



Report



European Works Councils

*Report from the Conference in Aarhus,
25 - 26 November 2002*



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The conference is supported by The European Commission.

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Preface

On 25 and 26 November 2002, the old trade union building in Aarhus in Denmark provided the setting for a conference attended by more than 400 persons. About 350 participants were members of European Works Councils, while the remaining participants came from national and European trade union organisations, training institutes and consultancy firms providing services to European Works Councils.

The title of the conference was: "Towards more Influence – EWC Conference". It was organised by;

- ◆ LO (the Danish Confederation of Trade Unions)
- ◆ FTF (the Danish Confederation of Salaried Employees and Civil Servants)
- ◆ AC (the Danish Confederation of Professional Associations)
- ◆ ETUC (the European Trade Union Confederation).

The conference formed part of a series of events under the Danish Presidency of the European Union. It was sponsored by the European Commission.

This report gives an outline of the presentations and discussions at the conference. The structure of the report generally follows the programme of the conference.

A special thanks to Kristine Drejø and Lotte Bianca Pedersen for helping to collect the material on which the report is based.

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1. Background and Aims of the Conference

An ever increasing share of production and services is carried out by multinational companies (MNCs). When companies become multinational an immediate effect is a gap in the representation of workers' interests. In the great majority of European countries there are works councils or similar bodies through which employee representatives can attempt to influence management decisions. However, such bodies are powerless if management decisions are taken in a corporate headquarter situated in another country.

One of the ways in which the European trade union movement has tried to close this representation gap is by campaigning for the establishment of European Works Councils (EWCs). EWCs are multinational bodies consisting of employee representatives from different countries. The representatives are entitled to meet their common corporate management and to discuss management decisions that affect the workforce in different countries.

Compared with trade unions and national works councils, EWCs are still in their infancy. A few were established in the late 1980s and early 1990s when there was still no legal framework for such bodies. The important turning point came in 1994, when the European Union adopted its Directive on European Works Councils. Under the influence of the Directive, several hundreds of MNCs negotiated voluntary agreements with their employee representatives on the establishment of an EWC. This happened in the two years between the adoption of the Directive (September 1994) and its entering into force in the member states (September 1996) - the so-called article 13 agreements. Since then, hundreds of additional EWCs have been negotiated in accordance with article 6 of the Directive.

By the time of the Aarhus conference, (November 2002), some 750 EWCs were in existence (Kerckhofs 2002), and in total between 15,000 and 20,000 employee representatives held seats on these EWCs. A new international layer of the representation of workers' interests had been created. A space had been opened in which employee representatives from different plants and different countries can meet each other and the corporate management of the MNC they are employed by.

EWCs are entitled to be informed and consulted by the central management of the MNC. Although they have no formal rights to co-determination or negotiations leading to joint decisions they still have an obvious potential for influence. Influence may be obtained on the basis of better information about the situation of the company – information that can be used in negotiations with management. Influence may also be obtained through consultations – either as a result of management taking employee views into consideration or because consultation develops into negotiations and joint decisions.

It was this potential for influence that was at the centre of the Aarhus conference, *Towards more Influence*. The invitation to the conference underlined the social value of EWCs as well as the problems facing EWCs:

"...thanks to European Works Councils, undertakings have gained something very precious: the advice of the best possible consultants, workers and their representatives".

"European Works Councils are an option for a different model of innovation and change that is based on social dialogue and produces long-lasting results. In order to make the most of this option, we need to evaluate and to improve the current work of European Works Councils".

"Practice has shown...that the EWC Directive has shortcomings and needs to be revised. Often it is difficult for EWC members to receive any information at all on what is going on. Again and again, EWC members are simply presented with a fait accompli".

"We need to discuss how trade unions can better assist EWCs in their work. We need to see how EWCs can play an active role in mergers and restructurations of undertakings, how they can enforce the rights they already have".

The intentions behind the conference were further outlined in the introductory speeches by Danish trade union leaders:

Hans Halvorsen, LO-Aarhus: "Investments must be beneficial in the long term. They must not only aim at shareholder value, but must create good and healthy establishments that are beneficial to society and the employees. Those who do the work must also take part in deciding on it".

Hans Jensen, LO-DK: "We have certain motives with this conference. The Commission is planning a revision of the Directive, and we have to know your experiences: What is functioning and what is not? Can the rules be improved or is it a question of practice? Can we as trade unions improve our support to you? What are your opinions?" "You are ambassadors for the best traditions in trade unionism. I know the barriers are huge: different languages, rules and cultures; and employers who still need to realise that co-operation is the best means to obtain competitiveness and improve the well-being of the employees".

Allan Bang, the FTF: "The EWC is an important tool if employees are to be able to influence mergers and takeovers...We must find out what is needed to make EWCs as efficient as possible, and how a good co-operation between EWCs and trade unions is secured".

Svend Christensen, the AC: "There is still a long way to go. Many companies see the EWC as just a forum for information, and information is given late. However, there are also good experiences; some companies now understand the necessity of having an EWC...Perhaps the task is to agree on realistic objectives".

Thus, the primary aims of the conference were

- ◆ a discussion of the experiences of EWCs
- ◆ strengthening the activities of EWCs and the support from trade unions
- ◆ a discussion of whether changes in the EWC Directive are needed.

As regards the latter, Fernando Vasquez, Deputy Head of Labour Law of the European Commission's DG 5, informed about the plans for a revision of the Directive. He noted that there are some loopholes in the present Directive: "We have to think of the areas where there are loopholes and where the Directive has to be reinforced".

Fernando Vasquez stated that it is the Commission's intention to start the revision process in the autumn of 2003. At the same time, he stressed that it is the hope of the Commission that the European unions and employer organisations will come to an agreement on a revised text of the Directive.





2. EWC experiences – problems and achievements

The main part of the conference was devoted to three workshops. Here, EWC-representatives and other participants presented and discussed their experiences with work in EWCs. The themes of the three workshops were:

- ◆ The EWC and structural changes, e.g. mergers and acquisitions
- ◆ Information and consultation – improving practices in the EWC
- ◆ Legal aspects: the opportunities for enforcing EWC rights.

The workshops focused on positive as well as negative experiences with a view to generating proposals that may improve the existing regulation and the existing practice of EWCs.

2. a. EWCs and restructuring

This workshop was chaired by Luc Triangle from the EMF and included the following presentations:

- ◆ John Sendanyoye (ILO) on mergers and acquisitions in the banking sector
- ◆ Luc Triangle on the EWC Directive in relation to restructuring
- ◆ Bruno Demaître (Fortis EWC) on a merger in the banking sector
- ◆ Friedholm Conradi (Avantis Pharma EWC) on a merger in the pharmaceutical sector
- ◆ Conny Holm (union representative in Saab Aerospace) on the lack of representation in joint ventures.

The impact of mergers and acquisitions in the banking sector

John Sendanyoye presented an ILO study. From 1985-98 mergers and acquisitions (M&As) have led to a drastic fall in the total number of banks; in the EU from over 14,600 to about 8,800, and in the Nordic countries from 1513 to 685. Virtually all M&As have resulted in extensive job cuts, and there has also been a negative impact on staff motivation. Examples of job losses between 1990 and 2000 are 150,000 in Britain and 51,000 in Spain.

Most of the lost jobs have been in branch- and back-office operations and are related to the closure of branches as well the introduction of new technology. Job gains in call centres, money management and IT areas have been insufficient to compensate for losses elsewhere. Job losses have particularly hit women as cost-cutting tends to fall disproportionately on functions where women predominate such as administration and branch operations.

According to John Sendanyoye, the structural change in banking and financial services has led to a growth in non-standard forms of employment and out-sourcing, but also to the introduction of high-performance work organisations emphasising flexibility, responsiveness and just-in-time production. There are indications that overtime is rising for the surviving staff; in the UK, actual hours worked per week are 5.6 higher than the collectively agreed working time.

Mass lay-offs have had a negative impact on motivation leading to a possible drop in creativity and productivity. This may be one of the reasons for another central finding of the study, namely that a "majority of financial sector M&As destroy or fail to create value" (Sendanyoye 2002).



The EWC-Directive and restructuring

Luc Triangle found that rights granted by the Directive on European Works Councils in cases of restructuring are too weak. It does not clarify when the EWC must be consulted. "Therefore, we often see information being given only after the decision has been taken".

Luc Triangle referred to the stronger consultation rights in the Directive on Worker Involvement (related to the European Company Statute). According to this, management has to inform employee representatives early enough to allow them to express an opinion that can be taken into consideration by management. "We want the same definition of consultation in the EWC Directive. This will open up for negotiations between representatives and management – and thus a new role for EWCs":

Fortis acquiring General Bank – EWCs overcoming divisions and passivity

This case was presented by Bruno Demaître, from Belgium, Vice-President of the Dutch-based banking and insurance group, Fortis.

A merger between Fortis and the Belgian-based General Bank (GB) took place in 1998, as a result of Fortis acquiring GB. Before the merger, the two groups had approximately the same size and each had an EWC. In November 2000, a new EWC agreement was signed covering the enlarged Fortis group.

Before the merger, Bruno Demaître served as a secretary of the EWC of GB. He explained that as soon as the merger plans were known, the bureau of the GB EWC set up an extraordinary meeting to receive more details from management. This was followed by further meetings and also with meetings with the Fortis management and the management of a competing bidder. In this process, the EWC – comprising of representatives from four countries – managed to express a unanimous opinion on the merger. The opinion pointed out that the winners of such a merger would be the shareholders, not the staff. This united attitude stood in contrast to the Belgian national works council of GB, where representatives from different trade unions expressed different views on the merger.

Bruno Demaître found the experience of the GB EWC a positive one: "We received all the information we asked for, and more. We were consulted well before the final decision, our opinion was even incorporated into the public share offer handbook when it was published...Furthermore, we succeeded in drafting a unanimous opinion, although very different views had been expressed nationally in the countries concerned" (Demaître 2002).

The next line of issues concerned the integration of the two EWCs following the Fortis take-over of GB. Demaître characterised the EWC of Fortis prior to the merger as relatively passive and "dominated by the Dutch concept of co-management"; compared to the GB EWC "a fundamentally different culture was at work" (Demaître 2002).

After the take-over, the Fortis management as well the Fortis EWC held the view that a new EWC could be formed by simply incorporating the BG EWC into the existing Fortis EWC. The BG EWC strongly protested to this, and after difficult negotiations – in particular between the two EWCs – a new agreement on a united EWC was concluded with the Fortis management in November 2000.

According to Demaître, many problems appeared during the first year of the new EWC. Dissemination of information and translation were inadequate, management tried to dominate the agenda of meetings, and too little time were given for EWC-representatives to meet internally before and after the meetings with management. There were also examples of parts of the group being sold or relocated without the EWC getting any prior information.

However, since then, things have improved. During a training course organised by ETUCO, the new EWC managed to agree on a line according to which the EWC should play "an active part, taking initiatives, organising itself into technical committees to carry out further studies of subjects of joint interest, and daring to oppose a too dominant management" (Demaître 2002).

The initiatives of the EWC have been accompanied by a change in the attitude of management. Now, the EWC's bureau has full control over the agenda of meetings. And, perhaps most importantly, since the May 2002 meeting, two nights are allowed for all members of the EWC, so that we can spend an afternoon in preparation, meet for a full day with management..., and have a morning to review the

meeting. This enables us to prepare our opinions properly, swap notes on experiences in our respective countries, and become a united group in our dealings with management" (Demaître 2002).

In spite of prospects of further restructuring, including out-sourcing, cross-border centralisations and loss of jobs, Bruno Demaître was optimistic on behalf of the EWC. Negotiations are taking place on clear procedures on how to handle transnational subjects; Management has agreed to set up a number of joint technical commissions and is prepared to give the EWC more competencies.

Yet, Demaître was uncertain as to how trade unions will react to an empowered EWC: "It is not certain at all whether national trade unions will agree upon reinforcing the international level, because they fear to lose their local powers" (Demaître 2002).

From Hoechst and Rhone-Poulenc to Aventis and on: attempts to influence restructuring

This case was presented by Friedhelm Conradi. Conradi is German and chairman of the EWC of Aventis, a pharmaceutical group created through a merger of the German Hoechst group and the French Rhone-Poulenc.

The Hoechst group was split up in 1997, and a new EWC was formed in 1998 for the group Hoechst Marion Roussel. By November 1998, there were indications of an imminent merger with Rhone-Poulenc. The trade unions – the French CFDT, the German IG BCE, and the European industry secretariat EMCEF – exchanged information and developed a joint position regarding social questions, the EWC of the new group, and representation on the supervisory board. Working groups were established to discuss the participation of employees on the supervisory board and the development of an EWC.

Since its creation, the Aventis EWC has particularly raised the following issues: description of activity profiles of the different plants, employment and working conditions, age structure and early retirement and the securing of the presence of trade unions and works councils in the plants. Friedhelm Conradi found the French-German co-operation in the EWC of the merged group to have been successful: "We have emphasised social demands. We have prevented that management can just close plants and prevented competition between plants. In the process after the merger, we learned a lot from each other".

Conradi went on to explaining how the Aventis EWC had tackled a situation where Aventis sold off the agribusiness division of the group. In 2000, when the first rumours about the sale emerged the EWC got actively involved. The executive committee called a meeting with the affected EWC members, and a further meeting was held for all the 12 members from the agribusiness division. Meetings were also organised with the works council and management of the prospective buyers, the Bayer group. In this process the EWC secured that social conditions were included in the terms of sale of the agribusiness division, and in the end, "Bayer was chosen because they would live up to the terms".

Finally, Friedhelm Conradi commented on the current situation of the Aventis EWC. An agreement has been made for the UK plants of the group, allowing the British representatives to meet nationally to prepare for EWC meetings. The EWC wants a similar agreement for other countries. Conradi stressed the value of common training courses, including their social aspects: "It helps a lot when you get a better understanding of each other". An ongoing project is to get a clear picture of working con-



ditions and pay in the different countries. Due to management's reluctance to provide information, the employee representatives have to collect the data themselves from local sources.

Joint ventures: Not covered by the EWC-Directive

This case was presented by Conny Holm who is employed by Saab Aerospace and a member of the Swedish Metal Workers' Federation.

Saab Aerospace is owned by British Aerospace (35%), Investor (36%) and a number of smaller shareholders. Due to the structure of ownership and localisation of the workforce, Saab Aerospace is not covered by the EWC-Directive.

Conny Holm explained that many of the activities of Saab Aerospace are carried out as common projects in joint ventures: "Companies work together on some projects and compete for other projects". Sometimes common projects last for up to 20 or 30 years, and the conditions of the Saab Aerospace workforce are often highly dependent on decisions taken by other companies.

Conny Holm concluded that the EWC Directive ought to be revised so that joint ventures are also to impose an obligation on the management to inform and consult employees on the transnational level.

An extra case: Conflicts and agreements between General Motors and its EWC

Luc Triangle invited Klaus Franz, chairman of the EWC of General Motors (GM), to talk about the results of the GM EWC in relation to restructuring.

Klaus Franz explained the process through which the EWC of General Motors had developed into a body with authority to negotiate and sign agreements with the European GM management. Over the last few years, the GM EWC has concluded three framework agreements with the management. The first one – from July 2000 – aimed at regulating the alliance between GM and FIAT. The participation of GM in the alliance was decided by the GM corporate management without notifying the EWC, although the alliance entailed employment consequences for many workers in GM as well as in FIAT. The GM EWC together with the FIAT EWC reacted by launching a Europe-wide campaign that forced the GM management to negotiate. The resulting framework agreement included job guarantees and guarantees that existing collective agreements, plant agreements and guidelines should remain in force.



In December 2000, GM informed the EWC of its intention to cut 6,000 jobs in Europe and close its Vauxhall Vectra plant in Luton. The British workers reacted by going on strike. The EWC managed to agree on an alternative restructuring plan and immediately organised an action day to show that workers in the different plants stood together. On 25 January 2001, more than 40,000 workers from the different GM plants in Europe went on strike and demonstrated their opposition to the management's plans. At the same time, negotiations went on between the EWC and GM's European management. The result was the second framework agreement, which among other things included a request for the Luton plant to be kept open and that redundancies should be avoided, although lay-offs achieved by 'socially acceptable means' such as early retirement, could take place.

The third framework agreement was concluded in October 2001, and concerns the restructuring and reduction of capacity in the Opel part of GM. Again, plant closures and outright redundancies were avoided. Instead, the agreement stipulates that the reduction of capacity must be shared by the existing plants that redundancies must be avoided and that workforce adjustments must take place by socially acceptable means. The agreement also includes measures to increase productivity and flexibility.

Klaus Franz pointed to two important factors underlying the success of the GM EWC. Firstly, that the employee representatives on the EWC had reached a united position that prevents management from being able to play workforces in one country off against their colleagues in other countries. In particular, this is secured by national representatives refusing to sign any agreements concerning restructuring before the issue has been negotiated between the EWC and the European management. Secondly, that the EWC works closely together with the trade unions and is prepared to engage in publicity campaigns and trade union action.

Discussion

During the workshop discussion, a number of issues were raised:

- ◆ Several EWC-representatives talked about lacking information from management in relation to plans for mergers, acquisitions and transfer of production and jobs.
- ◆ Two Nordic trade unionists pleaded for representation on the company board as a better way of obtaining information on restructuring plans; an Italian and a Belgian EWC representative replied that they found such information rather useless because of confidentiality obligations.
- ◆ Several EWC-representatives employed by US-based companies had been denied information on merger plans on the grounds that it would contravene US stock exchange rules; other participants argued that this is simply an excuse from management since many other persons than EWC-representatives are involved in analyses and discussions on mergers and acquisitions.
- ◆ A German EWC representative pointed out that the EU authorities have to hear interested third parties before they decide whether or not to recognise a merger or an acquisition; he argued that the EWC must be active and try to exploit this possibility (on this question, see ETUC 2002a: Mergers and Restructuring).

Luc Triangle finished the session by concluding that a revised Directive must contain improved information, consultation and participation rights regarding mergers and acquisitions. At the same time he stressed that it is also "up to the EWCs themselves to do something, legislation is not enough. We must be more active; we must speak with each other between the meetings".

2. b. Information and consultation

This workshop was chaired by Bernadette Tesch-Ségol (UNI Europe). Its purpose was to evaluate the practices on information and consultation in EWCs. The workshop included:

- ◆ a general assessment of information and consultation and how to improve practice
- ◆ two case stories (from the EWCs of DISA and Unilever, respectively).

How to improve information and consultation within EWCs

Boudewijn Berentsen from the Dutch trade union training institute, FNV Format, presented his experiences and viewpoints. He firstly underlined the great diversity among EWCs regarding information and consultation practices:

"For some EWCs, they only receive very limited information which has often already been published. This happens once a year. Consultation is not taking place at all. Another category of EWCs is quite well informed, but is not being consulted. At the moment, this category seems to be the majority of the existing EWCs. A third, rather small group of EWCs is properly informed and consulted. Of these EWCs, only a few have the opportunity to formulate their opinions on major transnational decisions. Out of this group a few EWCs go even one step further. These EWCs do not only formulate their opinion, but subsequently discuss it with management and sometimes negotiate European agreements on restructuring operations" (Berentsen 2002). Berentsen organised a show of hands among the participating EWC-representatives. It confirmed, not only the diversity among EWCs, but also his assumptions about the relative sizes of the four groups.

Boudewijn Berentsen then went on to explaining the reasons why many EWCs are not consulted by management:

- 1) *The Central management's unwillingness towards and unfamiliarity with consultation.* Most employers have only introduced EWCs because of the legal obligation and they try to "keep the whole thing as low-profile as possible" (Berentsen 2002). Other employers have a more positive attitude to the EWC, but they are not familiar with consultation processes. Furthermore, the complex structure of the bigger companies creates difficulties. Most of the decisions are taken at division or business unit level whereas an EWC is often only established at corporate level.
- 2) *Passive attitude of EWCs towards consultation.* Many EWCs accept the lack of consultation. They are not familiar with interest representation at the European level, and they are confronted with language barriers and cultural barriers.
- 3) *Conflicts of interests between EWC members.* Whether such conflicts are manifested or not, the mindset of many EWC-representatives leads them to think that it is best to take care of things at the local/national level. At this level they feel they know how to handle things. However, they tend to forget that the possibilities for influence are much greater at the European level.
- 4) *The EWC versus consultation at the local/national level.* A consultation process at the European level cannot avoid having an impact on consultations with works councils and trade unions nationally and locally. In some countries, trade unions resist that EWCs are informed and consulted first, or that national regulations should determine that workers' representatives at the local level are the first ones to be informed.
- 5) *Weak definition of consultation in the Directive, the transposition laws and EWC agreements and the lack of sanctions against non-consultation.*

Finally, Boudewijn Berentsen addressed the question of how consultation with EWCs can be improved. Mirroring the problems described above, he suggested the following answers:

- 1) *Pressure and awareness.* Pressure must be put on unwilling employers. The EWC must make clear what its rights are and – if necessary – use the threat of legal action. Other forms of pressure such as press conferences and press releases can also be applied. And sometimes what is needed is trade union action. In companies with a complex structure it is important to demand either divisional EWCs or to insist that division and business-unit managers are invited to EWC meetings.



- 2) *Towards a proactive EWC.* If management is unwilling to consult the EWC, the EWC may give unasked advice to management and inform the workforce about this. The EWC must also be ready to use confrontational tactics if needed. And thirdly, the EWC must strengthen itself through training and coaching.
- 3) *Common interests and solidarity.* EWCs have to realise that it is a common interest to respond to transfers of production and closures. The representatives must realise that the pattern of restructuring is "today it's them, tomorrow it's us". A joint response gives better results, and it is also a question of solidarity with workers in other countries.
- 4) *Proper procedures and the creation of Europe-wide networks of worker representatives.* The EWC has to clarify its exact role and develop procedures that link the EWC to representative bodies at the national level. "In this way, it is easier to achieve a common strategy when the opinion of the EWC can strengthen the position of local/national bodies" (Berentsen 2002)
- 5) *Consultation redefined.* The more precise definitions of consultation found in the Directive on Workers Involvement in the European Company and the Directive on information and consultation at national level should be incorporated into the revised EWC Directive. However, already at this point, EWC-representatives should try to strengthen consultation rights when renegotiating EWC-agreements.



Information and consultation in DISA

DISA is a Danish based company; It employs 2600 people and forms part of the much larger A. P. Møller group. DISA's present EWC was established in 2001 after a restructuring. However, the EWC chairman, Annette Odgaard, has been involved in EWC work since 1996. Annette Odgaard presented her experiences regarding information and consultation and relations between the EWC and management more generally.

The basis for this is the EWC agreement, which defines consultation as an exchange of viewpoints and a dialogue between the EWC and management. It is explicitly stated that consultations shall take place in due time before contemplated changes are initiated. "We have one EWC meeting a year during which we get information about all matters that we should be informed of according to the Directive – and more". However, Annette Odgaard has had to remind management that information is also needed between the annual meetings – on a more continuous basis. Therefore, her aim is to have meetings with the president of the company once a month as well as a number of meetings in the EWC executive committee for which the management may also be invited. Recently, management has agreed to issue a monthly information leaflet to the EWC executive committee.

Annette Odgaard also stressed the importance of procedures for the internal communication among EWC-representatives. It has been agreed that "the chairman is contacted if something happens, such as transfer of production, staff reductions, hiring of people etc". For the future a more systematic exchange of information is planned, also including information about wages, overtime, time off, the environment etc.

The DISA EWC has representatives from Denmark, Finland, Germany, France, Switzerland and Poland. Annette Odgaard regretted that, so far, the employees in England and the Czech Republic have chosen not to participate. Besides representation from these countries, her aim was future improvements in the following areas:

- ◆ a continuous dialogue with management
- ◆ a systematic exchange of information among EWC-representatives
- ◆ two meetings per year between the EWC and management
- ◆ language training to reduce communication barriers.

Information and consultation in Unilever

With its approximately 260,000 employees worldwide, Unilever is one of the giants among multinationals. Its EWC has 34 employee representatives, representing workers in 19 countries. The Unilever

EWC is a joint employee-management committee. The vice-chairman of the EWC, Sjaak van't Wout, presented the current work of the employee-side of the EWC.

The EWC-representatives have proposed the establishment of permanent joint working parties for each of Unilever's business groups. The aim is to become better informed about transnational issues at the strategic level, including international sourcing strategy, investment and innovation. Until now this demand has been rejected by management. However, it has been agreed that responsible business group managers shall participate in EWC meetings.

As regards information and consultation, the EWC aims at influencing the strategies of each business unit and cross-border restructuring. Furthermore, it wants to make sure that information and consultation takes place before final decisions are taken. The latter has been recognised by management.

Currently, procedures regarding restructuring are being discussed. The EWC-representatives aim to obtain the setting up of a document determining that restructuring:

- ◆ must take place in a socially responsible way
- ◆ must be followed by a social plan in case of redundancies; the EWC wants to secure that action is taken to help dismissed workers into new employment or, alternatively, that they receive decent financial compensation.

These efforts must be co-ordinated with local initiatives. Social plans must be negotiated locally, but the EWC "...can make recommendations and offer best practice examples from the manifold experiences we have" (van't Wout 2002).

In its proposal, the Unilever EWC points out that restructuring – if not done in a socially responsible way - will have harmful effects for the group: "If this socially responsible approach were not applied, the outcome would be job insecurity and decreased motivation, ultimately leading to the loss of key talent, and the attendant loss of expertise and corporate memory. Unilever's attractiveness as an employer would also be undermined. In addition, consumers/customers could be lost and the company's external reputation and brand image would be eroded" (van't Wout 2002).

Discussion

Many issues were raised in the discussion, among them were:

- ◆ Several EWC-representatives gave examples of how they had experienced that information was often given too late for consultation to take place.
- ◆ Several EWC-representatives stressed the need for continuous activities in the EWC between the meetings with management; the importance of a select committee; the importance of exchanging information internally in the EWC and with national works councils and trade unions; the importance of language training and the use of e-mail were also stressed by several participants.
- ◆ An Austrian EWC-representative said: the problem is not that we don't get information – the problem is that we get too much information and we get it too late. German EWC representative followed up by saying that: it is not enough to get the information; often we need training and help from experts to be able to use it.
- ◆ A French representative stressed the different cultural backgrounds of the representatives, in particular between the Scandinavian countries and the South: "In the beginning we did not know what to demand. Should we sit on the EWC or work on it"? He expressed the need for a trade union international to support the work of EWCs.
- ◆ A Spanish representative found that the provisions on information and consultation in the Directive are too weak; he called for stronger regulation at the European level and the involvement of all trade unions.

Bernadette Tesch-Ségol concluded the workshop by stressing that it is the initiatives of EWC-representatives themselves that will make things move forward. A revision of the Directive is important, but will not solve all problems.

2. c. Enforcement of rights

This workshop was chaired by Evelyn Regner from ÖGB. She launched the workshop by defining the aim of the workshop to look at practical legal problems in relation to the work of EWCs. What are the possibilities for enforcing the rights given by the Directive, and how can the Directive be improved in this respect? The workshop included presentations on

- ◆ national legislation regarding the enforcement of EWC rights
- ◆ the Panasonic case
- ◆ the Otis case.

National legislation and the enforcement of EWC rights

Anneliese Büggel – German lawyer and a specialist on employee rights – presented a study on the legislation in the member states regarding the possibilities for enforcing EWC rights.



The study shows that in almost every member state EWCs have the possibility of solving conflicts through voluntary extra judicial dispute procedures that are common to these member states (mediation, conciliation or arbitration). It is only in Italy that the extra judicial dispute procedure has been made obligatory by law, in case of violation of the information and consultation obligation deriving from an art. 6 agreement. There are, however, EWC agreements where the parties, in case of a conflict, have agreed to use an extra judicial dispute procedure.

In most countries, there are special procedures for a rapid resolution of disputes or disagreements. Anneliese Büggel stressed the importance of such procedures – without them management decisions will proceed and be implemented even if the EWC's right to information and consultation has been violated.

Anneliese Büggel pointed out that there are legal differences between article 13 and article 6 agreements. In a couple of countries article 13 agreements (those agreements that were concluded before the EWC Directive entered into force) are considered as agreements under private law, which has the consequence that civil courts have the competence for any dispute. For disputes concerning article 6 agreements, however, the labour courts are competent in all member states.

Anneliese Büggel noted that many EWC agreements fail to determine who pays the costs of legal action. In some countries the transposition laws are silent on this issue. In Italy the company always has to pay. In Austria, Belgium and France the EWC itself has to cover the costs, although in Belgium and France the EWC can eventually claim compensation of its costs by the undertaking. In other countries the rules are less clear. Anneliese Büggel recommended that EWC-representatives make sure that their EWC agreements determine clearly that costs of legal action and of hiring legal experts should always be borne by the company.

The Panasonic case

This case was presented by the French lawyer, Rachid Brihi.

The French based group Panasonic had decided to close its plant in Longwy. The EWC, the French national works council and the works council in Longwy, were dissatisfied because management had failed to inform and consult the workers' representatives. For that reason they instituted legal proceedings to obtain an injunction to prevent the management from announcing mass redundancies and to declare the proposed redundancy scheme invalid. The court of first instance issued a temporary injunction ruling that:

- ◆ the procedure for informing and consulting the EWC had not been respected
- ◆ therefore, the procedure for information and consultation should restart
- ◆ the Longwy site should not be changed and no dismissals should be announced until the information and consultation process had been completed.

Management lodged an appeal against this decision. Meanwhile the appeals court partially agreed to the claims presented by national employee representatives, the claims of the EWC were rejected solely on the grounds that the representative handling the case for the EWC could not present the power of attorney for legal proceedings. In other words, the court found that he did not have a mandate to represent the entire EWC. For that reason, the court declined to deal with the claims raised by the EWC.



Rachid Brihi concluded that EWCs must ensure a definition of who can represent the EWC in legal cases. They must also ensure that decisions are taken in accordance with the provisions in the agreement or standing orders and that the adoption of decisions is recorded in the minutes.

The Otis case

The case was presented by Christian Grangier from the Otis EWC.

Otis belongs to the US multinational United Technologies Company which has 170,000 employees world-wide. Otis has 24,000 employees in Europe. Its EWC is registered in France and thus refers to French legislation.

On 8 October 1997, the US-based corporate management of Otis informed all its managers of a world-wide restructuring via a video conference. Among the changes announced, was a restructuring of European operations. The Paris headquarters were to be closed, and instead, there should be three regional headquarters in Europe – all directly under the corporate management.

The following day, a meeting between the Otis EWC and the European management was held. Here, the restructuring was only mentioned briefly by management at the end of the meeting. On these grounds, the EWC decided to take Otis to court for not fulfilling its obligation to inform and consult the EWC.

The case was raised before the county court in Nanterre by the CGT delegate of Otis on behalf of the EWC. The court ruled that the Otis EWC was entitled to an additional meeting with management on the subject of Otis' new structure. The court justified its ruling on the grounds that at their annual meeting with the EWC, the management had not adequately informed about the new global organisation planned for Otis, despite the fact that corporate management had held a video conference with the various local managements the day before.

Discussion

During the discussion, the following points were made:

- ◆ French EWC representative: It is a problem that the experts we can use are selected by management.
- ◆ Belgian EWC representative: What can we do with confidential information when we are not allowed to pass it on to our colleagues?
- ◆ Anneliese Büggel repeated the importance of having defined in the agreement that management must bear the costs of the EWC regarding legal assistance and legal action; the agreement should also guarantee that the EWC can choose its own experts. She also said that although the right to information and consultation is not defined precisely in the Directive, the Renault and Otis cases show that information and consultation must take place prior to decisions.

Evelyn Regner concluded:

- ◆ Existing agreements must be revised so that it is made clear who can represent the EWC in a legal case.
- ◆ Agreements must define who bears the costs of legal assistance to the EWC and legal action taken by the EWC.
- ◆ It is important that there be procedures in all countries for arbitration and for fast resolutions of disagreements.

3. The European Company Statute – its significance to EWCs

This theme was presented by Ulrik Jørgensen, a Danish solicitor from Elmer & Partners, and Willy Buschak, General Secretary of the ETUC.

Ulrik Jørgensen gave a thorough outline of the main contents of the European Company Statute and the related Directive on Worker Involvement in the European Company. The Directive was adopted by the Council of Ministers on 8 October 2001 and will enter into force in the member states by 8 October 2004.

The aim of the European Company Statute is to create a regulatory framework that makes it easier for companies to operate in more than one of the EU member states. In particular, rules regarding mergers and relocations become less burdensome because European Companies (SEs) are disconnected from the various national regulations.

The Directive on Worker Involvement aims at regulating the information, consultation and participation of employees in SEs. Ulrik Jørgensen presented the rather complicated provisions of the Directive (for a guide to the Directive, see ETUC 2002b). He pointed out that a SE can only be established if management has invited employee representatives to a negotiation with a view to concluding an agreement on information and consultation through a representation body. Further, in most cases, but depending on the country in which the company chooses to register and on where its workforces are located, an agreement on participation of the company or supervisory board is also needed. If negotiations are not successful, information, consultation and participation will be regulated according to a reference clause in the Directive.

Willy Buschak drew attention to the advantages contained in the Directive on Workers Involvement in the SE compared to the EWC Directive:

- ◆ it entitles employees to participation (i.e. board level representation)
- ◆ it has stronger provisions on information and consultation; if something urgent happens – for example transfer of jobs – the representative body has the right to a meeting with management, and if management does not take the employee views into consideration a second meeting may be called "with a view to seeking agreement"
- ◆ trade union representatives and experts can take part in negotiating an agreement
- ◆ management has to take the initiative to negotiate an agreement as negotiations have to be carried through before an SE can be established.

Willy Buschak underlined that SEs will not normally have an EWC. Instead they will have a representative body that in many ways is similar to an EWC; in addition, there will typically be employee representatives at board level.

However, EWCs may be involved in establishing the provisions on consultation and participation in a firm wish of becoming a SE. If an existing company wants to register as a SE, it will be natural that the EWC – supported by trade union experts – takes on the role as a special negotiation body and negotiates a new agreement with management. Willy Buschak warned that some managers may propose just to continue the existing EWC agreement. He advised EWC-representatives not to accept this because it is possible to get a better deal on the basis of the new Directive. The negotiation position is stronger under the new Directive because:

- ◆ management has to give comprehensive information to the negotiation body
- ◆ management has an interest in not delaying negotiations
- ◆ the negotiation body is strengthened by the presence of trade union representatives and experts.



4. EWCs in the new member states

Andrzej Matla from Polish Solidarnosc presented a study on the participation on EWCs of employee representatives from the Eastern and Central European candidate countries.

The study showed that Czech and Polish employees were both represented in approximately 50 EWCs. This compares to the presence of at least 120 multinational companies covered by the EWC Directive in the Czech Republic and at least 200 in Poland. As for Hungary, the study had found 114 multinationals present, but only 18 employee representatives on EWCs. Most of the representatives enjoy full rights as EWC members whereas others have observer status.

Andrzej Matla explained some of the difficulties facing representation from the candidate countries. Sometimes management does not want to have representatives from these countries, and some of the trade unions are not interested either. A big problem is that many of the undertakings are not unionised. Unionisation rates are relatively low, with 15 per cent in Poland, 20 per cent in Hungary and 30 per cent in the Czech Republic. In non-unionised establishments one often finds that EWC-representatives are not 'real' employee representatives. Instead they are sales people, quality controllers etc. who have been selected by the local management without the unions or the workforce having been asked.

Andrzej Matla expected the coming EU enlargement to give a boost to the EWC representation of employees in the candidate countries. Membership of the EU and coverage by the EWC Directive are the most effective ways to get information from the multinational companies. More specifically he expected benefits from:

- ◆ the symbolic value of the EWC and the direct link to central management
- ◆ the ability to exchange information with other employee representatives
- ◆ avoiding 'double standards': one for EU countries, and another for the candidate countries.



5. The Future of EWCs – a political discussion

The role of EWCs and the way in which they are and should be regulated politically were addressed by several contributions to the conference. One contribution came from the Danish Minister of Employment, Claus Hjort Frederiksen. Others were placed in a panel discussion at the end of the conference. The participants in the panel were: Jørgen Rønneest (UNICE), Hans Jensen (Danish LO), Jean Lapeyre (ETUC), Odile Quintin (DG 5 of the European Commission), and Viviane van Wijngaerden (the EWC of the Dutch based TPG group). The panel discussion was chaired by the Danish journalist, Poul Smith.

In his speech, **Claus Hjort Frederiksen** said that he considered the EWC to be a significant innovation at the European level: "Is important that information is given – and given at an early stage – and that employees get the opportunity to express their views". He found that both management and employees can gain something from the dialogue.

Claus Hjort Frederiksen also pointed out that in his view there is no need to change the EWC Directive. Instead changes should take place on a voluntary basis within the individual companies. "The road forward is not to strengthen regulation, but to work for stronger traditions for co-operation and for the belief that change is an advantage". Hjort Frederiksen found no basis for changing the EWC Directive, unless a revision is agreed by the European social partners.

Jørgen Rønneest noted that for EWCs to play an offensive role in restructuring they must contribute to solving the problems of the undertakings. If there is no prior tradition for co-operation it is difficult to achieve anything.

Further, Jørgen Rønneest pointed out that the theme restructuring is included in the recently adopted programme for the social dialogue between the social partners at European level. He felt that the social dialogue was rendered difficult by the fact that the European Commission had scheduled a revision of the Directive on its working programme for 2003.

Hans Jensen found it important that more enthusiasm and confidence be associated with the role of EWCs. This will involve a better understanding of the role of EWCs among trade union members and a strengthened co-operation between EWCs and trade unions. "In my view the trade unions should be more interested in the work that takes place in the EWCs". Trade unions can assist EWCs through training and by helping to establish better communication between EWC-representatives.

Hans Jensen saw health and safety, CSR and companies' practice in third countries as areas in which the EWC can play an important role. He also expected EWCs to become increasingly involved in negotiating European company agreements.

Hans Jensen found a clear need for a revision of the EWC Directive. He listed the following demands:

- ◆ a lowering of the threshold according to which the Directive applies when a company has 1000 to 500 employees
- ◆ an obligation for the employer to inform and consult employees before decisions are taken
- ◆ stronger sanctions against employers who fail to fulfil their obligations
- ◆ clearer provisions obliging employers to finance training and adequate facilities for EWC-representatives.

Finally, Hans Jensen pointed out that "EWCs cannot be developed on a purely voluntary basis; rules and frameworks have to be created".

Jean Lapeyre stressed the need to improve a common culture among EWCs. In the case of restructuring, mergers and acquisitions the transnational companies are on the offensive. The EWC Directive has a number of serious loopholes so that information and consultation are often lacking.

Jean Lapeyre pointed at the European Commission's responsibility regarding a revision of the Directive, and added: "Hopefully, they do not have the same ideas as the Danish Minister of Employment" In his view a revision based on agreement between the social partners was not realistic: "The employers will not negotiate. They refused to negotiate on EWCs in the past. How can we aim to improve the Directive in negotiations with the employers when we know they are against changes? The Commission has to do its job!"



Odile Quintin found that the EWC Directive has been successful so far and has helped to move industrial relations in a more consensual direction. The EWC Directive now forms part of a consolidated framework for information and consultation – a framework that also includes the directive on redundancies, employee involvement in the European Company, and information and consultation in national companies. "The right to information and consultation is now part of the basic rights of workers. This is a great step forward since the beginning of the discussion".

Odile Quintin noted that EWC agreements negotiated in the individual companies have improved over time, and some agreements are genuinely innovative, covering issues such as the environment, equal opportunities, and joint projects within the company. However, she also identified a number of challenges for EWCs:

- ◆ "not much seems to be happening" to increase the number of EWCs beyond the present 730 or so
- ◆ the EU enlargement means that much work has to be done to integrate representatives from the candidate countries into EWCs
- ◆ the social partners are confronted by the task of discussing how restructuring can take place in a harmonious way.

Odile Quintin finally gave an outline of the process towards a revision of the Directive. She found it important that the social partners have a thorough discussion before the Commission asks for their views in the autumn of 2003. She recommended them to be "more optimistic in future and to improve their co-operation. I do not want the social partners to exclude the possibility of working together on this issue".

Vivian van Weingarten presented her experiences from the EWC of the Dutch based TPG group. She identified the greatest problem to be the lack of efficient communication between meetings. She deplored that the Directive is imprecise as to how much time is available to EWC members for communication with management and with each other. Consequently she found that the Directive should have more firm provisions on this matter, "because you cannot gain influence if there is no communication".

Discussion

Poul Smith: A question to Jørgen Rønne: Don't we need a European profile on businesses – to avoid scandals like Enron in the US – and do EWCs and co-operation not constitute part of that profile?

Jørgen Rønne: An American scandal is not an argument for revising the EWC Directive. The present Directive has demonstrated that it is a useful framework. The only reason to revise it is if it

does not work. If it is not followed, this is not an argument for revising it. The position of UNICE is that we need to know more about the consequences of the Directive at the moment, among other things because 10 new member states are about to join the EU, and it is a major task in itself to include the new countries in the EWCs. The present Directive is a good framework, but of course we can discuss the workings of EWCs and possible reforms in the social dialogue.

Poul Smith: A question to Jean Lapeyre: A considerable number of multinationals covered by the Directive still do not have an EWC. Why have more EWCs not been created?

Jean Lapeyre: About 1200 companies still do not have an EWC. We have planned campaigns to set up more EWCs. We can set them up if we wish.

It is true that the Directive is a good framework, but we can improve it. We can identify at least 15 companies in which the Directive has not worked in terms of restructuring etc. So, we may come up with a code on bad practice, demonstrating the loopholes of the Directive!

Jørgen Rønne: It works well in a lot of companies. We need more time to evaluate the problems.

Poul Smith: The Commission recognises there are loopholes in the Directive, that it is an incomplete framework. Yet, the Commission will only start the revision process in a year. Question to Odile Quintin: Is the Commission doing its work, or is it hiding behind the social partners?

Odile Quintin: The Commission is doing its work! I agree that the Directive is not perfect, and a number of elements can be improved upon. But a lot of social dialogue is going on at the moment. I am sure that the social partners will break some ground; they are now in a much better position to find consensus.

Jørgen Rønne (after some contributions from the audience strongly criticising the UNICE position): I plead for a development where EWCs contribute positively to the development of firms. If it is going to be a success – and not just an empty procedure – co-operation is needed. I am worried about the confrontational attitudes I hear.

Hans Jensen: Having heard the debate, the Danish Minister, the employer representative, the Commission, it is obvious that we have a huge task to do in relation to the Commission and the respective governments. It is easy for the employers just to say 'no' at the European level. In Denmark we have the strike weapon as a moderator when employers are unwilling to talk. In the European Union the Commission must act as moderator!



6. Conclusion: Five challenges to EWCs

A possible way of summing up the results of the conference – and at the same time looking ahead – is to identify the main challenges that EWCs are confronted with in the present situation. The conference demonstrated that the EWCs are a significant new element of European industrial relations. Examples were given of EWCs that had gained real influence on corporate decisions. But there were also indications that many EWCs have hardly entered the road towards influence. From the analyses and discussions at the conference it became clear that a further development of EWCs will depend on whether a number of challenges are addressed in a constructive way. In particular, the following five challenges can be identified:

1. Developing the EWC as a social actor. Many EWCs have not managed to establish themselves as social actors with a collective identity. The communication between EWC-representatives is too weak and sporadic, there is no systematic exchange of information and viewpoints, and strategic definitions of aims and means are lacking. There are serious linguistic, cultural and practical obstacles to developing efficient communication and policy making. Yet, priority and time are decisive factors that cannot be overlooked. For EWCs to become social actors able to influence management decisions the representatives must give high priority to EWC work – including the necessary co-ordination with national representative bodies – and they must spend the time that is needed to develop joint positions to be presented to management. A decisive step in starting a process towards collective identity and increased activity has for many EWCs been the participation of all representatives in a common training course running over several days.

2. Making uninterested employers interested. Many EWCs are met by a management that is rather unwilling to grant resources to the EWC and to develop a continuous and co-operative relationship with it. It is not difficult to find examples of employers failing to fulfil their obligations to inform and consult the EWC. To some employers it appears to be a matter of principle to avoid giving the EWC an influential role; to others the reason for the unwillingness is rather that they do not perceive the EWC – and the possible gains from co-operating with it in solving concrete problems – as important. Depending on the reasons of employer unwillingness the EWC must develop appropriate means to make itself respected by the employer. Roughly speaking, the EWC can choose a constructive or a confrontational approach. The constructive approach may include the proposal of joint projects – for instance regarding the improvement of training, health and safety and other qualitative aspects of the employment relationship. Or, it may involve ideas and plans for joint decisions regulating the employment consequences of restructuring. On the other hand, the confrontational approach follows a different logic. It aims at punishing the employer for not living up to the obligations defined by the EWC Directive and for not taking employee interests into account. This approach involves the threat or the actual use of legal proceedings and the threat or actual use of industrial action in co-operation with the trade unions.

3. Co-ordinating activities between EWCs and trade unions. Trade unions – nationally as well as at the European level – support the EWCs in a number of ways. They assist in negotiations on establishing EWCs, help to bring trade union and works council representatives from different countries in contact with each other, organise training courses, give advice to individual EWCs, etc. However, some trade unions appear to have a sceptical or at least ambivalent attitude to the EWCs. Some unions fear – rightly or wrongly – that EWCs will take over functions traditionally attended to by national or local trade union organisations. There is thus a need in the trade union movement for



discussions on the role that EWCs should play. The basis of such discussions must be that some issues are dealt with more efficiently at the European level than nationally or locally. The challenge is to define these issues and the division of roles between EWCs, European industry federations, national trade unions, and local trade unions and works councils. This is not an easy task, among other things because representation structures and roles of national and local bodies vary from one country to another. Yet, the experience of for instance the EWC of General Motors shows that a systematic effort on the part of the EWC – and in close co-operation with the relevant trade unions – can lead to substantial results.

4. Getting a better EWC Directive. The conference gave ample examples of the weaknesses of the present EWC Directive. Information and consultation are sometimes forgotten by management or given only at a time when decisions have already been taken. Restructuring often takes place without a serious effort of finding the best solutions to minimise the negative consequences for the workforce. Management often prevents EWCs from using experts of their own choice or rejects to finance such experts. And sanctions against companies that fail to comply with the Directive are weak and poorly defined. It is now clear that the process to revise the Directive will be started by the European Commission in 2003. However, at the conference it also became clear that UNICE sees no reason to revise the Directive at present. At the same time it is the express hope of the Commission that the social partners will be able to negotiate the revision themselves. For the trade union movement, this means that it must convince either UNICE or a sufficient number of member state governments that a revision, including more precise rights to the employee representatives, is needed.

5. Integrating representatives from the candidate countries. In 2004, the European Union will be enlarged by 10 new member states. In a significant number of EWCs, there are already representatives from the candidate countries, although not always with a full status, therefore, changes will have to be made in the agreements. Other EWCs will have to renegotiate their agreement with management more thoroughly to allow representatives from the accession countries to hold seats on the EWC. Finally, completely new EWCs have to be established in companies that are only covered by the Directive because of the enlargement. Trade union and works council representation structures are relatively weak and divisive in most of the candidate countries. For that reason, the challenge for the existing EWCs is to identify which representatives from the accession countries should be selected, or - if there are no representatives - to verify that proper elections are taking place. Another and even more important challenge will be to create unity and a common political platform in EWCs in which workforces with huge differences in working conditions and wages are represented.



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Abbreviations:

AC:

Akademikernes Centralorganisation/ The Danish Confederation of Professional Associations.

CFDT:

Confédération Française Démocratique du Travail /French Trade Union Confederation.

DG 5:

The General Directorate on Employment and Social Affairs, European Commission.

EMCEF:

European Mining, Chemical and Energy Federation.

EMF:

European Metalworkers' Federation.

ETUC:

European Trade Union Confederation.

ETUCO:

European Trade Union College.

IG BCE:

Industriegewerkschaft Bergbau, Chemie und Energie/ German Federation for Mining, Chemical and Energy Industries.

FNV:

Federatie Nederlandse Vakbeweging/ Dutch Trade Union Confederation.

FTF:

Funktionærernes og Tjenestemændenes Fællesråd/ Salaried Employees' and Civil Servants' Confederation (Denmark).

ILO:

International Labour Organisation.

LO:

Landsorganisationen i Danmark/ The Danish Confederation of Trade Unions.

UNICE:

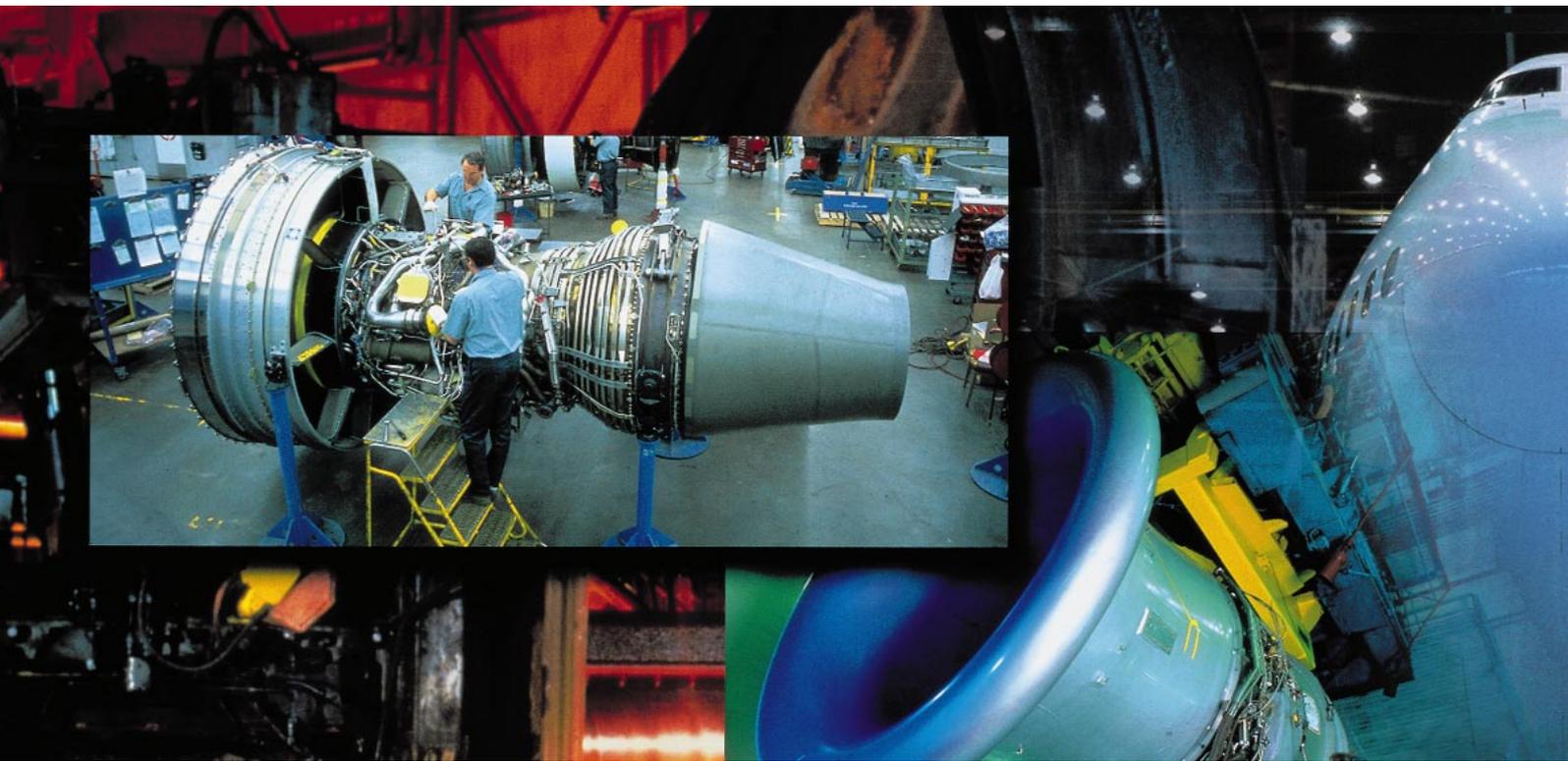
Union of Industrial and Employers' Confederations of Europe.

UNI Europe:

European Federation of Services and Communication.

ÖGB:

Österreichischer Gewerkschaftsbund/ The Austrian Trade Union Confederation.



***European Works Councils
Report from the Conference in Aarhus,
25 - 26 November 2002***



LO Denmark
The Danish Confederation
of Trade Unions



FTF
Salaried Employees' and
Civil Servants' Confederation



AC
The Danish Confederation
of Professional Associations



ETUC
The European Trade Union
Confederation

Conference secretariat

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