (85 EWCs involved)

Extraordinary meetings ... usually working



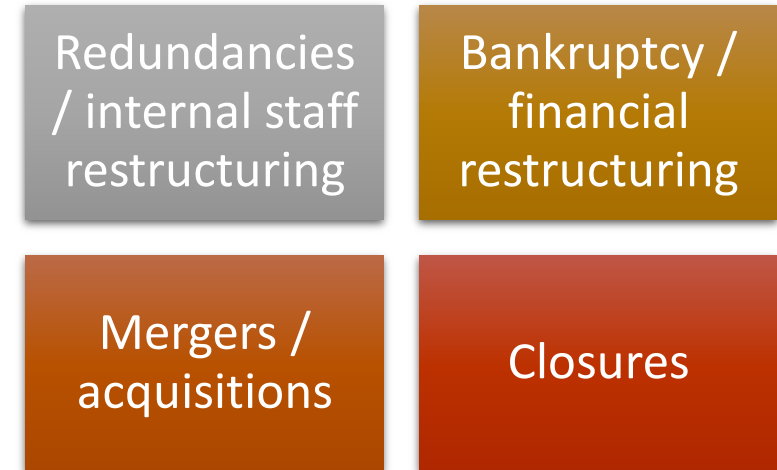
Typology of restructuring

MNC strategies

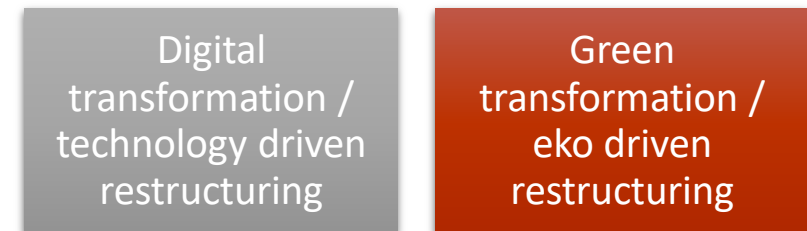
Types of restructuring



Crisis - response restructurings



Foresight restructurings



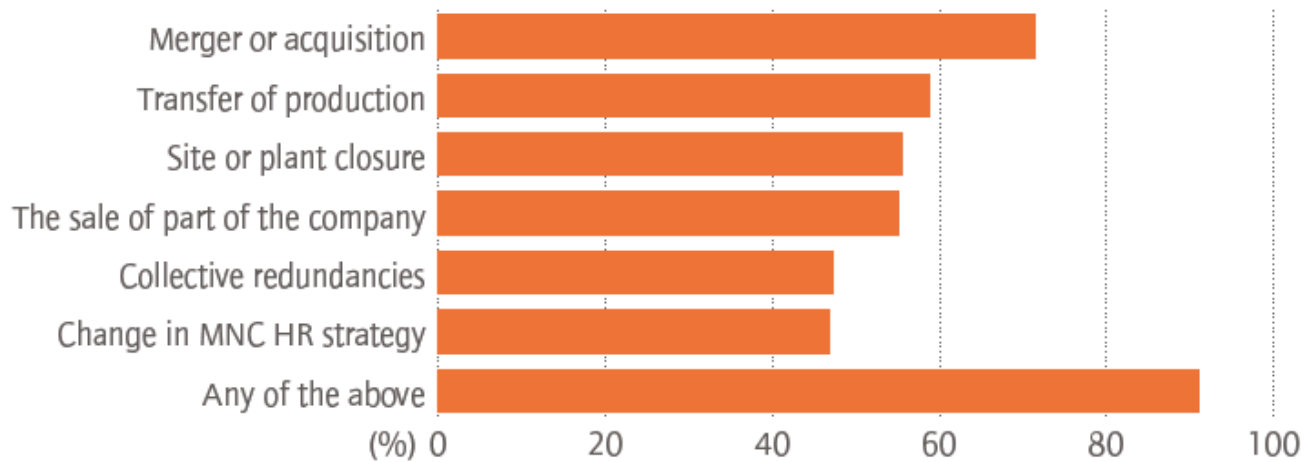
Types of restructuring in play

source : Cyprian Szyszka (ETUI) training survey, 2020



about three companies a day announce restructuring plans which potentially involve significant job losses

Figure 6.9 Types of restructuring in which EWCs were involved during the past three years



61 per cent of managers indicated that consultation with the EWC had no meaningful impact; 10 per cent reported a marginal impact and 29 per cent reported that the EWC had real impact

Source: De Spiegelaere and Jagodzinski (2019).

source : KU Leuven

Restructuring: daily reality across Europe

- 10% of restructuring measures are transnational in scope, putting jobs at risk in more than one EU Member State
- large-scale restructuring plans have a substantial impact on the employees in the company, concerning those to stay, too
- on average, each transnational restructuring case (other than those of business expansion) involves announced employment losses of over 3,000 jobs, around seven times greater than those of restructurings that take place within national borders
- The COVID-19 crisis has led to a doubling of restructuring job loss in the first half of 2020 compared to the rolling average
- One in three companies involved in European transnational restructuring in the last three years did not have an EWC or SE-WC

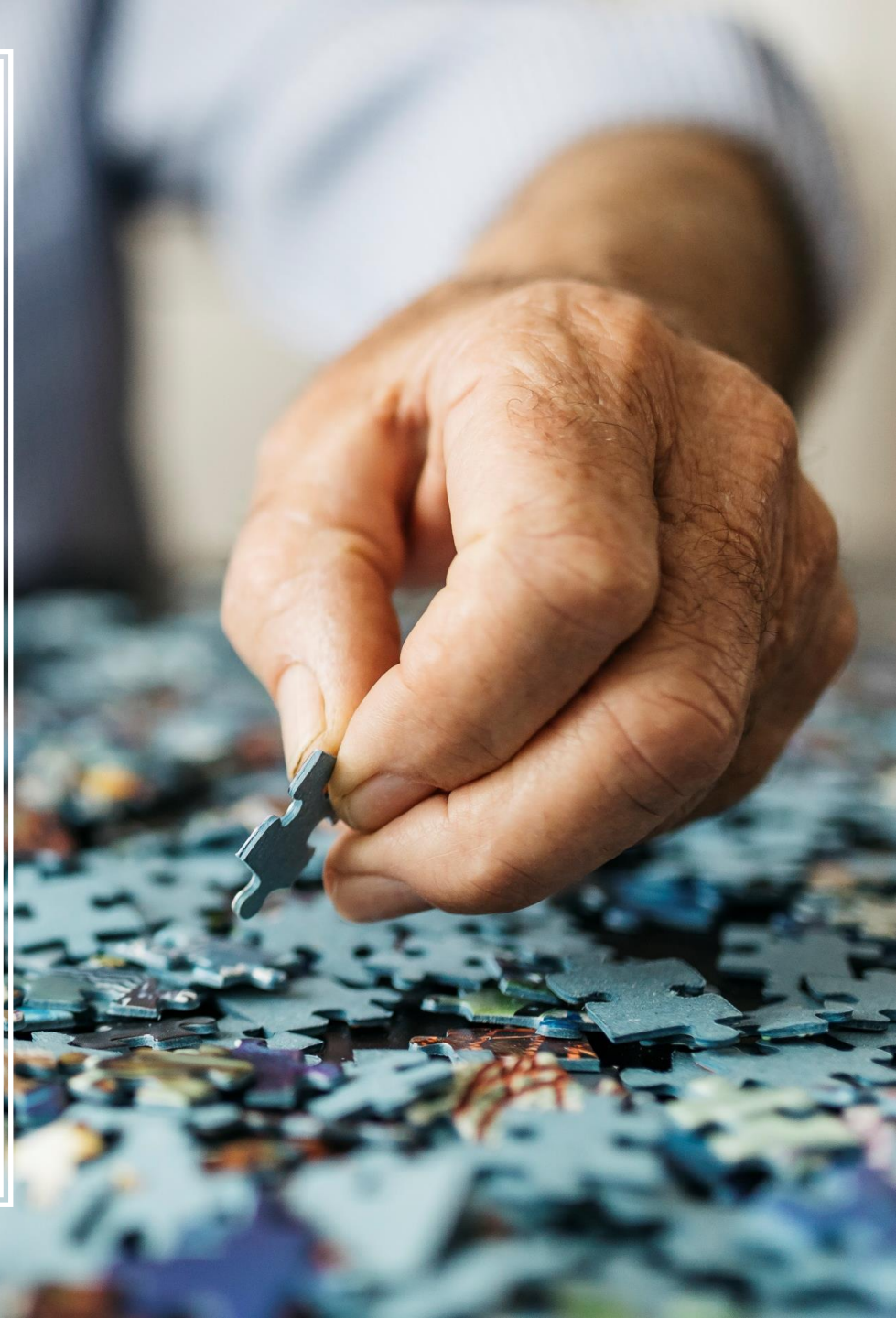


Figure 6.7 Jobs lost and gained as a result of restructuring, 2002-2020

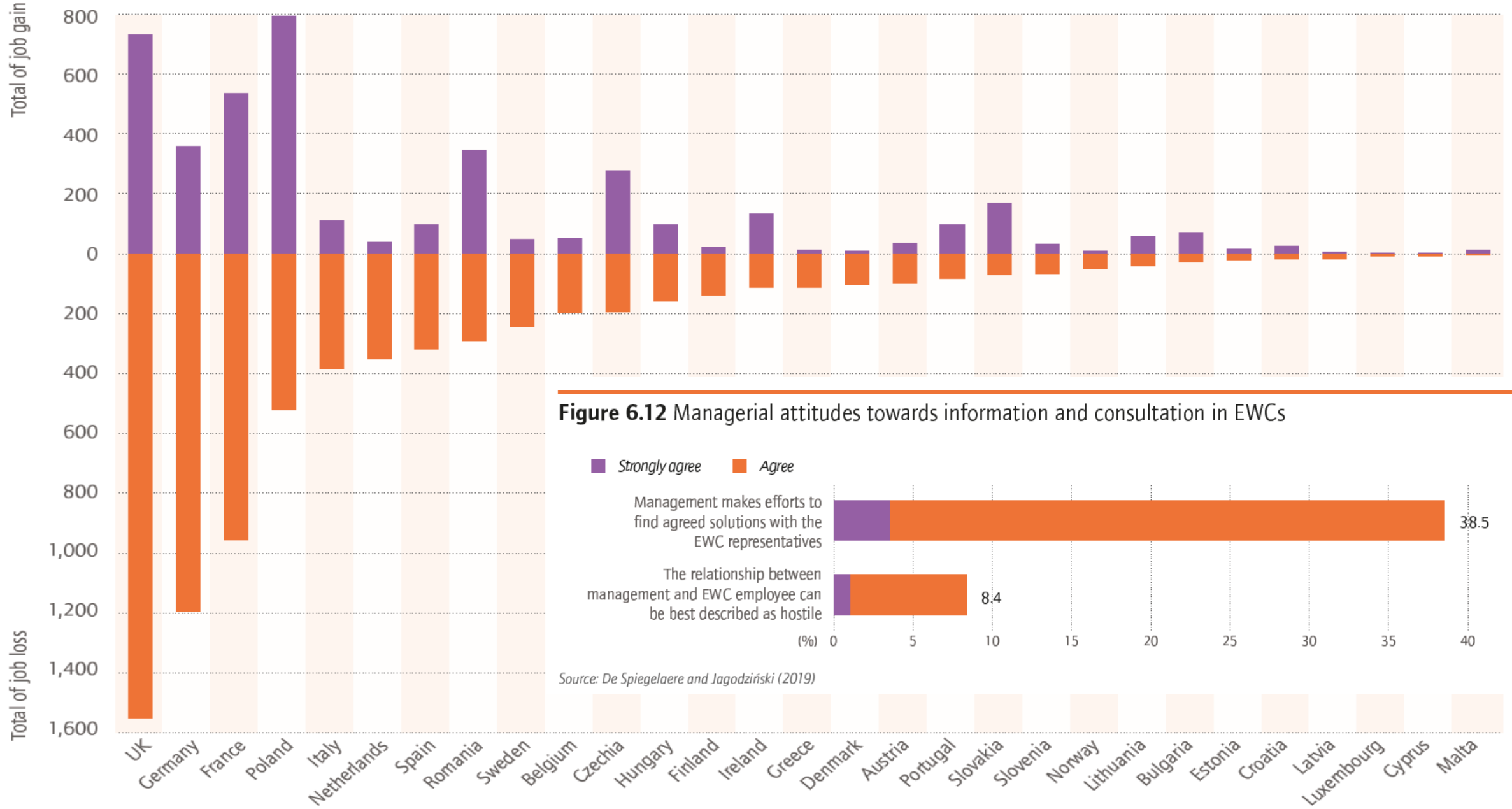
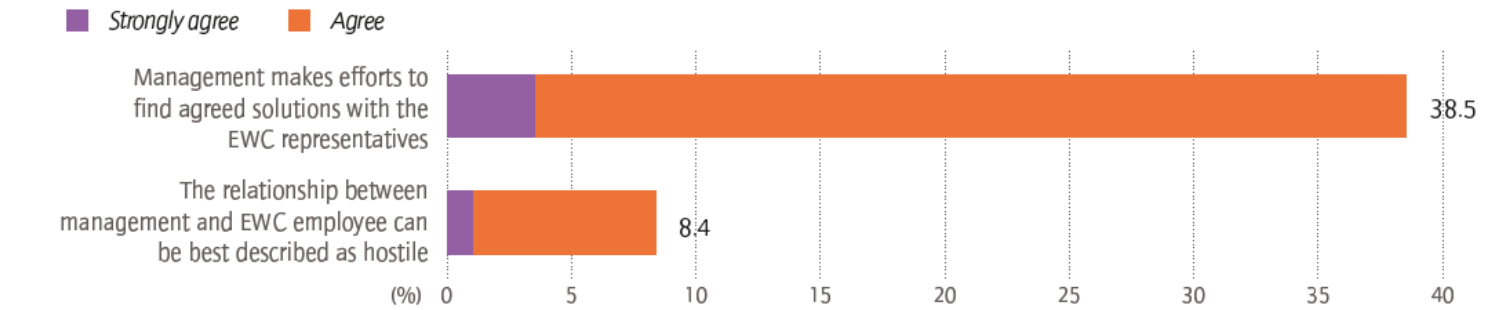


Figure 6.12 Managerial attitudes towards information and consultation in EWCs



Source: De Spiegelaere and Jagodziński (2019)

EWC reaction to restructuring

From shock to action plan



EWC switches to 'restructuring mode'

EWC 'business as usual' is 1 -2 meetings per year, slow information flow, and reactive majority of members must survive a shock and turn into 'restructuring mode' with the high pressure on time (management presses to get EWC opinion as fast as possible) and confidentiality risk (criminal law based on stock exchange rules)

First reaction: 'what is going on here?', 'how can we counteract?' => best approach is to play on delay (time gain), trying to get as much info as possible (get an expert, extraordinary meeting, asking for data, help local level)

Work on relations / early warning system triggered: align with the network on a national level: they have their tools and I&C procedure

Action plan: develop alternatives and influence the decision making

Case study “Candy EWC”



- Context:
 - struggling company, many facilities, big new plant in Slovakia, owned by private equity, in 3 years about 6 factories were closed
 - The task of the EWC is to ensure that a ***responsible balance is struck between the economic interests and the social interests of the company and its employees.***
- EWC reaction:
 - Before we give our opinion, we have to know what *the consequences are for the employees in DK and to assess this against the economic benefits for the company.* This implies that we have to await the agreement on a social plan in Denmark.
 - We also want to make sure that Candy *acts as a decent, social responsible employer.*
 - This implies the willingness to come to a good compensation package when people are made redundant.
 - The EWC feels *that failure to do so reflects on the whole Candy company, not just in Denmark.*
- Results:
 - Management furious
 - But could not start dismissing people
 - In the end an improved Social Plan was agreed with the Danish Trade Unions

Set up your EWC for future restructurings

EWC as a playmaker

- Build a communication network (national and European employee organisations, ETUF, union coordinator, BLER)
- Coordinate employees' responses to the restructuring (organize communication)
- Create a European strategy (facilitate multinational action)

EWC as a tactical tool

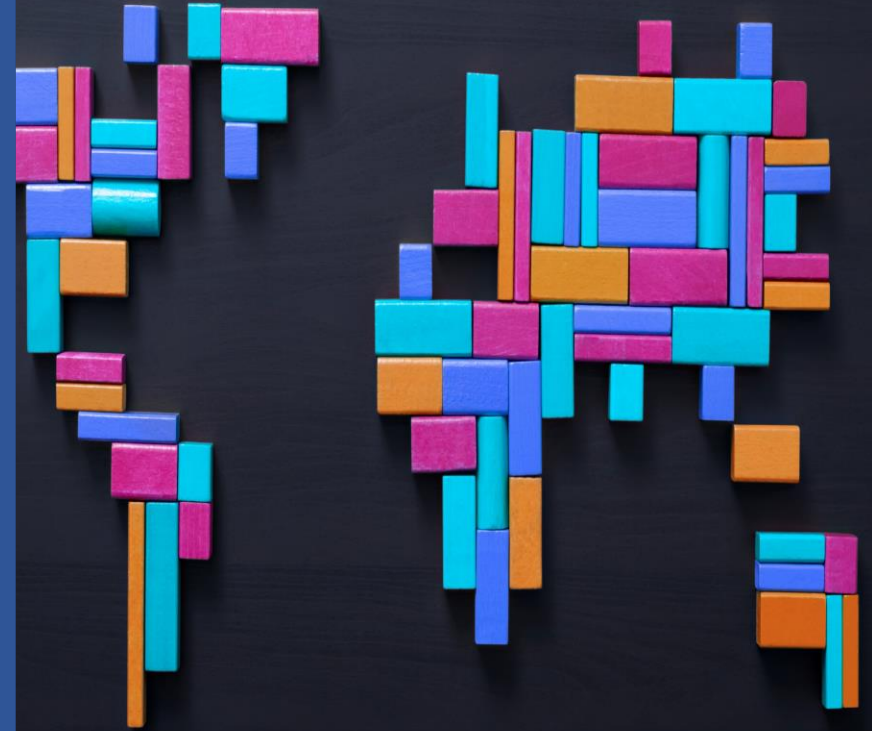
- Develop early warning system of restructurings to better influence the decision-making process on every level
- Buy some time, useful at the local level, at which social plans may be negotiated
- Support local strategies by exerting influence on management at the European level

EWC as an information source

- Know your I&C rights well and have them practically exercised
- Check different sources for the rumours of a restructuring
- Bring in the necessary experts to assist in evaluating the company's plans

Analyzing the restructuring

Data demand: what do you need to know?



Analyse the coming restructuring

Understand the decision process

- 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)?

Understand the restructuring plan

- 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?

Ask for information! (to understand the situation of the company)



Basic data demand

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.

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.



Detailed data demand

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.

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.

The ideal type of information you need to understand aims and objectives of the employer, is a complete business plan and detailed answers to all your questions.



Other sources

could include brainstorming and exchange of information within the EWC, and between local union, employee and board-level employee representatives. Also check alternative sources: annual reports, press releases, interviews with senior management representatives

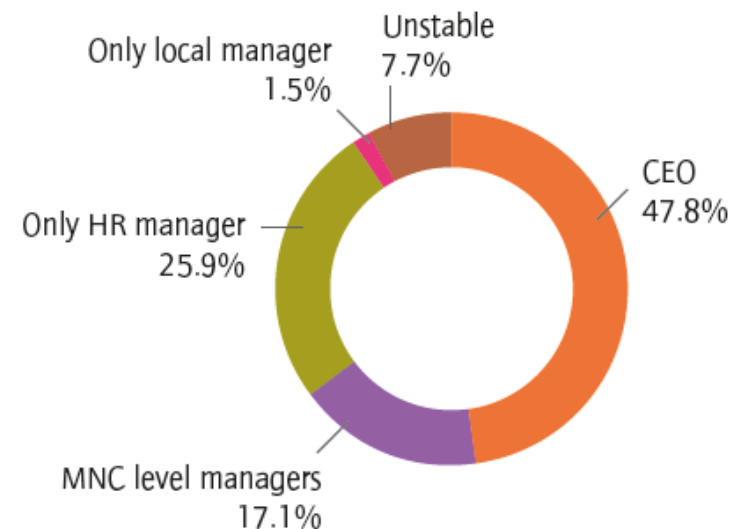
collect information from local representatives and employees as well as insights about relevant developments well in advance of the meeting in order to determine which issues should be brought up before management

Important principle: check your management on full compliance with information and consultation rights both at national and European levels

- Getting full access to the relevant information so that the EWC members can understand the company strategy and develop alternative measures
- Obtaining an extraordinary meeting of the EWC and enough time to work on alternative measures
- Agreeing on a timeframe for consultation to ensure that the I & C procedures take place before the finalisation of the decision
- National and European legislations protect the involvement of employee representatives in the decision-making process of the company!

Informed managers?

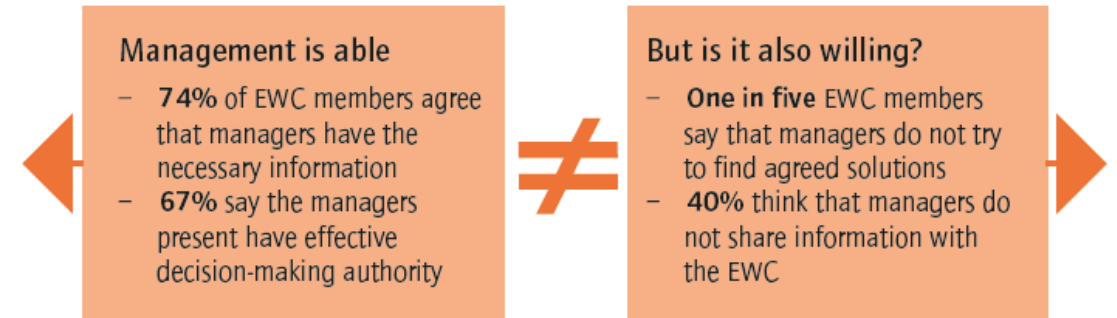
Figure 6.11 Who represents management towards EWCs?



Source: De Spiegelaere and Jagodziński (2019)

Restructuring assessment questions

Figure 6.10 Managerial ability and willingness to share information with EWCs

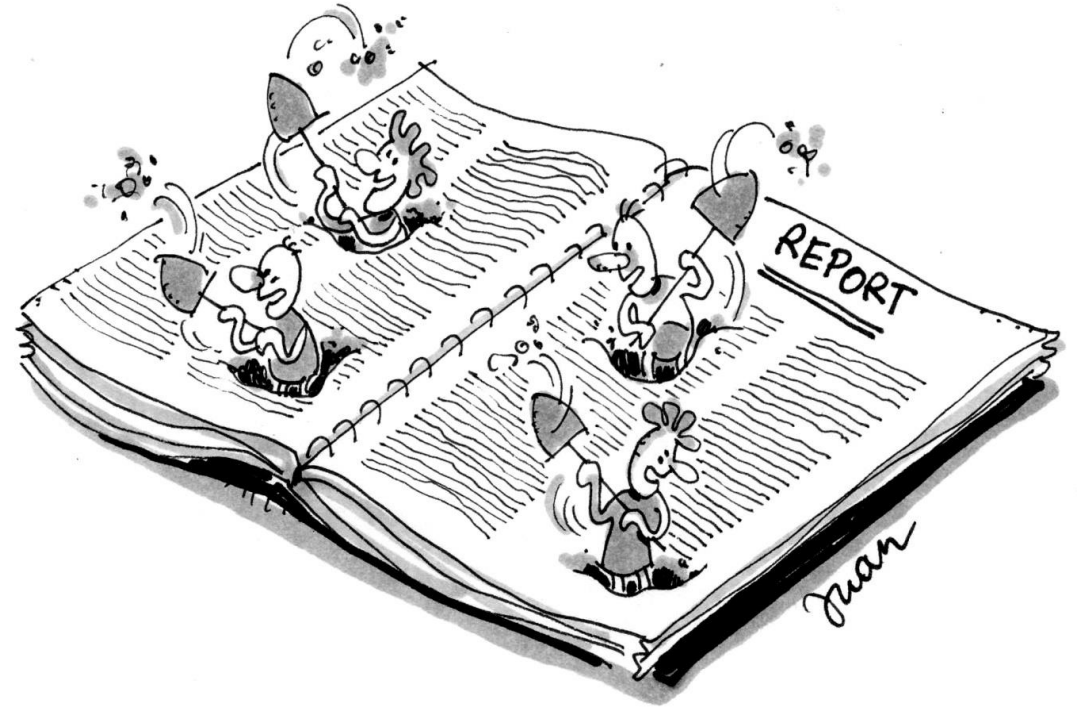


Source: De Spiegelaere and Jagodziński (2019).

1. Are the strategic and operational objectives of the project known to the EWC? Did management provide a convincing answer on the strategic significance of the restructuring plan?
2. What overall strategy is the company aiming at, and what are the goals pursued in the implementation process? Are the goals of the restructuring plan already fixed or are they still 'negotiable'?
3. Do the objectives and targets set by the employer seem realistic? After closer examination, does the intended restructuring plan seem meaningful in the economic sense? What will the impact be on the competitiveness of the company?
4. What possible 'hidden' motives exist? What advantages and disadvantages might the restructuring plan have for the employer?
5. What risks to the company's competitiveness has management identified in the restructuring plan? What measures is the company taking to mitigate these risks?
6. What impact will the restructuring operation have on employment?

To be aware...

- restructuring is a permanent reality
- current legal support is insufficient
- revision of 2009/38 doubtful
- “change” is more than restructuring
- I&C also for positive changes
- specify the role of the EWC in anticipating change and facing restructuring in your agreement
- discuss a common strategy in « quiet » times
- claim your right to use expert(s) of your choice
- ensure the presence of a trade union expert/coordinator
- always ensure a good communication with national and European unions, regardless of their conventional role



Early warning system

winter is coming



Developing an early-warning system

1

Checking from different sources the rumours of a restructuring so as to confirm or invalidate the news

2

Improving the anticipation of restructuring situations so that EWC members can better influence the decision-making process

3

Including in a information-sharing system all the relevant actors (national and European employee representatives, ETUF secretariat, union coordinator,...)

4

Getting reliable information at the right time is the best way to avoid any brutal announcement of restructuring! Allow also a rapid reaction to any restructuring situation and a tighter coordination!

To be aware...

“It should not be a surprise!!”

Anders Carlson, Chairman of Bombardier EWC

- Regular communication between EWC members; between EWC members (and deputy members) and the steering committee.
- Regular monitoring carried out by the chairman / steering committee of the EWC.
- National delegates (and deputy delegates) are key to spotting "weak signals".
- Institutional information to stakeholders, company newsroom, press... give a global overview.
- You will know more than your management!!!



- Make noise!

- Trade unions (network)
- National works council
- European Trade Union Federation

European Parliament deputies

- European Commission (DG Employment or Competition).
- Other EWCs
 - Press
 - Expert
 - Lawyer