



ETUI/ETF/UNI Europa webinar on restructurings for EWCs

30.09.2020-1.10.2020





10:00 - 10:10

Opening speeches

Annika Flaten (UNI Europa) and Myriam Chaffart (ETF)



10:10 - 10:30

How to prepare for the company change? Introduction to restructurings for EWCs/SE WCs

Cyprian Szyszka, ETUI Education



10:30 - 10:45

Horizontal and vertical articulation

Romuald Jagodzinski, ETUI Research



10:45 - 11:15

EWC tools to face restructurings

Sjef Stoop, SBI Formaats



11:15 - 11:45

Information & consultation: are you getting the proper information on restructurings?

Panel discussion, Frédéric Turlan, ETUI Education



11:45 - 12:00

Q & A + Questionnaire online

Agenda 1st day, 30 Sept 2020

10:00 - 10:30 The current state of play with restructurings. How bad it really is?

- *Questionnaire results & debate, Cyprian Szyszka, ETUI Education*

10:30 - 11:00 Strengthening the grip: multilevel actions and processes

- *Aline Hoffmann, ETUI Research*

11:00 - 11:30 Step by step EWC guidelines for restructurings: from information to litigation

- *Frédéric Turlan, ETUI Education*

11:30 - 11:45 UNI and ETF support in restructuring processes

- *Annika Flaten (UNI Europa) and Myriam Chaffart (ETF)*

11:45 - 12:00 Q & A + Webinar ending

Agenda 2nd day, **1 Oct** **2020**

How to prepare for the company change? Introduction to restructurings for EWCs/SE WCs

Cyprian Szyszka, ETUI
Education

Background definitions
of restructuring
EWC Directive and
restructuring

Introduction to restructuring for EWCs / SE WCs

Why restructuring?

- The prime motive: to cut down costs
- The common measure: reduction of staff / cheap labour
- 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'

Types of restructurings

Spin-off / outsourcing

Relocation / production transfer

Offshoring / nearshoring

Closures / greenfield investments

Redundancies / internal restructuring

Bankruptcy / financial restructuring

Mergers / acquisitions

Digital transformation / technology driven
restructuring



EU perspective on EWC role in restructurings

- 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.
- 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:
 - 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

I&C and the change management: Directive 2009/38 ideas

- 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
- 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

What do Directives say to EWCs facing restructuring?

- directive 2009/38 EWC
 - subsidiary requirements
 - 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.
- directive 2001/86 European Companies (SE)
 - idem EWC +
 - Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, this body shall have the right to a further meeting with the competent organ of the SE with a view to seeking agreement.
 - employee participation in the administrative or supervisory body

Extended employee I&C rights in cases of cross-border mergers and takeovers

- In addition to the EWC legislation, the European Union introduced specific rights for the involvement of workers in cases of takeover bids and mergers.
- Directive 2004/25/EC stipulates that workers have the right to receive comprehensive information on a takeover bid and gives them the right to issue their own opinion/ recommendation.
- In cases of cross-border mergers, according to Regulation EC No 139/2004 worker representation bodies have the right to be heard during the investigation procedures conducted by DG Competition.
- These rights are not very well known, but definitely worth exploring

How to prepare for a company change?

Seven practical steps

1. 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

2. 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?

3. Map the worker representative bodies affected and create the ,response net'

- Which local sites are affected by the decision?
- In which decisions and at which stage are the works councils or employee representatives in those locations involved?
- What kind of contacts with relevant management bodies do worker representatives already have, and what are their responsibilities?
- Who are the key representatives and how can they be reached?
- Which trade unions could help to establish contacts? => The ETUF role
- Who can help in the contacts? => EWC task distribution
- Invite to exchange information between levels: try to contact each involved rep directly as soon as a cross-border restructuring measure may be planned

4. Develop and manage the strategy



- You are well suited to develop an overall strategy of restructurings response on behalf of the employees
- The starting step is to set up a communication plan, both with employee representative bodies and the management; then you can convey information about restructurings down (right to information) and back up to management (right to consultation)
- Develop a joint strategy of action that includes a detailed overview of the roles and responsibilities of the key actors involved: the EWC and Select Committee, local employee representatives, trade unions, the European Trade Union Federation and experts.
- Those actors can have different fields of responsibility: information and consultation, negotiation (of social plans, framework agreements, etc.), communication, and different types of action (press releases, joint declarations, demonstrations, strikes, etc.).
- You can coordinate the exchange of possible actions internally (between EWC members) as well as externally (with local representatives and unions, the European Federation, experts, etc.)

5. 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.



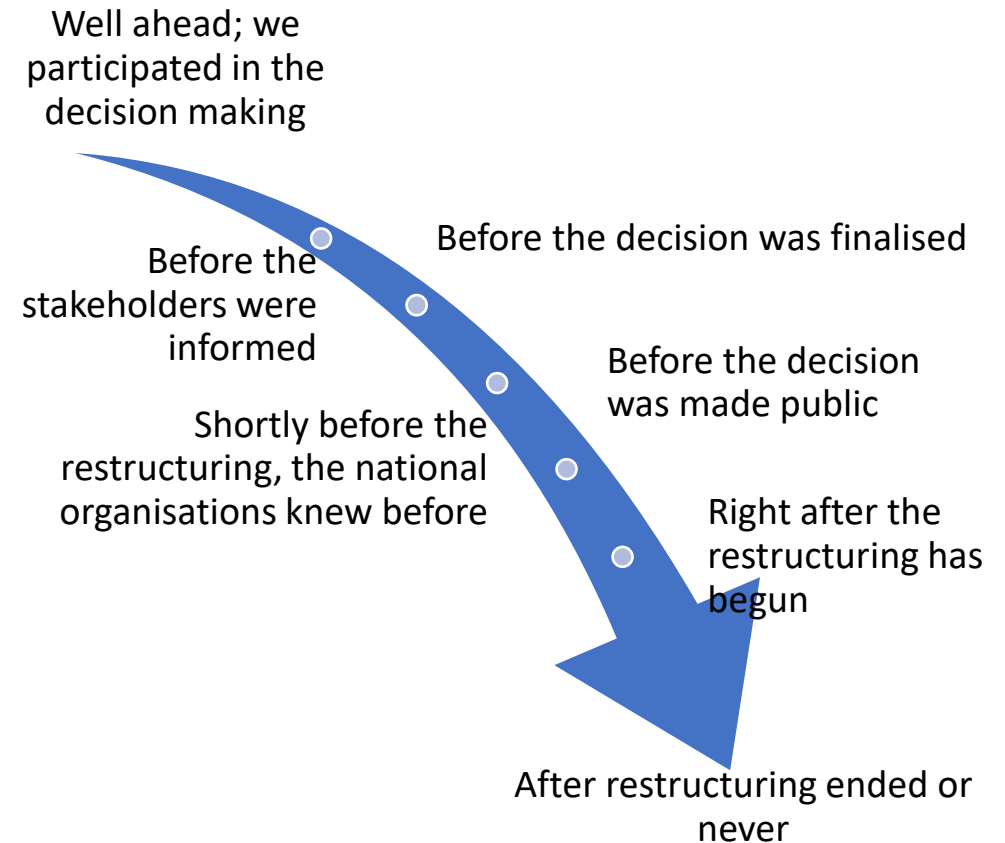
Other sources

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

Issue of time

- Too often the EWC is only notified during the final stages of a decision and the announcement of restructuring comes like a bolt from the blue.
- Therefore, it is important to keep an eye out for early warning signals that important changes are being considered.
 - This could be the appointment of new members to the executive board or of a new CEO, unusual fluctuations in the stock market, a change in the shareholder structure, the merger of major competitors, and so on.



6. Have the preliminary assessment of the restructuring plan (not every restructuring is bad!)

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



Key questions the EWC should ask to assess the plausibility of restructuring plans or projects are:

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?

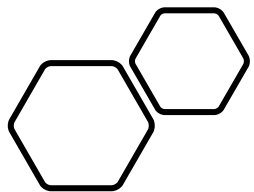
What overall strategy is the company aiming at, and what are the goals pursued in the implementation process? Are the goals of the restructuring plan already fixed or are they still 'negotiable'?

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?

What possible 'hidden' motives exist? What advantages and disadvantages might the restructuring plan have for the employer?

What risks to the company's competitiveness has management identified in the restructuring plan? What measures is the company taking to mitigate these risks?

What impact will the restructuring operation have on employment?



7. Develop a joint restructuring action-plan



Restructuring action plan prerequisites

Deal with the differing viewpoints among EWC members and establish a climate of trust on all levels

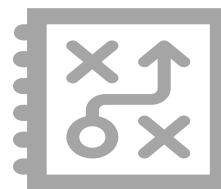
Create a coordination group to develop a coordinated response face to the management!

Understand the restructurings strategy and develop alternative measures to propose

Obtain an extraordinary meeting of the EWC

Ensure that the I & C procedures take place before the finalisation of the decision!

If possible, supported by the network of partners, extend the EWC scope and look for negotiation areas to draft the framework agreement



Don't start the consultation, unless:

You have the strategy: EWC agrees on its own objectives!

You get full access to the relevant information!

you have the operational roadmap with the division of tasks!

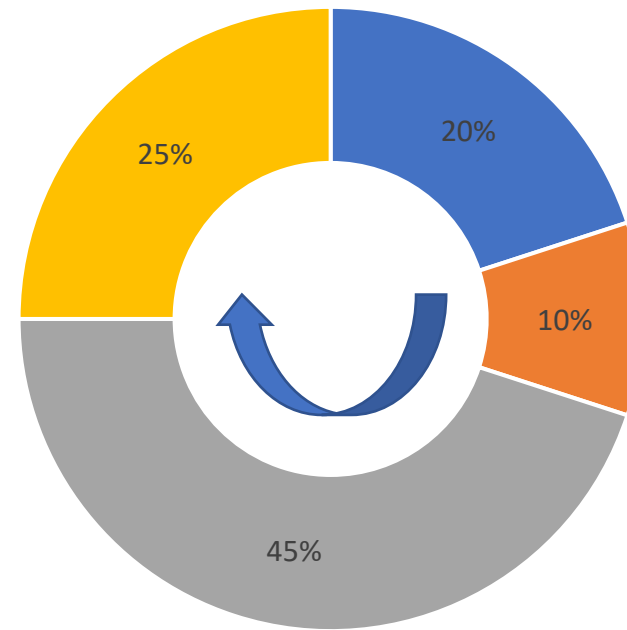
local worker representation bodies are involved!

experts are involved

the timetable is coordinated with that of the employer

Improve to end
in the yellow
part!

Distribution of management reaction
towards EWCs on restructurings



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



Thank you