



during most of the 2000s. However, after the recast Directive was adopted in May 2009, the conclusion of new EWC agreements declined to very low levels (only 15 were signed in 2010).

The slowdown in activity in setting up EWCs in the two years between the adoption and the implementation of the recast Directive may reflect, at least in part, legal uncertainty over the status of agreements signed in this period. It also stems from a desire on the part of unions and employee representatives to await implementation so that they could benefit from the recast Directive's more advantageous provisions.

Now that the new Directive has taken effect, an upswing in the conclusion of new agreements may be anticipated.

According to figures from the European Trade Union Institute ([ETUI](#)) around 2,400 multinationals are potentially covered by the EWCs Directive. The latest data from the ETUI database show that, as at 2012, a total of 1,214 EWCs had been created. However, it should be noted that some multinational companies have installed EWCs at a division level. Therefore, the total number of EWCs is larger than the number of MNCs that have a EWC. Currently, 931 multinational companies have an active EWC. However, not all eligible MNCs have established EWCs. This is due to the fact that the introduction of EWCs is not automatic but requires either the initiative of central management or 'the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States' (Article 5(1)).

Participation: The concept of participation refers to mechanisms for the involvement of employees in management decision-making by means other than [information and consultation](#).

'Direct' employee participation is practised face-to-face or individually between employees and managers.

'Indirect' participation occurs through [employee representation](#).

[Financial participation](#) encompasses different schemes under which employees can benefit from the organisation's economic performance. Employee participation is referred to in [Council Directive 2001/86/EC](#) supplementing the [European company](#) Statute with regard to the involvement of employees. Article 2(k) defines participation in particular terms as 'the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of the right to elect or appoint some of the members of the company's supervisory or administrative organ; or the right to recommend and/or oppose the appointment of some or all the members of the company's supervisory or administrative organ'. This definition of participation is repeated in [Council Directive 2003/72/EC](#) of





With the scientific support of



22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees. In February 2011, a total of 745 European Companies (SEs) had been established. However, most SEs do not conform to the standard definition, as they are SEs without employees ('empty SEs') and/or those without a specific business purpose ('shelf SEs'). Roughly one quarter of the total number of SEs are considered to be normal SEs, i.e. with employees and economic activities. As at January 2011, an agreement on worker involvement had been concluded in 68 SEs. The agreements of the larger SEs, in particular, are generally in line with good 'EWC practice' and, on certain points, go beyond the provisions of the 2001 SE Directive. In 33 SEs, the rights enshrined in the agreement include board-level participation, thereby adding an important dimension for workers' voice in company decision-making. A European Foundation report from 2011 (*Employee Involvement in Companies under the European Company Statute*) concluded: 'Employee participation at board level was an important aspect of the negotiations of employee involvement in all ten cases [studied in the report]. Company specific traditions, requirements and good practice experience were respected. In many cases the employee participation in board levels was adjusted according to new needs, efficiency criteria etc. No company switched from two-tier to one-tier corporate governance.'

Restructuring: 'Restructuring' is a term used to describe a multitude of different forms of re-organising the activities of the enterprise, many of which have serious consequences for the workforce in terms of levels and [terms and conditions of employment](#). The issue has become increasingly prominent with the substantial rise in corporate restructuring, particularly internationally, and because of significant national variation in the rights of employees in mergers and acquisitions and restructuring generally. The impact of corporate restructuring on employment and industrial relations differs from country to country, not least as a result of different regulatory frameworks. The EU has already adopted a number of measures to provide protection for employees and information and consultation rights in the event of the restructuring of enterprises. Directives already concerned with restructuring deal with [collective redundancy](#), [transfer of an undertaking](#), [European Works Councils](#), [information and consultation](#) and the [European company](#). In addition, Regulation 4064/89, amended by 1310/97 and Regulation 447/98, requires the approval of the Commission's competition authorities in cases of concentrations with a Community dimension, and allows recognised worker representatives in the companies concerned, if they apply, to be consulted by the Commission during its assessment.

As part of the process of [social dialogue](#), the European Commission began consultations with the EU-level social partners in January 2002, under Article 138(2) EC (now Article 154 of the Treaty on the Functioning of the European Union, TFEU), about how to anticipate and manage the social effects of corporate restructuring, aiming to conclude agreements on this issue at cross-industry or sectoral level. On 8 March 2002, [UNICE](#) (now





In the first case, once the EWC is established and a meeting convened, the SNB 'shall have the task of determining, with the [central management of the enterprise](#), by written agreement, the scope, composition, functions, and term of office of the European Works Councils or the arrangements for implementing a procedure for the information and consultation of employees' (Article 5(3)). Article 6(1) provides that 'The central management and the SNB must negotiate in a spirit of cooperation with a view to reaching an agreement'. Where no agreement is made, or if the parties so choose, requirements stipulated in an annex to the directive will come into force. However, the thrust of the directive is to enable and encourage central management and the SNB to agree on the form and operation of the EWC themselves.

In the second case – the SE – an agreement between the SNB and the management of the SE is concerned to set up a 'representative body' similar to an EWC or an information and consultation procedure. If they decide (and this is compulsory in some cases), the agreement may also set out the rules for board-level participation. In SEs established by transformation, the agreement must provide for at least the same level of employee involvement as existed within the company being transformed. If no agreement is reached, or the parties so decide, a statutory set of 'standard rules' applies providing for a standard 'representative body.'

Transnational Enterprise: The process of European economic integration has encouraged the growth of multi-national enterprises and groups that operate across national boundaries. Although the term 'transnational enterprise' is often used interchangeably with 'multi-national companies' (MNCs), it may more accurately describe MNCs with internationally integrated production/service systems and management structures. Some regulations are aimed specifically at MNCs and transnational enterprises, although they may not be referred to in this way. For example, the 1994 [European Works Councils](#) (EWC) Directive is concerned with the [information and consultation](#) of employees in [Community-scale undertakings](#) and groups.

Agreement (Framework Agreement): In the context of this database, the term «agreement» refers to transnational agreements/framework agreements at company level, that are concluded between management and employee representatives. While agreements concluded by some transnational groups, operating on a worldwide scale usually relate to fundamental rights or different aspects of company social responsibility, European agreements are often aimed at anticipating change and providing support for employees in the process of company restructuring. According to the EU Commission,





With the scientific support of



I.C.A.R.U.S.

Information and Consultation: Approaches of Research coordinating good Union Standard

three different approaches can be identified: a) in some cases, when there is no specific restructuring plan in place, these agreements cater for a forward planning for jobs and skills at European level; b) in other cases, they establish methods and procedures to be followed in order to promote the management of change; c) there are agreements related to specific restructuring operations and accompanying measures in this context.

Directive 2002/14 (general framework for informing and consulting employees): The EU Directive establishing a general framework for informing and consulting employees (2002/14/EC) plays a key role in promoting social dialogue. It sets minimum principles, definitions and arrangements for information and consultation of employees at the enterprise level within each country. Given the range of industrial relations practices across the Member States, they enjoy substantial flexibility in applying the Directive's key concepts (employees' representatives, employer, employees etc.) and implementing the arrangements for information and consultation. Management and labour play a key role in deciding those arrangements. Information and consultation are required on the recent and probable development of the undertaking's or the establishment's activities and economic situation; the situation, structure and probable development of employment within the undertaking or establishment and any anticipatory measures envisaged, in particular where there is a threat to employment as well as on decisions likely to lead to substantial changes in work organisation or in contractual relations. To avoid undue burdens on small and medium-sized enterprises, the Directive applies only to undertakings employing at least 50 employees, or to establishments employing at least 20 employees, according to the choice made by the Member State.

Employee involvement in restructuring process: The involvement of employees in corporate restructuring processes is guaranteed by European Directives such as the EWC Directive, the Framework Directive on information and Consultation as well as other Directives focussing on the involvement and participation of employees. Involvement can take different forms and in many countries involvement is not only carried out information and consultation practice but also more far reaching, e.g. the obligation to reach an agreement with employees in the case of redundancies or in the context of social plans. The Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees has defined employee involvement as follows in Art. 2(h): « 'involvement of employees' means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company“





With the scientific support of



Health and safety: “According to the International Labour Organization (ILO) and the World Health Organization (WHO), health and safety at work is aimed at the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations; the prevention among workers of leaving work due to health problems caused by their working conditions; the protection of workers in their employment from risks resulting from factors adverse to health; the placing and maintenance of the worker in an occupational environment adapted to his or her physiological and psychological capabilities; and, to summarise, the adaptation of work to the person and of each person to their job.”

Rights and responsibilities of employee representatives: In this category, listed agreements referring or alongside the commitments to comply with the freedom of association and the right to bargain collectively, to the ILO convention 135 on employee representatives and/or the ILO Recommendation 143 concerning protection and facilities to be afforded to workers' representatives in the undertaking and/or contain the commitment not to do union discrimination. Some agreements define a little more precisely the rights and resources employee representatives should have to perform their task (negotiation, information and consultation). With regard to the European Union, the Directive 2002/14/EC establishing a general framework for information and consultation in the European Community has defined

