



# **Study to evaluate the effectiveness of the European Works Councils in the transport sector**

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# Study to evaluate the effectiveness of the European Works Councils in the transport sector

A study by [ICF International](#)

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## Table of Contents

Abstract .....	i
Executive summary .....	ii
Introduction .....	ii
The practice and potential of EWCs in the transport sector .....	ii
The structure, scope and function of existing EWCs .....	iii
The reality of information and consultation structures and the role of EWCs in restructuring situations .....	iv
Themes being addressed by transport sector EWCs .....	vi
Strength, weaknesses and particular challenges facing EWCs in the transport sector .....	vi
Policy recommendations .....	vii
Kurzfassung .....	ix
Zusammenfassung .....	x
Einleitung .....	x
Praxis und Potenzial von EBR im Transportsektor .....	x
Struktur, Umfang und Funktion bestehender EBR .....	xii
Die Realität von Informations- und Konsultationsstrukturen und die Rolle von EBR in Restrukturierungssituationen .....	xiii
Von Transportsektor-EBR adressierte Thematiken .....	xiv
Stärken, Schwächen und spezielle Herausforderungen für EBR im Transportsektor .....	xv
Politikempfehlungen .....	xv
Résumé .....	xviii
Résumé analytique .....	xix
Introduction .....	xix
Les pratiques et le potentiel des CEE dans le secteur des transports .....	xix
La structure, le champ d'action et la fonction des CEE existants .....	xxi
La réalité des structures d'information et de consultation et le rôle des CEE dans les situations de restructuration .....	xxii
Les thèmes traités par les CEE du secteur des transports .....	xxiii
Forces, faiblesses et problèmes spécifiques rencontrés par les CEE dans le secteur des transports .....	xxiv
Recommandations politiques .....	xxiv
1 Introduction .....	1
2 Study approach and methodology .....	3
2.1 Approach .....	3
2.2 Methodology .....	6
3 European Transport Policies – impact on EWCs .....	15
3.1 Introduction to EWCs .....	15
3.2 Effects of the development of the internal market on corporate organisational structures and employment in the transport sectors – factors influencing the establishment and operation of EWCs .....	20
3.3 Effectiveness and impacts of the EWCs generally and in the transport sector specially .....	32
3.4 Summary of key findings .....	36

4	EWCs in the EU transport sector: potential and practice.....	38
4.1	Background .....	38
4.2	Potential.....	39
4.3	Share of active EWCs, by sub-sector.....	42
4.4	Challenges in establishing new EWCs .....	43
4.5	Reasons for 'failure' of EWCs.....	44
5	Key features of EWCs in the transport sector: background information .....	45
5.1	Characteristics of transport sector companies with EWCs.....	45
5.2	Background and triggers for the set-up of transport EWCs.....	46
5.3	EWC agreements in the transport sector: legal background and potential changes.....	47
6	Practical operation of EWCs in the transport sector.....	51
6.1	Composition of transport EWCs .....	51
6.2	Appointment and representatives of employee delegates in transport EWCs .....	52
6.3	Rights of EWC employee representatives .....	53
6.4	The frequency of meetings .....	55
7	Functioning of EWCs: Objectives and performance of information and consultation procedures particularly in restructuring situations.....	59
7.1	Objectives of EWCs in the transport sector .....	59
7.2	Functioning of transport sector EWCs in relation to information and consultation particularly in restructuring situations.....	60
7.3	Consultation .....	64
7.4	Focus of EWCs on transnational matters only.....	66
7.5	Performance of EWCs with regard to information and consultation.....	68
7.6	Coverage of European issues addressed by transport EWCs.....	72
7.7	Role of transport sector EWCs in restructuring situations.....	73
8	Strengths and weaknesses of transport sector EWCs .....	77
8.1	Challenges faced by existing transport EWCs .....	77
8.2	Strengths of transport EWCs.....	79
8.3	Weaknesses in transport EWCs .....	80
9	Conclusions.....	82
9.1	The practice and potential of EWCs in the transport sector.....	82
9.2	The structure, scope and function of existing EWCs .....	84
9.3	The reality of information and consultation structures and the role of EWCs in restructuring situations.....	85
9.4	Themes being addressed by transport sector EWCs .....	87
9.5	Strength, weaknesses and particular challenges facing EWCs in the transport sector .....	88
10	Policy Recommendations .....	90
10.1	Supporting the creation of further EWCs and enhancing the operation of existing ones.....	90
10.2	Clarity of EWC legislation and its transposition and implementation .....	98

10.3 Ways to interlink EU transport policy and the work of EWCs.....	98
Annex 1 - A list of transport companies which may qualify for an EWC but do not currently operate one.....	100

## **Abstract**

Depending on the precise delimitation of the sector, there are currently between 30-40 European Works Councils (EWCs) in the EU transport sector enterprises. It is estimated that at least a further 73 transport companies meet the size threshold to establish an EWC but have not established one. The complexity of business structures, the lack of publicly available information on the number of employees of the same company in different Member States, the absence of a tradition of company level social dialogue, the lack of organisational capacity among trade unions in some countries, together with the employer's reluctance are the major obstacles that impede the establishment of new EWCs.

Transport companies experience today significant restructuring due to economic and regulatory changes. EWCs are set up to provide information for employees and consult them about business decisions with a transnational impact on employment and working conditions.

While both management and worker representatives welcome a regular flow of exchange of information on business trends and strategy, in practice employees are informed and in particular consulted too late to influence decision making. EWCs have only had an impact on ensuring a process for a more socially responsible implementation of restructuring in a very limited number of cases.

This report explores the potential and practice of EWCs in the sector and makes recommendations on how to establish further EWCs and improve the current practices within EWCs.



## Executive summary

### Introduction

This study was commissioned by DG MOVE in the context of a growing emphasis on social issues within the transport agenda of DG MOVE, including in relation to social dialogue. Its goal was to establish:

- The practice and potential of EWCs in the sector by assessing how many EWCs are currently active (by mode of transport); how many have become defunct and for what reason; and how many companies in the sector could qualify for the creation of an EWC in line with the conditions laid down in Directive 2009/38/EC on the establishment of a European Works Council (hereinafter "Recast Directive");
- The structure, scope and function of existing EWCs;
- The reality of information and consultation structures, the determination of 'transnational issues' and their effectiveness particularly in times of restructuring;
- The themes EWCs in the transport sector are addressing, both in regard to their core information and consultation tasks, as well as broader work, for instance in working groups;
- The strengths, weaknesses and particular challenges facing EWCs in the sector and how they can be overcome.

### The practice and potential of EWCs in the transport sector

The European transport industry is characterised by intensified internationalisation, regulatory changes and restructuring since the 1990s. As a result, more transport companies fall under the scope of the Directive as mergers and acquisitions create larger, more transnational entities in some sub-sectors of the industry. Other characteristics of specific transport sectors also influence the number of EWCs which have/can be established. For instance, market concentration is far greater in the air and rail transport sub-sectors than in the road and logistics transport sub-sector. Although some large employers can be found in maritime transport services sectors (in many cases maritime transport companies tend not to employ seafarers under EU contracts) it has to be kept in mind that seafarers were initially not covered by the provisions of the Recast Directive<sup>1</sup>. This situation has recently changed with the adoption of Directive 2015/1794 amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC<sup>2</sup>. In the cases of port authorities including some terminal operators, many (though not all) only provide services in one Member State thus do not qualify as Community-scale undertaking. Furthermore, while a number of logistics / transport service companies are large, they have rather small national representations, thus remaining below the criteria of 150 employees in at least two Member States.

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<sup>1</sup> Unless Member States have explicitly included seafarers under the scope of the implementing provisions of the Recast Directive.

<sup>2</sup> Directive of the European Parliament and of the Council of 6 October 2015 on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC, COM(2013) 798 final – to be accessed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1448012463074&uri=CELEX:32015L1794>.

Overall, large (multinational) transport companies account for less than two per cent of the total number of companies in the transport sector in the EU-27<sup>3</sup>. However, nearly half of the workers in the transport sector are employed by large companies<sup>4</sup>.

With these market developments in mind, a total of 29 active transport sector EWCs have been identified<sup>5</sup> and it can be estimated that at least a further 73 transport companies meet the size threshold to establish an EWC<sup>6</sup> but have not (yet) established one<sup>7</sup>. The precise number of EWCs in the sector and the potential for creation depends on the precise delimitation of the sector, which can lead to the number of actual EWCs in the sector to increase to in the region of 40 EWCs and potential of around 80 further companies with the potential to establish such bodies. This includes EWCs that have been established on paper, but have not been active since (e.g. Lufthansa and Alitalia).

Based on the transport sectors agreed to be covered for this study<sup>8</sup> (and extended to the tourism sector), the figures show that the 29 active EWCs in the sector account for approximately 29% of all potentially 'eligible' companies in the sector and some 2.8% of all active EWCs.

Findings suggest that the greatest potential for additional transport sector EWCs exists in the sub-sector 'post, passenger, road transport and logistic' (52 %), followed by 'aviation' (19%) and maritime transport/services (27%).

The barriers for the set-up of new EWCs in the transport sector are diverse and include, for example, complex corporate structures of transport companies, making it difficult to establish which entities belong to the same company and therefore the total number of employees, as well as difficulties for employee representatives from different countries to establish contact with each other; a lack of legal requirement to report numbers of employees in different countries; intensified competition and corporate restructuring in the industry leading to fluid corporate structures; geographical dispersion of employees; declining union membership and absence of worker representatives resulting in lack of knowledge or 'drive' on the part of employee representatives of companies to drive forward the set-up of new EWCs. Management resistance is also encountered in some cases<sup>9</sup>.

Thus, because of the scale and frequency of restructuring in the sector, the picture is a fluid one which needs to be monitored and updated on a regular basis.

## **The structure, scope and function of existing EWCs**

The active transport sector EWCs operate largely in the 'post, passenger, road transport and logistics' sub-sector with 55% of all active EWCs in the transport sector, followed by 'aviation' and 'maritime transport'. Nearly a third of the active EWC in the sector are headquartered in Germany (31%), followed by France (24%), the UK

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<sup>3</sup> A recovery on the horizon? Annual Report on European SMEs 2012/2013, European Commission, October 2013

<sup>4</sup> Ibid.

<sup>5</sup> Further 10 were identified through [www.ewcdb.eu](http://www.ewcdb.eu) which had however ceased to exist or were never set up

<sup>6</sup> In particular employing more than 1,000 Employees in the EEA area – though the criteria of employing more than 150 employees in two Member States could not be verified.

<sup>7</sup> According to ETF, the figure may be a slightly higher with up to 80 transport companies qualifying for an EWC but no operating one.

<sup>8</sup> Land transport, water transport, air transport, warehousing and support activities for transportation, postal and courier activities

<sup>9</sup> Based on interviews and surveys undertaken as part of the research as well as material of ETF.

(14%) and the Netherlands (7%)<sup>10</sup>. Key characteristics of transport EWCs are outlined in the box below.

#### **CHARACTERISTICS OF TRANSPORT COMPANIES HOSTING EWCS**

Transport companies operating EWCs tend to be very large, multi-national companies: the average global number of employees is 130,000 of which around 82,000 are employed in the EU/EEA.

These companies operate, on average, in 16 different EU/EEA countries.

#### **CHARACTERISTICS OF TRANSPORT EWCS**

Transport EWCs include both brand new as well as some of the oldest EWCs in the EU. The average time EWCs in the sector have operated is 9.4 years.

The sector is dominated (74%) by EWC agreements following the rules of the Recast Directive (as a result of many new agreements and renegotiation of existing ones).

The EWC agreements in the sector are largely governed by the national legislation of the country where the company's European headquarters are located; no evidence of companies in the sample preferring a governing legislation of a country where the legislation related to work information and consultation is deemed as being weaker than in other countries.

Transport EWCs largely considered as 'workers only' bodies with an average number of employee delegates of 24 (ranging between 8 and 50). This is in line with sizes of average EWCs across all sectors.

EWCs in the transport sector appear to operate a slightly more frequent programme of plenary meetings than EWCs across all sectors (half with one and the other half with two plenary meetings)

Almost all have a select committee, which tends to meet three times a year. A third of EWCs have set up at least one working group.

#### **RIGHTS AND ROLES OF EWC EMPLOYEE DELEGATES**

The procedure for appointing employee delegates is mainly in line with each country's rules and regulations; but the appointment of delegates is a significant challenge for a small share of EWCs in the sector, particularly affecting countries with limited or a more recent tradition of worker information and consultation.

The typical term of office for employee delegates of transport EWCs is four years.

No areas of significant concern, apart from individual cases, were detected in the rights of employee representatives of transport EWCs; where problems had been encountered, they were often due to differences in local management practices.

*Source: Based on a sample of 23 EWCs from the transport sector*

### **The reality of information and consultation structures and the role of EWCs in restructuring situations**

According to the stakeholders consulted for this study, most transport EWCs have delivered against their objective of facilitating and improving information exchange. However, several shortcomings were identified in relation to consultation concerning transnational matters. Typically, the fact that decisions were discussed in EWCs after they had been taken by management was the main reason why they felt that little or no consultation had taken place.

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<sup>10</sup> Other countries where transport EWCs are 'located' include: AT, FI, SE, US, UE, CH

Overall, traditions of information and consultation, effective communication between the select committee and the wider EWC members, a higher meeting frequency and stability in EWC composition were identified among the factors contributing to the achievement of EWC consultation objectives.

It generally appears from the sample that the specific Directive provisions under which transport EWCs operate have had little influence on the way in which consultations are conducted in practice. For instance, there are no discernible improvements among EWCs with agreements established or renegotiated under the Recast Directive.

Overall, EWC consultation activities were shown to have a limited impact on restructuring decisions; indeed, in practice the role of transport sector EWCs in many restructuring situations is limited to that of an information exchange forum. In most cases, this is because the needed information is not communicated in a timely manner. In other cases, employee representatives may not be in a position to alter decisions made by central management. The low frequency of meetings is seen by many employee representatives as preventing them from following up on transnational issues. While extraordinary meetings would be the ideal format to discuss restructuring decisions, some employee representatives argued that even these meetings often come too late to influence decision making.

For some employer representatives, the fact that certain employee representatives bring up national or local issues at EWC meetings weakens the consultative role of EWCs. More generally, problems around the interpretation of the notion of *transnationality* and *substantial impact on employees* are considered to be detrimental to the role of transport sector EWCs in restructuring situations.

In a small number of cases, however, evidence has been gathered on the positive effects of EWC consultations in restructuring situations. These effects are relatively modest in scope, meaning that EWC employee representatives are understood as not being in a position to overturn or radically alter decisions made by central management in multinational transport companies. But there is evidence to suggest that EWCs can change central management's approach to communicating and discussing restructuring plans with employee representatives. In this regard, certain EWCs have generated so-called *process effects*. For example, while they have not managed to achieve changes to restructuring plans, in some cases outcomes for employees could be improved and consultation processes led to a better understanding of the reasons why decisions were being taken.

A number of EWC have specifically worked (or are working on) on agreeing process descriptions for information and consultation which set down on paper what type of information needs to be provided and when; what shape consultation should take (issuing opinions etc). In some cases this was building on national information and consultation traditions (e.g. the Netherlands) and in some cases processes were being developed specifically for the EWC.

Factors that strengthen the consultative role of transport sector EWCs in restructuring situations include:

- Clarity in agreements regarding the description of the process of information exchange and consultation procedures (including for example definitions of topics and level of detail);
- Timely flow of relevant information from central management to employee representatives;

- Stability in the composition of the EWC and experience of members, including an understanding among members as to the remits of an EWC;
- Engaged select committee;
- Trust between EWC employer and employee representatives;
- Expert advice on technical issues; and
- Clarity in agreements regarding the transnational scope of EWC activities.

### Themes being addressed by transport sector EWCs

The economic performance and developments in employment within the company dominate transport EWC meetings, followed by corporate strategy, restructuring and organisational questions. Discussions around the skills agenda have tended to focus on the general availability of staff training within the company or skills shortages. Health and safety has become an issue for individual EWCs as a result of work accidents and differences in procedures between national sites. The attractiveness of the sector is not one of the most commonly debated matters, albeit it is increasing in importance now that some companies, after some years of staff reductions, are experiencing skill shortages.

EU transport policy is rarely a direct topic of EWCs in the sector, unless they have an immediate impact on the company in question with practical competitiveness, levels of employment, working conditions or strategy implications. EU transport policy does not play an important role as such due to the fact that the EWCs core task is information and consultation on company related issues such as restructuring situations affecting jobs and employment conditions. However, half of the respondents in the interview carried out for this study saw potential for a more political role for EWCs. One of the reasons was that EU transport policies have an impact on company strategies and market positions, thereby affecting the work of EWCs. The EU policies and tools mentioned include, for example the 4<sup>th</sup> Railway Package, environmental policies, safety policies, EU investment and sector strategic policies (e.g. TEN-T, DG REGIO and structural funds, Roadmap to a Single European Transport Area and Motorways of the Sea). Also, employment policies have been a subject of reflection in relation to overall employment strategies, sector skills development and EU labour legislation (i.e. related to Temporary Agency Work Directive 2008/104/EC or the Posting of Workers Directive 96/71/EC). EWCs can discuss the direct impact coming from European transport policies on their company. The outcomes of such discussions can be fed into the European social partners and social dialogue process where relevant in order to be taken up at EU level in discussions with the European Commission (or could be taken up by European social partner representatives invited by EWC members).

### Strength, weaknesses and particular challenges facing EWCs in the transport sector

Perceived strengths and weaknesses vary relatively considerably from one EWC to the other. Evidence gathered so far however suggests that there are a small number of recurring strengths and weaknesses affecting the performance of EWCs and these have also been included in table below.

Strengths	Weaknesses
Improved trust between management and staff representatives	Only a forum for information exchange and not so much for consultation; discussions only happen once decisions have already been made
Ensuring a European representation level of staff to central management	The frequency of EWC meetings too low; too few face to

Strengths	Weaknesses
Improved flow of information between management and staff representatives	face meetings
Strengthening trust between employee representatives from different countries; ability to come together to develop common positions for the good of all employees across all countries	Lack of time to undertake EWC duties for EWC members, or lack of engagement or interest from EWC members or management
Engagement of the select committee	Difficulties in finding EWC delegates from certain countries and related high turnover
Support from external experts on technical issues	Focus shifting to national or local issues as opposed to transnational ones
Stable composition or membership within the EWC	Inexperience within newly established EWCs
	Differences in national approaches to industrial relations
	Language barriers

*Source: Interviews with management and employee representatives of transport EWCs*

## Policy recommendations

The following policy recommendations can be made arising from the study:

The establishment of further EWCs in the transport sector (and beyond) remains an important goal and was part of the agenda behind the Recast Directive. However, this should not be at the expense of attention being paid to the quality of discussions in such bodies. The performance and relevance of existing EWCs should be seen to have an important signalling affect for other companies and employee representatives aspiring to set up transnational information and consultation bodies.

The establishment of further EWCs can furthermore be supported by overcoming some of the barriers identified in this study:

- The complexity and lack of knowledge of corporate structures and whether companies meet relevant size thresholds can on the one hand be addressed by employees making requests to the company for relevant information (the requirement for companies to provide this information is enshrined in the Recast Directive). European social partner organisations also have a role to play in identifying further companies which might qualify for the establishment of EWCs. The present study can also make a contribution in this regard.
- The study revealed the important impact of transport policy (alongside other factors) in the reorganisation of the sector and the restructuring of companies.
- An important challenge is the geographical dispersion and language difficulties (not only at the moment of establishment but also once established), which can often make it challenging to communicate in the preparation for the request of the establishment of a Special Negotiating Body (SNB - the body that negotiates the setup of the European Works Council) when resources for interpretation become available. The same is also true for the exchange of experiences and practices of established EWC. Use could be made of budget lines available in DG Employment to facilitate such dialogue and exchanges. Social partners at European level have an important co-ordinating function in this regard and may be given a more formal role at the moment of intention of establishment of a EWC.
- It is also clear that efforts to establish EWCs are more likely to arise in larger companies based in countries with a strong tradition of employee representation. Financial and other support for the establishment of such dialogues could

therefore be focussed particularly on smaller companies and countries with a greater requirement for capacity building among employees' organisations and employers in relation to transnational information and consultation mechanisms.

The functioning of existing (and planned) EWCs can be enhanced by ensuring clarity in the definitions of information, consultation and transnationality within EWC agreements. A study carried out by DG Employment is assessing the transposition and implementation of the Recast Directive which includes an assessment of the impact of the new definition of transnationality. In the absence of this, process agreements setting out how information and consultation should be organised in practice can provide a solution.

Trade union and employer capacity to organise agreed and legitimate processes for the election of EWC representatives are also of significance and European social partner organisations can play a role in providing relevant expertise and support in this area. EWC Agreements should also be clear on how the views of employees from countries which may not qualify for their own representative on the EWC can be heard.

The Recast Directive provided rights to training and appropriate facilities to EWC members. Information on the enforcement of such rights in practice should be shared within the fora offered by European social partners and concerns should be raised within EWCs as experience shows that such matters can usually be addressed when brought to the attention of the company headquarter.

With regard to existing legislation, an assessment of its implementation is currently under way, but this study provided an indication that some issues remain with the practice of consultation in restructuring situations and the interpretation of transnational matters. Again process agreements on how such information and consultation should be organised in practice could be of assistance in this regard.

The issue of the availability of dissuasive sanctions in cases of failures to consult in a timely fashion was raised at the workshop held on 10 September as part of this study and could be considered in more detail.

Overall, there was significant interest in the better exchange of information which could be facilitated by enhancing existing databases with updated materials on EWC agreements, contact names and the content of agreements reached within EWCs.

## Kurzfassung

Je nachdem, wie man den Sektor genau abgrenzt, existieren derzeit zwischen 30 und 40 Europäische Betriebsräte (EBR) in den Unternehmen des EU-Transportsektors. Es wird darüber hinaus geschätzt, dass mindestens 73 weitere Unternehmen der erforderlichen Mindestgröße für die Gründung eines EBR entsprechen, aber keinen aufgestellt haben. Die Komplexität der Unternehmensstrukturen, der Mangel an öffentlich verfügbaren Informationen bezüglich der Anzahl an Angestellten des selben Unternehmens in verschiedenen Mitgliedsstaaten, die Abwesenheit einer Tradition eines sozialen Dialogs auf Unternehmensebene, der Mangel an organisatorischer Kapazität zwischen Gewerkschaften in einigen Ländern sowie der Vorbehalt von Arbeitgebern stellen die größten Hindernisse bei der Gründung neuer EBR dar.

Transportunternehmen erfahren heute deutliche Restrukturierungen aufgrund wirtschaftlicher und regulatorischer Änderungen. EBR werden eingerichtet, um Angestellten Informationen bereitzustellen und sie zu Geschäftsentscheidungen, die transnationale Auswirkung auf Beschäftigungs- und Arbeitsbedingungen haben, zu befragen.

Obwohl sowohl Management- als auch Arbeitnehmervertreter einen regelmäßigen Austausch an Informationen zu Geschäftstendenzen und -strategien begrüßen, werden Angestellte in der Praxis zu spät informiert oder befragt, um tatsächlich einen Einfluss auf die Entscheidungsfindung zu haben. EBR hatten nur in einer sehr geringen Anzahl von Fällen eine Auswirkung auf die Sicherung eines Verfahrens für eine sozial verantwortlichere Umsetzung der Restrukturierung.

Dieser Bericht untersucht das Potenzial und die Praxis von EBR im Sektor und unterbreitet Vorschläge zur Vorgehensweise bei der Gründung weiterer EBR sowie der Verbesserung derzeitiger Praktiken innerhalb von EBR.



## Zusammenfassung

### Einleitung

Diese Studie wurde von DG MOVE im Kontext einer wachsenden Bedeutung sozialer Problematiken innerhalb des Transportprogrammes der European Kommission in Auftrag gegeben, einschließlich in Verbindung mit der Entwicklung des sozialen Dialogs. Sie hatte zum Ziel, folgendes darzustellen:

- Die Praxis und das Potenzial von EBR im Sektor durch die Feststellung, wie viele EBR derzeit aktiv sind (nach Transportart); wie viele EBR nicht mehr aktiv sind und aus welchen Gründen; und wie viele Unternehmen im Sektor sich für die Gründung eines EBR entsprechend den Bedingungen der Richtlinie 2009/38/EC bzgl. der Gründung eines Europäischen Betriebsrates (nachfolgend „Neufassungsrichtlinie“) qualifizieren;
- Die Struktur, den Umfang und die Funktion bestehender EBR;
- Die Realität von Informations- und Konsultationsstrukturen, die Bestimmung von „transnationalen Problemen“ und ihre Effektivität besonders in Zeiten der Restrukturierung;
- Die Thematiken, die EBR im Transportsektor adressieren, sowohl in Bezug auf deren Kerninformationen und Konsultationsaufgaben, als auch im Sinne einer weit gefassten Arbeit (zum Beispiel in Arbeitsgruppen);
- Die Stärken, Schwächen und speziellen Herausforderungen, denen sich EBR im Sektor stellen müssen, und wie sie diese überwinden können.

### Praxis und Potenzial von EBR im Transportsektor

Die europäische Transportindustrie ist seit den 1990er Jahren charakterisiert durch eine intensive Internationalisierung, regulatorische Veränderungen und eine Restrukturierung. Infolgedessen fallen immer mehr Transportunternehmen unter den Wirkungsbereich der Richtlinie, während Fusionen und Übernahmen immer größere, transnationale Einheiten in einigen Teilsektoren der Industrie schaffen. Andere Charakteristika spezifischer Transportsektoren haben außerdem einen Einfluss auf die Anzahl an EBR, die gegründet wurden bzw. gegründet werden können. Beispielsweise ist die Marktkonzentration in den Teilsektoren Luftfahrt und Schienenverkehr deutlich höher als im Teilsektor Straßenverkehr und Transportlogistik. Obwohl sich in Seeverkehrsdienstleistungssektoren einige große Arbeitgeber finden lassen (in vielen Fällen neigen Seeverkehrsunternehmen dazu, keine Seefahrer unter EU-Verträgen einzustellen), muss beachtet werden, dass Seefahrer ursprünglich nicht von den Bestimmungen der Neufassungsrichtlinie erfasst wurden<sup>11</sup>. Die Situation hat sich vor Kurzem mit dem Erlass der Richtlinie 2015/1794 geändert, welche die Richtlinien 2008/94/EC, 2009/38/EC und 2002/14/EC des Europäischen Parlaments und Rats sowie die Ratsrichtlinien 98/59/EC und 2001/23/EC ergänzt<sup>12</sup>. Im Falle von Hafenbehörden, einschließlich einiger Terminalbetreiber, bieten viele (aber nicht alle)

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<sup>11</sup> Es sei denn, Mitgliedsstaaten haben Seefahrer explizit in den Erfassungsbereich der Bestimmungen der Neufassungsrichtlinie mit eingeschlossen.

<sup>12</sup> Richtlinie des Europäischen Parlaments und Rats vom 6. Oktober 2015 bzgl. Seefahrer, ergänzt Richtlinien 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC und 2001/23/EC, COM(2013) 798 Endfassung – Zugriff unter: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1448012463074&uri=CELEX:32015L1794> .

nur Dienstleistungen in einem Mitgliedsstaat an und qualifizieren sich daher nicht als gemeinschaftsweites Unternehmen. Außerdem verfügen viele große Logistik- bzw. Transportdienstleistungsunternehmen über eine verhältnismäßig geringe nationale Repräsentanz und liegen daher unter dem Kriterium von 150 Angestellten in mindestens zwei Mitgliedsstaaten.

Generell machen große (multinationale) Transportunternehmen weniger als zwei Prozent der Gesamtzahl an Unternehmen im Transportsektor in der EU-27 aus<sup>13</sup>. Allerdings ist fast die Hälfte aller Arbeiter im Transportsektor bei großen Unternehmen angestellt<sup>14</sup>.

Vor dem Hintergrund dieser Marktentwicklungen wurden insgesamt 29 aktive EBR im Transportsektor identifiziert<sup>15</sup> und es wird geschätzt, dass mindestens 73 weitere Transportunternehmen der erforderlichen Mindestgröße für die Gründung eines EBR<sup>16</sup> entsprechen, aber (noch) keinen aufgestellt haben<sup>17</sup>. Die exakte Anzahl an EBR im Sektor und die Befähigung zur Gründung hängen von der genauen Abgrenzung des Sektors ab, wonach die Menge tatsächlicher EBR im Sektor in der Region auf 40 EBR und 80 weitere Unternehmen mit dem Potenzial zur Gründung solcher Informations- und Konsultationsgremien steigen kann. Dies schließt EBR mit ein, die zwar auf dem Papier gegründet worden sind, aber seitdem nicht aktiv waren (z. B. Lufthansa und Alitalia).

Basierend auf den für diese Studie vereinbarten Transportsektoren<sup>18</sup> (und ausgeweitet auf den Tourismussektor) zeigen die Werte an, dass die 29 aktiven EBR im Sektor ungefähr 29 % aller potenziell „berechtigten“ Unternehmen im Sektor und etwa 2,8 % aller aktiven EBR ausmachen.

Die Ergebnisse zeigen, dass das größte Potenzial für zusätzliche Transportsektor-EBR im Teilsektor „Post-, Personen-, Straßenverkehr und Logistik“ (52 %) liegt, gefolgt von den Teilsektoren „Luftfahrt“ (19 %) und „Seeverkehr(sdienste)“ (27 %).

Die Barrieren bei der Errichtung neuer EBR im Transportsektor sind vielseitig und beinhalten zum Beispiel komplexe Unternehmensstrukturen von Transportunternehmen, die es schwierig machen, eindeutig festzustellen, welche Geschäftseinheiten zum selben Unternehmen gehören oder wie groß die Gesamtanzahl der angestellten Mitarbeiter ist; Schwierigkeiten für Arbeitnehmervertreter aus verschiedenen Ländern, miteinander in Kontakt zu treten; einen Mangel an gesetzlicher Verpflichtung in verschiedenen Ländern, Mitarbeiterzahlen anzugeben; intensiven Wettbewerb und Unternehmensrestrukturierung in der Industrie, die zu fließenden Unternehmensstrukturen führen; geographische Verteilung von Mitarbeitern; Verweigerung von Gewerkschaftsmitgliedschaft und Fehlen von Arbeitnehmervertretern, was zu einem Mangel an Wissen oder „Motivation“ auf Seite

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<sup>13</sup>Eine Besserung am Horizont? („A recovery on the horizon?“) Jährlicher Bericht über europäische KMUs 2012/2013, Europäische Kommission, Oktober 2013

<sup>14</sup> Ebd.

<sup>15</sup>Weitere 10 wurden durch [www.EBRdb.eu](http://www.EBRdb.eu) identifiziert, allerdings hatten diese aufgehört zu existieren oder waren nie errichtet worden

<sup>16</sup> Insbesondere die Beschäftigung von mehr als 1.000 Angestellten im EWR – obwohl das Kriterium der Beschäftigung von 150 Angestellten in zwei Mitgliedsstaaten nicht überprüft werden konnte.

<sup>17</sup> Laut ETF könnte dieser Wert noch ein wenig höher sein, mit bis zu 80 Transportunternehmen, die sich für einen EBR qualifizieren, aber keinen betreiben.

<sup>18</sup>Landverkehr, Seeverkehr, Luftfahrt, Lagerhaltung und Förderaktivitäten für Transport, Post- und Kurierdienste

der Mitarbeiter führt, das Unternehmen zur Gründung eines neuen EBR anzutreiben. In einigen Fällen findet sich auch Widerstand bei der Konzernleitung<sup>19</sup>.

Daher ist das Bild aufgrund von Umfang und Häufigkeit der Restrukturierung im Sektor ein fließendes und benötigt regelmäßiger Kontrolle und Ergänzung.

## **Struktur, Umfang und Funktion bestehender EBR**

Die aktiven Transportsektor-EBR operieren mit 55 % aller EBR des Sektors vor allem im Bereich „Post-, Personen-, Straßenverkehr und Logistik“, gefolgt von den Bereichen „Luftfahrt“ und „Seeverkehr“. Beinahe ein Drittel der aktiven EBR im Sektor haben ihren Hauptsitz in Deutschland (31 %), gefolgt von Frankreich (24 %), dem Vereinigten Königreich (14 %) und den Niederlanden (7 %)<sup>20</sup>. Hauptmerkmale von Transport-EBR sind im nachfolgenden Kästchen dargestellt.

### **MERKMALE VON TRANSPORTUNTERNEHMEN MIT EBR**

Bei Transportunternehmen, die EBR betreiben, handelt es sich in der Regel um sehr große, multinationale Unternehmen: die weltweit durchschnittliche Anzahl an Mitarbeitern beträgt 130.000, von denen etwa 82.000 in der EU bzw. dem EWR angestellt sind.

Diese Unternehmen sind im Durchschnitt in 16 verschiedenen EU/EWR-Ländern tätig.

### **MERKMALE VON TRANSPORT-EBR**

Transport-EBR beinhalten sowohl brandneue als auch einige der ältesten EBR in der EU. Der durchschnittliche Zeitraum, über den EBR im Sektor tätig sind, beträgt 9,4 Jahre.

Der Sektor ist dominiert (74 %) von EBR-Vereinbarungen, die den Vorschriften der Neufassungsrichtlinie folgen (als Ergebnis vieler neuer Vereinbarungen und Verhandlung der bereits existierenden).

Geregelt werden die EBR-Vereinbarungen im Sektor in der Regel von der nationalen Gesetzgebung des Landes, in dem das europäische Hauptquartier des Unternehmens liegt; die Untersuchung lieferte keinen Hinweis auf Unternehmen, die die Rechtsvorschriften eines Landes bevorzugen, in denen die Gesetzgebung bezüglich Arbeitsinformationen und Konsultation als schwächer als in anderen Ländern erachtet wird.

Transport-EBR gelten allgemein als Körperschaften „nur für Arbeiter“, mit einer durchschnittlichen Anzahl an Belegschaftsvertretern von 24 (schwankt zwischen 8 und 50). Dies entspricht der Größe durchschnittlicher EBR in allen Sektoren.

EBR im Transportsektor scheinen etwas häufiger Programme für Plenarversammlungen zu betreiben als EBR in anderen Sektoren (die eine Hälfte mit einer und die andere Hälfte mit zwei Plenarversammlungen).

Fast alle EBR haben einen Vorstand gewählt, der sich in der Regel dreimal im Jahr trifft. Ein Drittel aller EBR hat mindestens eine Arbeitsgruppe aufgestellt.

### **RECHTE UND AUFGABEN VON EBR-BELEGSCHAFTSVERTRETERN**

Das Verfahren zur Ernennung von Belegschaftsvertretern richtet sich generell nach den Vorschriften und Regulierungen jedes Landes; aber die Ernennung von Vertretern ist eine große Herausforderung für einen kleinen Anteil von EBR im Sektor, besonders in Ländern mit einer begrenzten oder noch sehr jungen Tradition bezüglich der Information und Konsultation der Arbeitnehmer.

Die übliche Amtszeit für Belegschaftsvertreter in Transport-EBR beträgt vier Jahre.

Abgesehen von Einzelfällen ließen sich keine größeren Probleme bezüglich der Rechte von Belegschaftsvertretern in Transport-EBR feststellen; wo Probleme auftraten, war dies häufig eine Folge der

<sup>19</sup> Basierend auf Interviews und Umfragen im Rahmen der Untersuchung sowie auf Material der ETF.

<sup>20</sup> Andere Länder, in denen sich Transport-EBRs finden lassen, sind u. a.: AT, FI, SE, US, UE, CH

Unterschiede zu örtlichen Managementpraktiken.

Quelle: Basierend auf einer Stichprobe von 23 EBR aus dem Transportsektor

## **Die Realität von Informations- und Konsultationsstrukturen und die Rolle von EBR in Restrukturierungssituationen**

Laut der für diese Studie befragten Interessenvertreter haben die meisten Transport-EBR ihr Ziel erreicht, den Austausch von Informationen zu vereinfachen und zu verbessern. In Verbindung mit der Konsultation bezüglich transnationaler Angelegenheiten wurden jedoch verschiedene Defizite identifiziert. Vor allem aufgrund der Tatsache, dass Entscheidungen im EBR diskutiert wurden, nachdem sie bereits vom der Konzernleitung getroffen worden waren, bekamen sie das Gefühl vermittelt, dass wenig oder gar keine Konsultation stattgefunden hatte.

Insgesamt wurden folgende Faktoren zum Erreichen der EBR-Konsultationsziele identifiziert: Traditionen der Information und Konsultation, effektive Kommunikation zwischen dem gewählten Vorstand und den allgemeinen EBR-Mitgliedern sowie häufigere Versammlungen und Stabilität in der EBR-Zusammensetzung.

Aus der Studie geht generell hervor, dass die spezifischen Richtlinienbestimmungen, unter denen die Transport-EBR agieren, wenig Einfluss darauf haben, wie Konsultationen in der Praxis durchgeführt werden. Es gibt beispielsweise keine erkennbaren Verbesserungen bei EBR mit Vereinbarungen, die unter der Neufassungsrichtlinie aufgestellt oder verhandelt wurden.

Insgesamt ließ sich feststellen, dass EBR-Konsultationstätigkeiten eine begrenzte Auswirkung auf Restrukturierungsentscheidungen haben; tatsächlich ist die Rolle der Transportsektor-EBR in der Praxis in vielen Restrukturierungssituationen auf die eines Forums zum Informationsaustausch beschränkt. In den meisten Fällen liegt dies daran, dass die benötigten Informationen nicht rechtzeitig übermittelt werden. In anderen Fällen sind Belegschaftsvertreter gegebenenfalls nicht in der Position, Entscheidungen des zentralen Managements anfechten zu können. Die geringe Häufigkeit von Versammlungen wird von vielen Belegschaftsvertretern als Hindernis bei der Nachverfolgung transnationaler Probleme erachtet. Obwohl Sonderversammlungen einen geeigneten Rahmen zur Diskussion von Restrukturierungsentscheidungen bilden würden, erwähnten einige Belegschaftsvertreter, dass selbst diese Versammlungen häufig zu spät stattfinden würden, um die Entscheidungsfindung zu beeinflussen.

Einige Belegschaftsvertreter sind der Meinung, dass die Tatsache, dass gewisse Belegschaftsvertreter nationale oder lokale Probleme bei EBR-Versammlungen anbringen, die konsultative Rolle der EBR schwächt. Generell ausgedrückt werden Probleme bezüglich der Interpretation von *Transnationalität* und *erheblichen Auswirkungen auf Mitarbeiter* als nachteilig für die Rolle von Transportsektor-EBR in Restrukturierungssituationen angesehen.

Allerdings wurden in einer geringen Anzahl an Fällen positive Effekte auf EBR-Konsultationen in Restrukturierungssituationen nachgewiesen. Diese Effekte sind in ihrem Umfang relativ bescheiden, was bedeutet, dass generell verstanden wird, dass EBR-Belegschaftsvertreter nicht in einer Position sind, Entscheidungen der zentralen Geschäftsleitung in multinationalen Transportunternehmen anzufechten oder radikal zu verändern. Es gibt jedoch Hinweise darauf, dass EBR die Vorgehensweise der Konzernleitung bei der Kommunikation und Diskussion von Restrukturierungsplänen mit Belegschaftsvertretern ändern können. In diesem Sinne haben bestimmte EBR

sogenannte *Verfahrenseffekte* erzeugt. Obwohl sie es nicht geschafft haben, Änderungen an Restrukturierungsplänen zu bewirken, konnten so in einigen Fällen die Ergebnisse für Mitarbeiter verbessert werden, während die Konsultationsprozesse zu einem besseren Verständnis der Gründe hinter den Entscheidungen führten.

Mehrere EBR arbeiteten explizit (oder arbeiten derzeit) an Vereinbarungsprozessbeschreibungen für Information und Konsultation, die schriftlich festhalten, welche Art von Informationen übermittelt werden muss und zu welchem Zeitpunkt und welche Form die Konsultation annehmen sollte (Stellungnahmen, etc.). In einigen Fällen baute dies auf nationalen Informations- und Konsultationstraditionen auf (z. B. in den Niederlanden) und in anderen Fällen wurden Prozesse speziell für den EBR entwickelt.

Für die Stärkung der konsultativen Rolle von Transportsektor-EBR in Restrukturierungssituationen sind (u. a.) die folgenden Faktoren von Bedeutung:

- Verständlichkeit der Vereinbarungen bezüglich der Beschreibung des Informationsaustausch- und Konsultationsverfahrens (beinhaltet beispielsweise Themendefinitionen und Detailtiefe);
- Rechtzeitige Übermittlung relevanter Informationen vom zentralen Management an die Belegschaftsvertreter;
- Stabilität in der Zusammensetzung des EBR und Erfahrung der Mitglieder, einschließlich einem gemeinsamen Verständnis aller Mitglieder bezüglich des Aufgabenbereichs eines EBR;
- Engagement des gewählten Vorstands;
- Vertrauen zwischen dem EBR-Arbeitgeber und den Belegschaftsvertretern;
- Fachkundige Beratung in Bezug auf technische Schwierigkeiten; und
- Verständlichkeit der Vereinbarungen bezüglich des transnationalen Umfangs von EBR-Aktivitäten.

### **Von Transportsektor-EBR adressierte Thematiken**

Die wirtschaftliche Leistung sowie Entwicklungen in der Beschäftigung innerhalb des Unternehmens dominieren Versammlungen von Transport-EBR, gefolgt von Unternehmensstrategie, Restrukturierung und organisatorischen Fragen. Diskussionen zur Aus- und Weiterbildung konzentrieren sich in der Regel auf die generelle Verfügbarkeit von Personalschulungen innerhalb des Unternehmens oder auf Fachkräftemangel. Infolge von Arbeitsunfällen und Unterschieden in Verfahren zwischen nationalen Standorten sind Gesundheit und Sicherheit für vereinzelte EBR zum Problem geworden. Die Attraktivität des Sektors ist keine der am häufigsten diskutierten Angelegenheiten, obwohl dies nun an Bedeutung gewinnt, nachdem einige Unternehmen infolge langjähriger Personalkürzungen einen Fachkräftemangel erfahren.

EU-Transportpolitik ist selten ein direktes Thema für EBR im Sektor, es sei denn sie hat eine unmittelbare Auswirkung auf das entsprechende Unternehmen bezüglich praktischer Wettbewerbsfähigkeit, Beschäftigungsniveaus oder Arbeitsbedingungen sowie strategische Auswirkungen. EU-Transportpolitik als solche spielt keine bedeutende Rolle, da die Kernaufgabe der EBR in der Information und Konsultation unternehmensbezogener Probleme liegt, wie etwa Restrukturierungssituationen mit Auswirkungen auf Jobs und Arbeitsbedingungen. Allerdings sah die Hälfte aller im Interview für diese Studie befragten Personen das Potenzial für eine politischere Rolle

von EBR. Einer der Gründe dafür war, dass EU-Transportrichtlinien eine Auswirkung auf Unternehmensstrategien und Marktstellungen haben und dadurch die Arbeit von EBR beeinflussen. Erwähnte EU-Richtlinien und Instrumente beinhalten zum Beispiel das vierte Eisenbahnpaket („Railway Package“), Umweltrichtlinien, Sicherheitsrichtlinien, EU-Investment- sowie sektorale Strategierichtlinien (z. B. TEN-T, DG REGIO und Strukturfonds, „Roadmap to a Single European Transport Area“ und „Motorways of the Sea“). Außerdem waren Beschäftigungsrichtlinien ein Thema, in Verbindung mit generellen Beschäftigungsstrategien, Kompetenzentwicklung im Sektor sowie dem EU-Arbeitsrecht (d. h. bezüglich der Leiharbeitsrichtlinie 2008/104/EC oder der Arbeitnehmerentsendungsrichtlinie 96/71/EC). EBR können die direkte Auswirkung europäischer Transportrichtlinien auf ihr Unternehmen diskutieren. Die Ergebnisse solcher Diskussionen können bei bestehender Relevanz an die europäischen Sozialpartner und die Verfahren des Sozialdialogs weitergeleitet und so auf EU-Ebene in Diskussionen mit der Europäischen Kommission aufgenommen werden (oder von Vertretern der europäischen Sozialpartner, die von EBR-Mitgliedern eingeladen wurden).

### **Stärken, Schwächen und spezielle Herausforderungen für EBR im Transportsektor**

Die wahrgenommenen Stärken und Schwächen variieren relativ deutlich von einem EBR zum anderen. Bisherige Ergebnisse deuten allerdings darauf hin, dass es eine geringe Anzahl wiederkehrender Stärken und Schwächen gibt, die die Leistung von EBR beeinflussen; diese wurden in der folgenden Tabelle aufgelistet.

<b>Stärken</b>	<b>Schwächen</b>
Verstärktes Vertrauen zwischen Management und Personalvertretern	Nur ein Forum für Informationsaustausch und nicht wirklich für Konsultation; Diskussionen geschehen erst, nachdem die Entscheidungen bereits getroffen wurden
Sicherung einer europäischen Präsenzebene des Personals gegenüber dem zentralen Management	Zu geringe Häufigkeit der EBR-Versammlungen; zu seltene Treffen von Angesicht zu Angesicht
Verbesserter Informationsfluss zwischen Management und Personalvertretern	Zeitmangel seitens der EBR-Mitglieder bei der Ausführung von EBR-Pflichten bzw. Mangel an Engagement oder Interesse seitens der EBR-Mitglieder oder des Managements
Stärkung des Vertrauens zwischen Belegschaftsvertretern aus verschiedenen Ländern; Möglichkeit zur Entwicklung gemeinsamer Standpunkte zum Wohl aller Mitarbeiter in allen Ländern	Schwierigkeiten bei der Suche nach EBR-Abgeordneten aus bestimmten Ländern und diesbezüglich starke Fluktuation
Engagement des gewählten Vorstands	Schwerpunktverlagerung auf nationale oder lokale Probleme im Gegensatz zu transnationalen Problemen
Unterstützung durch externe Fachkräfte bei technischen Schwierigkeiten	Unerfahrenheit innerhalb neu gegründeter EBR
Stabile Zusammensetzung oder Mitgliedschaft innerhalb des EBR	Unterschiede in nationalen Herangehensweisen an industrielle Beziehungen
	Sprachbarrieren

*Quelle: Interviews mit dem Management und Belegschaftsvertretern von Transport-EBR*

### **Politikempfehlungen**

Ausgehend von der Studie können die folgenden Politikempfehlungen unterbreitet werden:

Die Gründung weiterer EBR im Transportsektor (und darüber hinaus) bleibt ein wichtiges Ziel und war Teil der Agenda hinter der Neufassungsrichtlinie. Dies darf jedoch nicht auf Kosten der Aufmerksamkeit geschehen, die der Qualität der

Diskussionen in solchen Körperschaften gewidmet sein sollte. Die Leistung und Relevanz bestehender EBR sollte eine bedeutende Signalwirkung auf andere Unternehmen und Belegschaftsvertreter haben, die mit dem Gedanken spielen, transnationale Informations- und Konsultationskörperschaften zu gründen.

Darüber hinaus kann die Gründung weiterer EBR unterstützt werden, indem man einige der in dieser Studie identifizierten Barrieren überwindet:

- Die Komplexität und der Mangel an Wissen über Unternehmensstrukturen und darüber, ob Unternehmen die erforderliche Mindestgröße erfüllen, kann einerseits dadurch adressiert werden, dass Mitarbeiter gegenüber dem Unternehmen Anfragen auf relevante Informationen stellen (die Voraussetzung für Unternehmen, solche Informationen bereitzustellen, ist in der Neufassungsrichtlinie festgehalten). Europäische Sozialpartnerorganisationen spielen ebenfalls eine Rolle bei der Identifizierung weiterer Unternehmen, die sich für die Gründung von EBR qualifizieren. Die vorliegende Studie kann diesbezüglich ebenfalls einen Beitrag leisten.
- Die Studie offenbarte die Bedeutung der Transportpolitik (neben anderen Faktoren) bei der Reorganisation des Sektors und der Restrukturierung der Unternehmen.
- Eine bedeutende Herausforderung liegt in der geographischen Verteilung sowie in den Sprachbarrieren (nicht nur zum Zeitpunkt der Gründung, sondern auch darüber hinaus), welche die Kommunikation unter verfügbaren Dolmetschressourcen in Vorbereitung auf den Antrag auf ein besonderes Verhandlungsgremium („Special Negotiating Body“, SNB – ein Gremium, das die Gründung des EBR verhandelt) häufig schwierig machen. Dasselbe gilt für den Austausch von Erfahrungen und Methoden in bestehenden EBR. Es könnte ein Nutzen aus den Haushaltslinien der GD Beschäftigung gezogen werden, um einen solchen Dialog und Austausch zu vereinfachen. Sozialpartner auf europäischer Ebene haben diesbezüglich eine wichtige koordinierende Funktion und könnten zum Zeitpunkt der Planung der Gründung eines EBR gegebenenfalls eine förmlichere Rolle einnehmen.
- Es ist ebenfalls klar, dass Bemühungen zur Gründung von EBR eher in großen Unternehmen in Ländern mit einer langen Tradition im Bereich Arbeitnehmervertretung unternommen werden. Finanzielle und anderweitige Unterstützung bei der Aufstellung solcher Dialoge könnte sich dementsprechend besonders auf kleinere Unternehmen und auf Länder mit einem größeren Bedarf an Kapazitätsaufbau für Mitarbeiterorganisationen und Arbeitgeber in Bezug auf transnationale Information und Konsultation konzentrieren.

Die Funktionalität bestehender (und geplanter) EBR kann durch eine Sicherung der Verständlichkeit der Definitionen von Information, Konsultation und Transnationalität innerhalb von EBR-Vereinbarungen verbessert werden. Eine Studie der GD Beschäftigung bewertet derzeit die Umsetzung und Durchführung der Neufassungsrichtlinie und beurteilt außerdem die Auswirkungen der neuen Definition von Transnationalität. In der Zwischenzeit können Verfahrensvereinbarungen darüber, wie Information und Konsultation in der Praxis organisiert sein sollten, eine Lösung bieten.

Gewerkschafts- und Arbeitgeberkapazität sind bei der Organisation vereinbarter und legitimer Verfahren zur Wahl von EBR-Vertretern ebenfalls von Bedeutung und die europäischen Sozialpartnerorganisationen können in diesem Bereich durch Vermittlung relevanter Expertise und Unterstützung eine Rolle spielen. EBR-Vereinbarungen sollten

außerdem deutlich vermitteln, wie Mitarbeiter aus Ländern, die sich nicht für ihre eigene EBR-Repräsentanz qualifizieren, ihre Meinung beitragen können.

Die Neufassungsrichtlinie stellte das Recht auf Schulung und auf angemessene Einrichtungen für EBR-Mitglieder. Informationen zur Durchsetzung dieses Rechts in der Praxis sollten innerhalb der Foren der europäischen Sozialpartner geteilt und Bedenken innerhalb der EBR vorgebracht werden, da die Erfahrung zeigt, dass solche Angelegenheiten in der Regel adressiert werden können, wenn sie dem Unternehmenshauptsitz gegenüber deutlich gemacht werden.

Momentan wird eine Bewertung der Implementierung der bestehenden Gesetzgebung vorgenommen, aber diese Studie hat bereits darauf hingewiesen, dass bezüglich der Konsultationspraxis in Restrukturierungssituationen und der Interpretation transnationaler Angelegenheiten noch einige Probleme bestehen. Auch hier könnten die erwähnten Verfahrensvereinbarungen darüber, wie solche Information und Konsultation in der Praxis organisiert werden sollten, von großer Hilfe sein.

Während des Workshops am 10. September (im Rahmen dieser Studie) wurde das Problem der Verfügbarkeit abschreckender Sanktionen im Falle der Versäumnis einer rechtzeitigen Konsultation angebracht und könnte stärker in Erwägung gezogen werden.

Insgesamt bestand ein bedeutendes Interesse am besseren Austausch von Informationen, welcher durch die Erweiterung bestehender Datenbanken um aktuelles Material zu EBR-Vereinbarungen, Inhalten dieser Vereinbarungen sowie Namen von Kontaktpersonen erleichtert werden könnte.



## Résumé

Selon la délimitation retenue du secteur, il y a actuellement entre 30 et 40 comités d'entreprise européens (CEE) dans les entreprises du secteur des transports de l'UE. Il est estimé qu'au moins 73 entreprises de transports supplémentaires atteignent le seuil minimum pour mettre en place un CEE mais ne l'ont pas fait. Les principaux obstacles qui empêchent la mise en place de nouveau CEE sont les suivants : la complexité des structures d'entreprise, le manque d'informations accessibles au public quant au nombre d'employés de la même entreprise dans les différents États membres, l'absence d'une tradition de dialogue social à l'échelle de l'entreprise, le manque de capacité organisationnelle des syndicats dans certains pays, et, enfin, la réticence de certains employeurs.

Les entreprises de transports vivent aujourd'hui d'importantes restructurations suites aux évolutions économiques et réglementaires. Les CEE sont établis pour fournir des informations aux employés et les consulter sur les décisions économiques qui ont un impact transnational sur l'emploi et les conditions de travail.

Bien que les représentants de la direction et des travailleurs soient favorable à un échange d'informations régulier sur les perspectives commerciales et la stratégie d'entreprise, dans la pratique, les employés sont informés et, plus particulièrement, consultés trop tard pour influencer la prise de décision. Les CEE n'ont permis un processus de restructuration socialement plus responsable que dans un nombre très limité de cas.

Ce rapport explore les pratiques et le potentiel des CEE dans le secteur, et propose des recommandations pour mettre en place de nouveaux CEE et améliorer les pratiques actuelles au sein de ces derniers.

## Résumé analytique

### Introduction

Cette étude a été commissionnée par la DG MOVE dans un contexte où l'accent est mis de plus en plus sur les problèmes sociaux dans le secteur des transports dans le programme de travail de la DG MOVE, notamment concernant le dialogue social. Son objectif était d'établir:

- les pratiques et le potentiel des CEE dans le secteur en évaluant le nombre de CEE actuellement actifs (par mode de transport), le nombre de CEE ayant disparu et pour quelle raison, et le nombre d'entreprises du secteur pouvant prétendre à la création d'un CEE en accord avec les conditions définies dans la directive 2009/38/CE sur la mise en place d'un comité d'entreprise européen (ci-après « Directive de refonte ») ;
- la structure, le champ d'action et la fonction des CEE existants ;
- la réalité des structures d'information et de consultation, la détermination des « problèmes transnationaux » et leur efficacité, en particulier en période de restructuration ;
- les thèmes traités par les CEE dans le secteur des transports, à la fois en ce qui concerne leurs tâches premières d'information et de consultation, ainsi que les travaux allant au-delà de celle-ci, par exemple dans les groupes de travail ;
- les forces, les faiblesses et les défis spécifiques que rencontrent les CEE dans le secteur et la manière de les surmonter.

### Les pratiques et le potentiel des CEE dans le secteur des transports

L'industrie des transports en Europe est caractérisée par une internationalisation accrue, des changements réglementaires et des restructurations depuis les années 1990. Par conséquent, davantage d'entreprises de transports se retrouvent dans le cadre de la directive, les fusions-acquisitions créant des entités plus grandes et transnationales dans certains sous-secteurs de l'industrie. D'autres caractéristiques spécifiques de secteurs des transports influencent aussi le nombre de CEE qui peuvent être mis en place ou qui l'ont déjà été. Par exemple, la concentration des marchés est bien plus importante dans les sous-secteurs des transports aériens et ferroviaires que dans ceux des transports routiers et logistiques. Bien qu'on trouve certains grands employeurs dans les secteurs des services de transports maritimes (dans de nombreux cas, les entreprises de transports maritimes tendent à ne pas employer de marins sous contrats européens), nous devons garder en tête qu'à l'origine, les marins n'étaient pas couverts par les dispositions de la Directive de refonte<sup>21</sup>. La situation a récemment changé avec l'adoption de la directive 2015/1794 amendant les directives 2008/94/CE, 2009/38/EC et 2002/14/CE du Parlement européen et du Conseil, et les directives du Conseil 98/59/EC et 2001/23/CE<sup>22</sup>. Dans le cas des autorités portuaires, y compris de certains opérateurs de terminaux, beaucoup (pas tous néanmoins) ne fournissent de services que dans un seul État membre et ne

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<sup>21</sup> À moins que les États membres n'aient explicitement inclus les marins dans le cadre des dispositions de mise en oeuvre de la Directive de refonte.

<sup>22</sup> Directive du Parlement européen et du Conseil du 6 octobre 2015 sur les marins amendant les directives 2008/94/CE, 2009/38/CE, 2002/14/CE, 98/59/EC et 2001/23/CE, COM(2013) 798 finale – accessible sur : <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1448012463074&uri=CELEX:32015L1794>.

répondent donc pas aux critères de projet à l'échelle de la Communauté. En outre, même si de nombreuses entreprises de services de transports/logistiques sont de grande taille, elles ont des représentations nationales de taille relativement petite, restant de ce fait en dessous du critère des 150 employés dans au moins deux États membres.

De manière générale, les grandes entreprises de transports (multinationales) représentent moins de deux pour cent du nombre total d'entreprises du secteur des transports dans l'UE des 27<sup>23</sup>. Toutefois, presque la moitié des travailleurs du secteur des transports sont employés par de grandes entreprises<sup>24</sup>.

Avec ces informations de marché en tête, 29 CEE actifs dans le secteur des transports ont été identifiés au total<sup>25</sup>, et on peut estimer qu'au moins 73 autres entreprises de transports ont la taille limite requise pour mettre en place un CEE<sup>26</sup>, mais ne l'ont pas (encore) fait<sup>27</sup>. Le nombre précis et le nombre potentiel de création de CEE dans le secteur dépendent de la délimitation précise du secteur. Ce qui pourrait amener le nombre de CEE effectifs du secteur à environ 40 CEE et leur nombre potentiel à environ 80 autres entreprises pouvant mettre en place de telles entités. Ceci inclut les CEE ayant été mis en place sur le papier, mais n'ayant jamais été actifs (par ex., Lufthansa et Alitalia).

Pour les secteurs de transports couverts par cette étude<sup>28</sup> (et étendus au secteur du tourisme), les chiffres montrent que les 29 CEE actifs dans le secteur représentent environ 29 % de toutes les entreprises potentiellement « éligibles » et 2,8 % de tous les CEE actifs.

Notre analyse montre que le plus grand potentiel de création de CEE supplémentaires dans le secteur des transports se trouve dans le sous-secteur des « transports postaux, de passagers, routiers et logistiques » (52 %), suivi de l'« aviation » (19 %) et des « services liés au transport maritime » (27 %).

Les barrières à la mise en place de nouveaux CEE dans le secteur des transports sont diverses. Elles comprennent, par exemple, les structures internes complexes des entreprises de transports qui compliquent, l'identification des entités appartenant à la même entreprise et par conséquent, du nombre total d'employés ; des difficultés pour les délégués du personnel de différents pays d'établir des contacts entre eux ; un manque d'obligation légale de communiquer le nombre d'employés dans les différents pays ; une concurrence accrue et des restructurations d'entreprises dans l'industrie, menant à des structures organisationnelles fluctuantes ; une dispersion géographique des employés ; une adhésion aux syndicats en déclin et une absence de représentants des employés, entraînant un manque de connaissance ou de « volonté » de la part des délégués du personnel des entreprises pour faire avancer la mise en place de

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<sup>23</sup> Une reprise à l'horizon ? Rapport annuel sur les PME européennes 2012/2013, Commission européenne, octobre 2013

<sup>24</sup> Ibid.

<sup>25</sup> Dix autres identifiés via [www.ewcdb.eu](http://www.ewcdb.eu), ont toutefois cessé d'exister ou n'ont jamais été constitués

<sup>26</sup> D'après ETF, le chiffre pourrait être légèrement plus élevé avec plus de 80 entreprises de transports remplissant les conditions pour le CEE, mais n'en ayant institué aucun.

<sup>27</sup> Particulièrement ceux employant plus de 1 000 personnes dans la zone EEE, même si le critère d'emploi de plus de 150 personnes dans deux États membres n'a pu être vérifié.

<sup>28</sup> Transports routiers, maritimes et fluviaux, aériens, activités de stockage et d'assistance pour les transports, activités de poste et de coursier.

nouveaux CEE. On rencontre également dans certains cas une résistance de la part de la direction<sup>29</sup>.

Par conséquent, en raison de l'échelle et de la fréquence des restructurations dans le secteur, le tableau est fluctuant et doit être suivi et mis à jour régulièrement.

### **La structure, le champ d'action et la fonction des CEE existants**

Les CEE actifs dans le secteur des transports opèrent en grande partie dans le sous-secteur des « transports postaux, de passagers, routiers et logistiques » avec 55 % de tous les CEE actifs, suivi de l'« aviation » et des « transports maritimes ». Presqu'un tiers des CEE actifs dans le secteur ont leur siège en Allemagne (31 %), puis en France (24 %), au Royaume-Uni (14 %) et aux Pays-Bas (7 %) <sup>30</sup>. Les caractéristiques principales des CEE des transports sont présentées dans l'encadré ci-dessous.

#### **CARACTÉRISTIQUES DES ENTREPRISES DE TRANSPORTS HÉBERGEANT DES CEE**

Les entreprises de transports ayant institué des CEE sont souvent de très grandes entreprises multinationales : le nombre total moyen d'employés est de 130 000, parmi lesquels environ 82 000 sont employés dans l'UE/EEE.

Ces entreprises sont actives en moyenne dans 16 pays différents de l'UE/EEE.

#### **CARACTÉRISTIQUES DES CEE DES TRANSPORTS**

Les CEE des transports comprennent à la fois tous des CEE très récentes, et certains des plus anciens CEE de l'UE. La durée moyenne d'activité des CEE dans le secteur est de 9,4 années.

Le secteur est dominé (74 %) par des accords de CEE suivant les règles de la Directive de refonte (résultat de nombreux nouveaux accords et de la renégociation d'accords existants).

Les accords de CEE dans le secteur sont en grande partie régis par la législation nationale du pays dans lequel l'entreprise a son siège européen. Parmi les entreprises de l'échantillon, aucune n'a choisi la législation d'un pays où les lois concernant les informations relatives au travail et à la consultation sont estimées plus faibles que dans d'autres pays.

Les CEE des transports généralement considérés comme des entités « travailleurs seuls » comptent un nombre moyen de 24 délégués du personnel (allant de 8 à 50). Ces chiffres correspondent aux tailles moyennes des CEE, tous secteurs confondus.

Les CEE dans le secteur des transports semblent suivre un programme de réunions plénières légèrement plus fréquentes que dans l'ensemble des CEE, tous secteurs confondus (la moitié avec une réunion plénière et l'autre avec deux).

Quasiment tous ont un comité restreint, qui tend à se réunir trois fois par an. Un tiers des CEE ont établi au moins un groupe de travail.

#### **DROITS ET RÔLES DES DÉLÉGUÉS DU PERSONNEL DES CEE**

La procédure de nomination des délégués du personnel est en général conforme aux lois et aux réglementations de chaque pays, mais la nomination de délégués est un problème de taille pour une petite partie des CEE du secteur, en particulier dans les pays ayant une tradition limitée ou plus récente d'information et de consultation des travailleurs.

<sup>29</sup> D'après les interviews et les enquêtes menées dans le cadre de la recherche, ainsi que des informations de ETF.

<sup>30</sup> Les autres pays où l'on trouve des CEE des transports incluent : l'Autriche, la Finlande, la Suède, les États-Unis, l'Union européenne, la Suisse.

Le mandat type pour les délégués du personnel des CEE des transports est de quatre ans.

Aucune zone de préoccupation importante, en dehors de cas individuels, n'a été détectée dans les droits des délégués du personnel des CEE des transports. Là où des problèmes avaient été rencontrés, ils étaient souvent dus à des différences dans les pratiques locales de gestion.

Source : d'après un échantillon de 23 CEE du secteur des transports

## **La réalité des structures d'information et de consultation et le rôle des CEE dans les situations de restructuration**

D'après les partis prenantes consultées pour cette étude, la plupart des CEE des transports ont rempli leur objectif de faciliter et d'améliorer l'échange d'informations. Cependant, plusieurs défauts liés à la consultation concernant des sujets transnationaux ont été identifiés. Généralement, le fait que des décisions aient été débattues dans les CEE après avoir été prises par la direction était la raison principale du sentiment que peu de consultations, voire aucune, n'avaient eu lieu.

De manière générale, les traditions d'information et de consultation, une communication efficace entre le comité restreint et les membres du CEE dans son ensemble, une fréquence de réunion plus élevée et une stabilité dans la composition des CEE ont été identifiées parmi les facteurs contribuant à la réalisation des objectifs de consultation des CEE.

D'après l'échantillon, il apparaît généralement que les dispositions spécifiques de la directive en vertu desquelles les CEE des transports opèrent, ont eu peu d'influence sur la manière dont les consultations sont menées dans la pratique. Par exemple, il n'y a pas d'améliorations visibles parmi les CEE avec des accords établis ou renégociés dans le cadre de la Directive de refonte.

Dans l'ensemble, les activités de consultation des CEE n'ont eu qu'un impact limité sur les décisions de restructuration. En effet, dans la pratique, le rôle des CEE dans le secteur des transports, dans beaucoup de situations de restructuration, est limité à celui d'un forum d'échange d'informations. Dans la plupart des cas, cela arrive car les informations nécessaires ne sont pas communiquées en temps et en heure. Dans d'autres cas, les délégués du personnel ne sont peut-être pas en position d'altérer les décisions prises par la direction centrale. La fréquence faible des réunions est perçue par beaucoup de délégués du personnel comme un obstacle au suivi des problèmes transnationaux. Les réunions extraordinaires étant le format idéal pour débattre des décisions de restructuration, certains délégués du personnel affirment que même ces réunions arrivent souvent trop tard pour influencer la prise de décision.

Pour certains représentants des employeurs, le fait que certains délégués du personnel soulèvent des questions nationales ou locales lors de réunions des CEE affaiblit le rôle consultatif des CEE. De façon plus générale, des problèmes autour de l'interprétation de la notion de *transnationalité* et d'*impact important sur les employés* sont considérés comme préjudiciables au rôle des CEE du secteur des transports dans des situations de restructuration.

Dans un petit nombre de cas cependant, des preuves ont été apportées concernant les effets positifs des consultations des CEE dans des situations de restructuration. Ces effets sont de portée relativement modeste. Autrement dit, les délégués du personnel des CEE ne se retrouvent pas en position de renverser ou d'altérer radicalement les décisions prises par la direction centrale dans les entreprises de transports multinationales. Mais il existe des preuves suggérant que les CEE peuvent changer

l'approche de la direction centrale en matière de communication et de débat des plans de restructuration avec les délégués du personnel. À cet égard, certains CEE ont généré des *effets de processus*. Par exemple, bien qu'ils n'aient pas réussi à apporter des changements aux plans de restructuration, dans certains cas, les résultats pour les employés ont pu être améliorés, et les processus de consultation ont mené à une meilleure compréhension des raisons pour lesquelles les décisions ont été prises.

Des CEE ont travaillé en particulier (ou travaillent actuellement) sur des descriptions de processus d'accords pour l'information et la consultation qui mettent sur papier le type d'informations qui doit être fourni et quand, la forme que devrait prendre la consultation (publications d'avis, etc.). Dans certains cas, cela a été fait à partir des traditions d'information et de consultation nationale (par ex., aux Pays-Bas) et dans certains cas, les processus ont été développés spécifiquement pour le CEE.

Les facteurs qui renforcent le rôle consultatif des CEE du secteur des transports dans les situations de restructuration comprennent :

- une clarté dans les accords concernant la description du processus d'échange d'informations et les procédures de consultation (y compris, par exemple, la définition des sujets traités et le niveau de détail) ;
- une circulation dans les meilleurs délais des informations pertinentes de la direction centrale à l'attention des délégués du personnel ;
- une stabilité dans la composition du CEE et l'expérience des membres, y compris une entente entre les membres sur les compétences d'un CEE ;
- un comité restreint impliqué ;
- une confiance entre les représentants des employeurs et les délégués du personnel au sein du CEE ;
- un conseil d'expertise sur les questions techniques ; et
- une clarté dans les accords concernant le champ d'action transnational des activités du CEE.

### **Les thèmes traités par les CEE du secteur des transports**

La performance économique et le développement de l'emploi au sein de l'entreprise dominent les réunions des CEE des transports, suivis par la stratégie de l'entreprise, les restructurations et les questions organisationnelles. Les discussions des questions de compétences ont eu tendance à se concentrer sur la disponibilité générale de formation du personnel au sein de l'entreprise ou la pénurie de compétences. La santé et la sécurité sont devenues des sujets de préoccupation pour des CEE particuliers, suite à des accidents du travail et des différences de procédures entre des sites nationaux. L'attractivité du secteur n'est pas un des sujets les plus communément débattus, bien que son importance grandisse maintenant que certaines entreprises, après quelques années de réduction du personnel, doivent faire face à des pénuries de compétences.

La politique de l'UE sur les transports est rarement un sujet direct des CEE dans le secteur, à moins qu'elle n'ait un impact immédiat sur l'entreprise en termes de compétitivité réelle, de niveaux d'emploi, de conditions de travail ou d'implications stratégiques. La politique des transports de l'UE ne joue pas un rôle important en tant que telle, car la tâche principale des CEE est l'information et la consultation sur des questions liées à l'entreprise, comme des situations de restructuration affectant les emplois et les conditions de travail. Cependant, la moitié des personnes interrogées

lors des entretiens menés pour cette étude ont vu un potentiel pour un rôle plus politique des CEE. L'une des raisons était que les politiques de l'UE en matière de transport ont un impact sur les stratégies des entreprises et les positions sur les marchés, affectant par conséquent le travail des CEE. Les politiques de l'UE et les outils mentionnés incluent, par exemple, le 4<sup>e</sup> paquet ferroviaire, des politiques environnementales, des politiques de sécurité, des politiques d'investissement de l'UE et de stratégie par secteur (par ex., TEN-T, DG REGIO et les fonds structurels, la feuille de route pour un espace européen unique des transports et les autoroutes de la mer). En outre, les politiques de l'emploi ont été un sujet de réflexion, en ce qui concerne les stratégies globales d'emploi, le développement des compétences par secteur et le droit du travail de l'UE (c.-à-d., en relation avec la directive Travailleurs intérimaires 2008/104/CE ou la directive Détachement des travailleurs 96/71/CE). Les CEE peuvent débattre de l'impact direct des politiques européennes des transports sur leur entreprise. Les résultats de telles discussions peuvent, le cas échéant, être amenés au niveau de l'UE dans les discussions avec la Commission européenne via le dialogue entre les partenaires sociaux européens (ou peuvent être repris par des délégués des partenaires sociaux européens invités par des membres du CEE).

### **Forces, faiblesses et problèmes spécifiques rencontrés par les CEE dans le secteur des transports**

Les forces et les faiblesses perçues varient de manière considérable d'un CEE à un autre. Les indices rassemblés jusqu'à présent suggèrent néanmoins qu'il existe un petit nombre de forces et de faiblesses récurrentes qui affectent les performances des CEE. Celles-ci sont incluses dans le tableau ci-dessous.

<b>Forces</b>	<b>Faiblesses</b>
Confiance améliorée entre la direction et les délégués du personnel	Un simple forum pour l'échange d'informations et pas vraiment pour la consultation ; les discussions n'ont lieu qu'une fois les décisions déjà prises
Assurer un niveau européen de représentation du personnel face à la direction centrale	Trop faible fréquence des réunions de CEE ; trop peu de réunions en face à face
Circulation améliorée de l'information entre la direction et les délégués du personnel	Manque de temps pour les membres du CEE pour remplir leurs obligations relatives au CEE, ou manque d'implication ou d'intérêt de la part des membres du CEE ou de la direction
Renforcer la confiance entre les délégués du personnel de différents pays ; la capacité à se réunir pour développer des positions communes pour le bien de tous les employés, tous pays confondus	Difficultés à trouver des délégués du CEE dans certains pays et fort taux de renouvellement
Implication du comité restreint	Concentration sur les problèmes nationaux ou locaux, plutôt que sur les sujets transnationaux
Assistance de la part d'experts externes sur les questions techniques	Inexpérience dans les CEE récemment mis en place
Composition ou adhésion stable au sein du CEE	Différences dans les approches nationales des relations industrielles
	Barrières linguistiques

Source : entretiens avec la direction et les délégués du personnel des CEE des transports

### **Recommandations politiques**

Les recommandations politiques suivantes peuvent être faites suite à l'étude :

La mise en place de nouveaux CEE dans le secteur des transports (et au-delà) reste un objectif important et faisait partie des finalités de la Directive de refonte. Cependant, cela ne doit pas se faire aux dépens de l'attention portée à la qualité des discussions au sein de telles entités. Le bon fonctionnement et la pertinence des CEE

existants doivent être vus comme un signal important donné aux autres entreprises et délégués du personnel aspirant à mettre en place des organes d'information et de consultation transnationaux.

La mise en place d'autres CEE peut en outre être soutenue en dépassant certaines des barrières identifiées dans cette étude :

- La complexité et le manque de connaissances des structures d'entreprise et le fait que les entreprises sachent si elles atteignent la taille minimale requise sont des problèmes auxquels les employés peuvent remédier en demandant les informations pertinentes à l'entreprise (l'obligation pour les entreprises de fournir ces informations est inscrite dans la Directive de refonte). Les organisations de partenaires sociaux européens ont aussi un rôle à jouer dans l'identification d'autres entreprises pouvant remplir les conditions pour la mise en place de CEE. La présente étude peut aussi y contribuer.
- L'étude a révélé l'impact considérable de la politique des transports (conjointement à d'autres facteurs) dans la réorganisation du secteur et la restructuration d'entreprises.
- Un des problèmes importants est la dispersion géographique et les difficultés linguistiques (non seulement au moment de la mise en place, mais aussi après), qui entravent souvent la communication lors de la préparation de la demande de création d'un groupe spécial de négociation (GSN : l'organe qui négocie la mise en place d'un comité d'entreprise européen) avant que les ressources pour l'interprétation ne deviennent disponibles. Cela est aussi vrai pour l'échange d'expériences et de pratiques de CEE mis en place. Des lignes de budget disponibles à la DG Emploi pourraient être utilisées pour faciliter de tels dialogues et échanges. Les partenaires sociaux au niveau européen ont une fonction importante de coordination à cet égard et pourraient avoir un rôle plus formel au moment de l'intention de mettre en place un CEE.
- Il est aussi évident que les efforts nécessaires à la mise en place des CEE sont plus susceptibles de naître dans des entreprises plus grandes, établies dans des pays à forte tradition de représentation du personnel. Un soutien financier et autre pour l'établissement de tels dialogues pourrait donc particulièrement se concentrer sur les entreprises plus petites et sur les pays faisant preuve d'un plus grand besoin de renforcement des capacités parmi les organisations d'employés et les employeurs en relation avec les mécanismes transnationaux d'information et de consultation.

Le fonctionnement des CEE existants (et prévus) peut être amélioré en assurant la clarté des définitions d'information, de consultation et de transnationalité dans les accords de CEE. Une étude menée par la DG Emploi évalue la transposition et la mise en œuvre de la Directive de refonte qui inclut une évaluation de l'impact de la nouvelle définition de la transnationalité. En l'absence de celle-ci, des accords de processus établissant la manière dont l'information et la consultation doivent être organisées dans la pratique peuvent fournir une solution.

La capacité des syndicats et de l'employeur à organiser des processus convenus et légitimes pour l'élection des représentants des CEE sont aussi importants, et les organisations de partenaires sociaux européens peuvent jouer un rôle en fournissant une expertise pertinente et une assistance dans ce domaine. Les accords de CEE doivent aussi préciser la manière dont les opinions d'employés de pays pouvant ne pas remplir les conditions pour avoir leurs propres délégués au CEE peuvent être entendues.



La Directive de refonte a fourni des droits à la formation et à des équipements appropriés pour les membres du CEE. Des informations sur l'application de ces droits dans la pratique doivent être partagées dans les forums mis en place par les partenaires sociaux européens, et les problèmes devraient être soulevés dans les CEE, l'expérience montrant que de tels sujets peuvent être généralement traités lorsqu'ils sont portés à l'attention du siège de l'entreprise.

Quant à la législation existante, une évaluation de sa mise en œuvre est actuellement en cours, mais cette étude a indiqué que certains problèmes persistent dans la pratique de la consultation dans des situations de restructuration et dans l'interprétation de sujets transnationaux. A nouveau, des accords de processus sur la manière dont l'information et la consultation doivent être organisées dans la pratique pourraient aider à cet égard.

La question de la disponibilité de sanctions dissuasives en cas d'échec de la consultation dans des délais respectables a été soulevée à l'atelier tenu le 10 septembre, dans le cadre de cette étude, et pourrait être considérée plus en détail.

De manière générale, un grand intérêt a été montré pour un meilleur échange d'informations, qui pourrait être facilité en améliorant les bases de données existantes avec des documents à jour sur les accords de CEE, les noms des contacts et le contenu des accords conclus dans les CEE.

## 1 Introduction

ICF International was appointed by the European Commission, DG Mobility and Transport, in December 2014 to carry out a study to evaluate the effectiveness of European Works Councils (EWCs) in the transport sector (Ref: MOVE/B3/SER/2014-260/S12.698836).

The overarching goal of the assignment was to provide a **comprehensive overview of objectives, activities and practical organisation of European Works Councils (EWCs) in the EU transport sector**. The **functioning of EWCs in relation to information and consultation of workers** was also considered, especially in restructuring situations, together with an assessment of the extent to which transport sector EWCs are meeting their own objectives. The assignment also explored and identified **the challenges transport sector EWCs face** in carrying out their activities and achieving their main objectives. **Future prospects for transport sector EWCs** were assessed. Finally, the assignment aimed to provide **recommendations for increasing the number and improving the functioning of EWCs** in the sector.

The study took place within the context of a **growing emphasis on social issues** within the transport agenda of DG MOVE, including in relation to social dialogue. Therefore the study also considered **how EWCs were contributing and could in future contribute to the realisation of the EU transport policy** especially in the context of transnational restructuring and the evolution of the transport policy, which places greater emphasis on skills development and on enhancing the attractiveness and competitiveness of the sector. The impact of EU transport policies and trends on EWCs in the sector was assessed, as well the impact of the recast EWC Directive.

This document is the final report setting out research findings gathered between January and September 2015 including information and examples presented at a seminar organised as part of the project on 10 September 2015.

The remainder of the report is structured as follows:

- Section 2 describes the analytical framework and the method applied to gather information;
- Section 3 provides a summary of the literature examined to understand transport subsector specific policies and developments potentially impacting on companies and their EWCs as well as literature analysing the functioning of EWC and their effectiveness;
- Section 4 provides information on the current picture of the number of companies that have an EWC; those that meet the threshold to establish one, but have not done so and the respective reasons for this;
- Section 5 describes the general characteristics of the EWCs that were interviewed for this study;
- Section 6 gives information about the functioning and the type of issues addressed in the EWCs that were interviewed for this study;
- Section 7 discusses the objectives and performance of information and consultation procedures in EWCs and their impact in cases of restructuring
- Section 8 discusses the strengths and weaknesses in the functioning of existing EWCs;

- Section 9 concludes on the study findings;
- Section 10 provides policy recommendations arising from the findings of the study.

## 2 Study approach and methodology

### 2.1 Approach

The methodology for this study combined both primary and secondary data collection. The study approach built on:

- In-depth interviews (both face to face and telephone) with employee and employer representatives of transport sector EWCs as well as social partners / industry bodies operating at EU/international level;
- An online survey of sectoral social partners organisations (at national level) in the EU-28;
- An extensive review of literature and databases; and
- Primary research on transport companies in the EU to establish how many additional companies meet the size criteria set in EWC legislation, but have not (yet) established one.

An analytical framework was drafted and then updated to display the type of information gathered as part of the assignment. The framework brings together the information gathered as part of different research methods and steps.

*Table 1. Analytical framework, EWCs in the European transport sector*

General objectives	Specific objectives / indicators
Baseline data on EWCs in the transport sector	Number of EWCs currently operating in the transport sector; number of EWCs in different sub-sectors (post <sup>31</sup> & logistics; tourism <sup>32</sup> , services; aviation; passenger transport; maritime / ports (logistics); rail)
	Number of companies in the transport sector and in different sub-sectors / modes that would qualify for an EWC
The scope and key features of EWCs in the transport sector	Countries covered by transport EWCs, including the global and European HQ country
	Number of employees covered by the EWCs (company as a whole, EU/EEA and European headquarter country); number of countries in which the company operates
	Date of establishment of the EWC; Elaborate main reasons that triggered the set up negotiations of the EWC
	Renewal of EWCs (reasons for modifications, experiences with renegotiations of EWC agreements, need for further renewal)
	Establish the legal background of the EWCs (e.g. were they set

<sup>31</sup> It should be noted that the postal sector does not fall under the remit of DG MOVE and postal sector companies were included primarily to reflect their role in delivering complex logistics functions either by road, rail or air.

<sup>32</sup> Similarly, tourism services are outside the remit of DG MOVE but were included here because of the transport functions of many of these companies (e.g. ownership of airlines, cruise ships etc.).

General objectives	Specific objectives / indicators
	<p>up under Article 13 or 6 of Directive 94/45/EC or under the rules of the Recast Directive)</p> <p>Governing legislation of the agreements (MS legislation), including the reason for choosing this legislation</p>
<p>Composition of the EWCs in the transport sector</p>	<p>Total number of EWC members, including employee and employer representatives; trend in the number of EWC delegates since the EWC was first established</p> <p>Procedure for appointing EWC delegates in different countries; potential associated difficulties</p> <p>Term of office for EWC members and actual time served on the body</p> <p>Representativeness of EWC members (number of countries represented / not or only indirectly represented); impact on the operation of the EWC and representation of workers; methods for taking into consideration the views of employees not directly represented at the EWC; position of employees from non-EU countries</p> <p>Role of transnational trade unions in the EWC (negotiation or operation)</p>
<p>Practical operation of EWCs in the transport sector</p>	<p>Existence of steering committees, working groups and preparatory meetings for employee representatives; core tasks and themes</p> <p>Number of annual plenary meetings, steering committee meetings and working group meetings; trend in the number of different types of meetings</p> <p>Provision in the agreement to hold extra-ordinary meetings; number of extra-ordinary meetings held since the setup of the EWC</p>
<p>The objectives and achievements of EWCs in the transport sector</p>	<p>Objectives of EWCs; main achievements of the EWCs related to the objectives</p> <p>Performance of the EWCs; reasons for successes/challenges</p> <p>Strengths and weaknesses of EWCs</p>
<p>Functioning of EWCs in relation to information and consultation</p>	<p>Definitions of information, consultation and transnationality in the EWC agreements; interpretation of the terms in the absence of definitions</p> <p>Assessment of the functioning of EWCs in relation to information, consultation and focus on transnational matters; reasons for the assessment</p>

General objectives	Specific objectives / indicators
of employees, especially in restructuring situations	<p>Trends in the functioning of EWCs in their role as forums for information and consultation of employees in transnational matters in the last 10 years</p> <p>The role of EWCs in past restructuring situations; the timing and extent of information and consultation, ability to formulate alternative proposal, impact of the proposals on restructuring processes</p> <p>The potential future role of EWCs in transnational restructuring situations</p>
Functioning of the role of employee representatives of EWCs	<p>Availability of training days for EWC employee representatives; assessment of a right to training, content of training</p> <p>Availability of time off for EWC members to perform their function as employee representatives; differences across countries, assessment of a right to time off</p> <p>Availability of facilities for EWC members to perform their function as employee representatives; assessment of a right to such facilities</p> <p>Access to paid, external expertise for employee representatives of the EWC and use made of such expertise</p> <p>Trends in the rights of employee representatives in the past 10 years</p>
Coverage of European issues addressed by the EWCs	<p>Economic and financial situation of the company; Corporate strategy and investment; Changes to working methods / organisation; Probable development of the business, production and sales; Company structure; Closures or cutbacks; Mergers, take-overs or acquisitions; Transfers / relocation; Employment situation and forecasts; Collective redundancies; Skills agenda / training of employees; Equal opportunities; Health and safety; Working time; Labour mobility; EU transport policy; Attractiveness of the sector as an employer; Working conditions; Other</p>
Challenges faced by transport sector EWCs	<p>Challenges faced; employer and employee viewpoints</p> <p>Recommendations for avoiding and overcoming challenges</p>
Reasons for unsuccessful set up negotiations and cancellation of EWCs	<p>Number and reasons for failures in initial negotiation</p> <p>Reasons for cancellation of transport sector EWCs</p>

General objectives	Specific objectives / indicators
Future prospects for EWCs in the transport sector	Changes expected, affecting the work of EWCs (employer and employee viewpoints); impact of the recast Directive
	Contribution of transport sector EWCs on EU transport policy
	The effect of EU transport policy on the set up or functioning of EWCs
	Recommendations for preparing EWCs to manage expected changes

## 2.2 Methodology

### 2.2.1 Transport sector: definitions and scope

For the purposes of this study we have used the *NACE rev.2. H* definition of 'transport and storage'. These include the following Nomenclatures:

- 49 Land transport and transport via pipelines
  - 49.1 Passenger rail transport, interurban
  - 49.2 Freight rail transport
  - 49.3 Other passenger land transport
  - 49.4 Freight transport by road and removal services
- 50 Water transport
  - 50.1 Sea and coastal passenger water transport
  - 50.2 Sea and coastal freight water transport
  - 50.3 Inland passenger water transport
  - 50.4 Inland freight water transport
- 51 Air transport
  - 51.1 Passenger air transport
  - 51.2 Freight air transport and space transport
- 52 Warehousing and support activities for transportation
  - 52.1 Warehousing and storage
  - 52.2. Support activities for transportation
- 53 Postal and courier activities
  - 53.1 Postal activities under universal service obligations
  - 53.2. Other postal and courier activities

We excluded 49.5 'Transport via pipelines' but we broadened the scope of the transport and storage sector by including 'mobile food services in air transport' and 'travel agencies and tour operators and related activities' division 79 focussing on those tour operators that run their own passenger air transport companies or tourist

companies moving people and operating on a global scale. As indicated in footnotes 1 and 2 above, the postal and tourism sectors fall outside the remit of DG MOVE, but were included here because of the role of many postal companies in delivering logistics services by air, land and sea and because of the ownership, for instance, of airlines by a number of tourism operators. By the same token, a number of other companies which also have significant interests in the transport sector have not been included in our sample, as their share of transport operation is relatively low (e.g. the food and beverage company Oetker in Germany operating Hamburg Süd container transports)

The selected classification has allowed the study team to include more active EWCs in the study sample than originally identified in the terms of reference. The number of transport EWCs under review **increased from 21 (mentioned in the terms of reference) to a total of 39 possible EWCs** of which:

- 29 proved to be active EWCs (see next section 2.2.2)
- 10 had ceased to exist, are still under negotiation, are not active or were never set-up (see section 2.2.3).
- The original and revised samples of EWCs were gathered on the basis of information on the European EWC database ([www.ewcdb.eu](http://www.ewcdb.eu)) and information from social partners.
- As indicated above, during a seminar that was held on 10 September 2015 as part of the project information was provided that potentially more active EWCs in the transport sector exist, namely in the following companies: GYSEV (cargo railways) and BCD Travel (business travel, tourism services) and American Express (tourism and travel). In addition there are some companies with a EWC established that are not typical transport sector companies but do have transport business lines. These are: Oetker Group (Maritime Transport and Logistics – Hamburg Süd) and Securitas (Transport and Logistics). These companies have not been included in the study sample.
- Thus on this basis it can be established that in total there are 34 active EWCs in the broadly defined transport sector.

### **2.2.2 Interviews with employee and employer representatives of EWCs**

As mentioned above, the study sample of EWCs was extended from the original 21 foreseen in the terms of reference to possible 39 EWCs. Of the 39 possible EWCs, 29 (or 34 including those identified during the conference of 10 September mentioned above) proved to be 'active EWCs' – in other words, EWCs that were in operation at the time of research (see section 2.2.3 for information for the remaining 10 companies that were mentioned as EWCs that ceased to exist, are still under negotiation or are not active any more).

In total, 23 out of the 29 EWCs identified by the study team were covered either through both employee and employer interviews, or with an interview with the employee side only. Specifically:

- 12 EWCs were covered by both employer and employee interviews
- 11 EWCs were covered through interviews with employee representatives only

Six EWCs have not been covered through interviews due to refusals to participate, failure to reply to the inquiry, lack of time of the individuals, or inability to locate the



correct individuals involved with the EWC. Numerous avenues were explored to secure participation.

Therefore, a **response rate of 79% was achieved at the end of the study**, hence **exceeding the typical response rate** of around 60% of EWCs interviewed for similar studies.

A full overview is given in Table 2.2 below. For reasons of anonymity requested the following list does not distinguish those companies that did not participate in the interviews.

Table 2. Overview Study Sample

Post, Passenger (by road and rail), Road Transport and Logistics	Maritime transport (incl. passenger transport), maritime services	Aviation (passenger and cargo), aviation services	Tourism
Itella		AirFrance/KLM	TUI
TNT	Hapag Lloyd	British Airways	CWT
Kuehne+Nagel	DP World	Easyjet	Thomas Cook
Deutsche Bahn	Scandlines	LSG Skychefs	
Gefco Logistics		International Airlines Group (Iberia and Vueling)	
GeoPost		Aviapartner	
Keolis			
Veolia Transdev			
SNCF			
CEVA Logistics			
Deutsche Post DHL			
Fedex			
UPS			
Austrian Rail OBB			
STEF TFE			
Curt Richter			

- Face to face interviews were carried out with nine EWCs. These face-to-face interviews allowed the researchers to explore some of the key topics more in-depth than telephone interviews, including a more detailed discussion of achievements and challenges.
- In terms of the profile of interviewees, on the employee side most interviewees were EWC chairs, but also included deputy chairs, long-standing members of the EWC, an independent expert working for an EWC and, as indicated above, EWC employee representatives from non-headquarter countries. Employer

representatives included HR directors and managers as well as company legal officers.

The main **reasons for interviews not taking place** include the following:

- Interviewees taking several weeks, in some cases months, and dozens of calls and emails to get them to agree on a date (and in some cases it was not possible to obtain agreement)
- Refusals to take part due to lack of time
- Last minute cancellations of telephone interviews
- Difficulties in identifying the right individuals, especially when dealing with companies which have headquarters outside the EU and when contacted, the companies refusing to give out names of individuals involved with the EWC

A number of **strategies have been used to maximise** the number of interviews undertaken:

- Native speakers have been allocated to identify and contact potential interviewees
- A higher than foreseen number of interviews have been undertaken face-to-face
- The letter of support from EC has been made available to all potential interviewees
- The September 2015 project seminar has been used as an incentive
- The importance of highlighting the views and perspectives of both 'sides', employers and employees, has been stressed
- National, sectoral trade unions have been contacted to identify relevant individuals

### 2.2.3 Consultations with unsuccessful and 'failed' EWCs

- One of the goals of the assignment was to explore the reasons for failures in initial EWC negotiations or in operations, resulting in a dissolution of EWCs or failure to set up an EWC (despite the possibility that the subsidiary rules could apply) in the sector or non-activity of an agreed EWC. The original information was obtained from the EWC database ([www.ewcdb.eu](http://www.ewcdb.eu)), which is sometimes out of date, and the main research methods to update this information included the following:
  - Short consultations with trade unions
  - Short consultations with current and former shop-stewards
  - Short consultations with EWC experts
  - Web-research (in native languages)

Table 2.3 below shows the companies assessed during this exercise and results of the research. Reasons why EWC set up processes were unsuccessful and challenges during negotiations are further explained in Section 4 of this report.

*Table 3. Information on EWCs under negotiations or failed (according to [www.ewcdb.eu](http://www.ewcdb.eu))*

<b>Company name/ Sector</b>	<b>Information researched/Interviews</b>
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<b>Company name/ Sector</b>	<b>Information researched/Interviews</b>
Eurokai/ maritime transport	No evidence of an EWC having been set up. Research showed that company has a dispersed ownership of several companies, mostly active in DE and IT. However it was not clear whether Eurokai based in Germany effectively managed their Italian daughter company Contship Italia. In this case Eurokai is not actually the 'controlling undertaking' as set out by the EWC Directive - they do not need to set up an EWC for Eurokai and Contship but may have to set up an EWC for each entity. When analysing the structure of both entities separately they seem to be currently nationally acting organisations. <sup>33</sup>
National Express Group/ road passenger transport	No active EWC. No further information whether a EWC agreement exists. The company could qualify to fall under the rules of the EWC Directive as the Group is also active in Spain (since 2005). Overall the company employs 42,000 people.
Tallink AS / maritime transport	No active EWC. There were discussions around 2006/2008, especially on the part of employees and seafarers trade union in Estonia, to pursue this and the early efforts were at least partially supported by the seafarers' unions in Sweden and Finland. The interest arose when Tallink AS bought a large Finnish cruise ferry company, Silja Line, and thereby became a much larger employer. Eventually, the lack of consistent trade union drive across the countries to take it forward and some mistrust issues between unions meant the initiative was not taken forward. The company falls under the EWC rules, as it operates in Sweden, Finland, Estonia and Latvia and it employs about 6,900 workers.
Lufthansa / aviation	There is an Art. 13 EWC agreement in place (prior entering into force of the EWC Directive 1994) but currently the EWC is not active.
Wincanton / road transport	No longer qualifies under EWC rules: Sold all EU operations and currently only active in the UK.
Aer Lingus / aviation	An EWC agreement is in place but the EWC is not active.
Alitalia / aviation	EWC was not renewed. In 1998 introduction of a scheme of employee shares in the company (20.5%) - Alitalia agreed to have 3 employee representatives on the Board of Directors. The company was twice in situations close to bankruptcy; restructuring and significant employee layoffs. Etihad Airways (United Arab Emirates) took over 49% of Alitalia in 2014.
DSV Logistics Group / road transport	EWC under negotiation for three years: currently subsidiary rules of the 2009 Recast Directive apply – the negotiations for an actual EWC agreement are still on-going.
World Flight Services / aviation	EWC is under negotiation – currently the subsidiary requirements of the 2009 Recast Directive apply.

<sup>33</sup> <http://www.euro-betriebsrat.de/pdf/eurogatede.pdf>.

Company name/ Sector	Information researched/Interviews
services	
Stagecoach / road passenger transport	EWC ceased to exist. The EWC agreement was negotiated in 1998 by Swebus AB a partner company of Stagecoach. However in 2000 Swebus AB was sold to Concordia Bus AB and Swebus is now called Nobina. The EWC dissolved thus due to de-merger and no new EWC agreement exists within Stagecoach.

It seems that there may be more EWC agreements or agreements for other forms of companywide social dialogue in multinational companies in place in transport companies but because there is no central register (nor obligation to register) such types of agreements or knowledge about them remains very limited.

### 2.2.4 Interviews with European social partner representatives

A total of 15 social partner organisations operating at EU/international level in the transport sector were contacted as part of a stakeholder consultation for the study.

These contacts were organised in the following manner:

- The initial contacts were made during the period of March to May 2015.
- Those who did not react were contacted again after one or two weeks after the initial request.
- In total 13 of the 15 European sectoral social partner organisations contacted replied to the request but only six organisations agreed to an interview: three employers’ organisations (ACI Europe, ECSA, IACA) and three representative organisations for workers (ETF, European Cockpit Association (ECA), UniEuropa).

Seven employers’ organisations declined to take part in an interview due to EWCs not being discussed at European level within their organisation or with their national members and/or because of a lack of official position on the issue<sup>34</sup>.

It should be mentioned that the sector of “logistics or warehousing” is not formally represented European level which made also the assessment of this sector or even the clear separation of this sector from other activities difficult.

### 2.2.5 Survey of national sectoral social partners

#### 2.2.5.1 Background

An online survey of (national) sectoral social partner organisations operating in the transport sector was launched 15 April 2015.

The survey was delivered via the SNAP surveys platform<sup>35</sup>.

<sup>34</sup> Furthermore, one organisation responded by stating that they could not take part in the study because they do not represent a significant number of companies (employers) so they found that it would be disproportionate to reply. Two organisation did not reply after more than four emails and telephone contacts.

<sup>35</sup> <http://www.snapsurveys.com/> - this is a company providing technology to run online surveys.

### 2.2.5.2 Survey dissemination

A two-channel approach to disseminating the survey was considered:

- The preferred approach was to ask the EU level sectoral social partner organisations to distribute the SNAP survey link through their own networks. This was the preferred approach as it increased the legitimacy of the survey by having the 'support' of the European representative body.
- A total of five EU level social partners agreed to this (ETF, UniEuropa, ECA; IRU, ECSA) and the survey was disseminated to their member organisations.
- The second planned approach involved the study team identifying and gathering contact details for the organisations in question and sending out the survey directly. This approach was not used for three main reasons:
  - Some organisations stated that they do not represent companies that could be considered "community-scale undertakings" (having more than 1,000 employees and more than 150 employees in two Member States). For example, ESPO named the three biggest companies that satisfy at least the condition of having more than 1,000 employees. ECSA informed the team that while there were willing to distribute the survey, the Recast Directive was in a number of EU Member States not applicable to the maritime sector thus excluding a number of big enterprises from its scope.
  - The rest of the organisations contacted represented companies rather than national social partner organisations.

Overall, the survey was disseminated to 321 contacts in national social partner organisations (possibly also beyond European Union countries). However a number of the trade union organisations may have been double counted (due to overlap between ETF and UniEuropa members). Table 2.4 below offers an overview of the number of organisations the survey was distributed to.

Table 4. Stakeholder consultations

European social partner organisation	Number of member orgs
European Transport Workers' Federation (ETF)	167
IRU (International Road Union)	76
UniEuropa	34
ECA	24
ECSA	20
<b>Total</b>	<b>321<sup>36</sup></b>

### 2.2.5.3 Activities undertaken to increase response rate

The original deadline for survey responses was 18 May 2015. Due to the low number of responses, the deadline was extended twice and reminders were sent to the organisations in the sample. The last deadline was 5 June 2015

The survey was available in English but the respondents were given an option to respond to the open-ended questions in their own language. In order to increase

<sup>36</sup> Though some double-counting may still be possible.

furthermore the response rate the survey was also translated into French and German.

#### **2.2.5.4 Survey responses**

Despite several deadline extensions and encouragement to respond, only 11 organisations responded to the survey.

The key characteristics of this sample are as follows:

- In terms of country breakdown, most responses were received from the UK (3). One response per country was received from Austria, Denmark, Finland, France, Germany, Lithuania, Malta and the Netherlands.
- 7 out of the 11 responses came from workers' representatives, 3 from employer representatives and 1 from an industry association.
- The aviation sector was best represented with 8 responses, followed by post & logistics.

#### **2.2.6 Literature review**

A literature review has been carried out to analyse the effects of EU transport policies on corporate structures and transport companies impacting indirectly on employment levels and the creation and work of EWCs. A review of literature sources was undertaken to understand what kind of impact of EWCs have had on transport companies to be able to further explore these findings in interviews.

#### **2.2.7 Identification of transport sector companies eligible for an EWC**

Research has been undertaken to identify companies in the different transport sectors (as defined for this study) that could be identified as "community-scale undertaking" (according to the Recast Directive, this includes companies with more than 1,000 employees having more than 150 employees in at least two different Member States).

This research has been partially supported by a database that was developed by the ETF in 2008, which was shared with the research team. This list included about 40 companies from different transport subsectors; this list has been updated and companies have been checked again to review their current position. Partially, information was used from the European database EWCs ([www.ewcdb.eu](http://www.ewcdb.eu)) that also includes lists per sector of companies that qualify but have not set up an EWC. However, each link needed to be checked as some information was outdated.

In addition, the study team carried out desk research to further investigate the larger companies in the different transport sub-sectors. This research proved to be challenging as a number of transport companies are active in different transport sub-sectors and are often characterised by complex company structures. This made it difficult to understand whether companies have actual control over those branches as set out under Article 3 of the Recast Directive. In addition, there are a number of worldwide players in different transport sub-sectors. It was also a challenge to find out the exact number of employees in different Member States, as such information is rarely included in annual company reports.

This exercise has resulted in the creation of a database of 74 companies which appear to meet the criteria for the setup of an EWC but which do not currently operate one. The results of this exercise are presented in section 4.

The final approach used to identify further “community-scale undertakings” without an EWC was through further interviews with national social partners. However, this approach yielded little information.

### 3 European Transport Policies – impact on EWCs

This section is based on a literature review on EU transport policies and trends impacting on the structure and functioning and the subject matters addressed by EWCs. It provides:

- A short introduction to EWCs;
- A policy background looking at the integration of the EU transport sector and the development of legislation on workers' information and consultation rights;
- Effects of the development of the internal market on corporate organisational structures and employment trends in the transport sectors thus potentially impacting on the work and types of issues addressed by EWCs and the creation of additional EWCs; and
- Findings from the literature on effectiveness and impacts of the EWCs in general and in the transport sector in particular.
- The literature review concludes with a summary of key findings from the review, which inform / have informed primary research conducted as part of this study. Importantly, in some places, this review is complemented by findings from our own research so as to compare the findings from the literature or to provide a more up-to-date picture of the situation.

#### 3.1 Introduction to EWCs

EWCs are bodies representing employees in transnational companies. They seek to ensure that employees are **informed and consulted by management on any transnational business issue or decision that could have an impact on the employment and working conditions of employees**<sup>37</sup>. The legal basis for the setting up of European Works Councils was established by Directive 94/45/EC. This was particularly relevant in the context of a European single market where more and more firms operated on a transnational level in the EU, EEA and beyond. EWCs create the framework for a link between employees in different Member States who are a part of the same company or group and ensure that there is a structure enabling effective dialogue within these entities.

The Directive introduced the right to establish an EWC (or another procedure for informing and consulting employees) in Community-scale undertakings employing at least 1,000 employees within the EU Member States and at least 150 employees each in at least two Member States.

Negotiations to establish an EWC have to be initiated either by a request from 100 employees from two countries or an initiative by the employer. A special negotiating body (SNB) is established composed of central management and employee representatives. It decides on the composition, competences and functioning of a EWC<sup>38</sup>. In accordance with the principle of subsidiarity, Member States are free to determine the method to be used for the election or appointment of the members of the employees' representatives who will sit in the SNB<sup>39</sup>. An agreement is signed

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<sup>37</sup> European Commission, European Works Councils. Available at: <http://ec.europa.eu/social/main.jsp?catId=707&intPageId=211&langId=en>

<sup>38</sup> Article 5 of Recast Directive

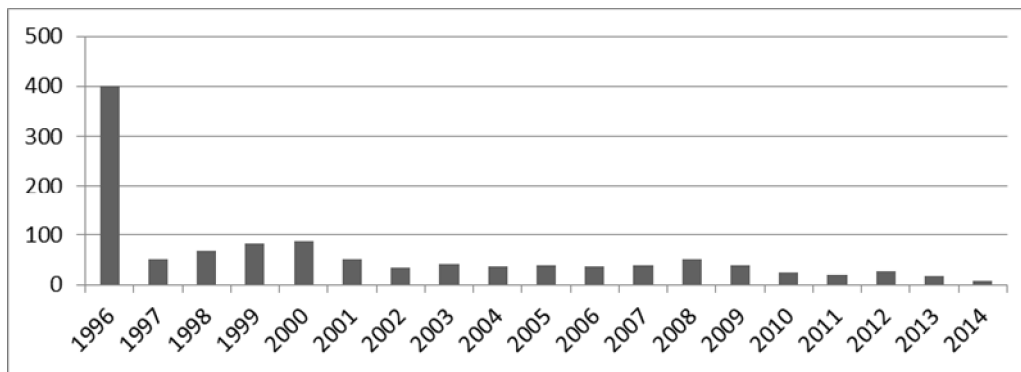
<sup>39</sup> Eurofound, European Works Councils. Available at: <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/europeanworkscouncils.htm>



between management and employee representatives of the different countries to set the rules regarding the composition and the functioning of each EWC. In the absence of agreement being reached within a given time limit (or upon the decision of both negotiating parties), subsidiary requirements apply<sup>40</sup>.

According to the database of European works council agreements ([www.ewcdb.eu](http://www.ewcdb.eu)), 1,296 EWCs have been created to date, out of which **1,048 are still considered to be active**<sup>41</sup>. The trend of the newly created EWCs shows that after an initial peak in 1996, the number of EWCs set up has declined to an annual average of around 50 up to 2009, and to around 20 in the post-2009 period (see Figure 3.1).

Figure 1. Number of created EWCs 1996-2014



Source: EWC database (ETUI).

Most of the EWCs active in November 2013 had their headquarters in Germany (about 200 EWCs) or in the US (with more than 160 EWCs)<sup>42</sup>. Many companies with headquarters in France, UK, Sweden or the Netherlands also operate an EWC. Only a few EWCs are established in companies having their headquarters in southern Member States such as Spain, Cyprus, Portugal or Greece.

Data shows that **EWCs tend to be created in very large enterprises** but also in companies operating in more than ten EEA countries. Indeed, more than half of the active EWCs (52%) in 2013 were created in companies operating in more than ten EEA countries against 17% operating in less than 5 EEA countries.

It is worth noting that other countries which are not part of the EEA are not exempted from the scope of the Recast Directive if they operate in EEA countries and meet the employee size thresholds here. As a result, EWCs are also established in companies having their headquarters outside the EEA such as in the US, Switzerland, Japan, Canada, Australia and South Africa<sup>43</sup>.

It should also be noted that the EU accession process was key to the development of existing EWCs (in terms of the size of representation on the part of employees). Indeed, a larger number of EU Member States goes hand in hand with a growing involvement of employees' representatives from these countries. In 2013, out of the

<sup>40</sup> Article 6 of the Recast Directive

<sup>41</sup> <http://www.ewcdb.eu/index.php>

<sup>42</sup> Location of the company's HQ determines the applicable national legislation.

<sup>43</sup> ETUI, EWC bodies currently active, by country of headquarters. Available at: [http://www.ewcdb.eu/documents/freegraps/2013\\_11\\_EN.pdf](http://www.ewcdb.eu/documents/freegraps/2013_11_EN.pdf)

1,048 active EWCs, 270 included one or more representatives from a Member State that joined the EU in 2004. In some of the newer Member States, the election of EWC representatives provided particular challenges in the absence of a strong national tradition of employee representation and information and consultation. This is something that is experienced by a number of transport sector EWCs too, as shown by the latter parts of the report.

**Transport sector EWCs make up a relatively small share of all EWCs created to date.** According to information from the EWC database, they make up around 2.5% of all active EWCs, although our research raises this figure to 2.8%<sup>44</sup>. As will be shown below, the share of employment in the transport sector (of EU total employment) is 5%.

The integration of the EU transport sector and the development of legislation on workers' information and consultation rights

The European transport industry is characterised by intensified internationalisation since the 1990s. EU-level regulatory activity has encouraged the opening of national markets with the aim of creating a single European transport market in order to achieve increased interoperability, efficiency, mobility and competitiveness. The first major initiative in this regard was the Commission's White Paper of 1992 on the future development of the common transport policy which laid the groundwork for the opening and integration of the European transport market.

This initiative followed on from the 1986 Single European Act and the Maastricht Treaty signed in 1992. It marks the transition from the completion of the internal market of the provision of services towards a more comprehensive policy designed to ensure the integration and harmonisation of Europe's transport systems<sup>45</sup>. The drive towards further European integration at that time led to market concentration in the EU transport sector.

The **European Works Councils Directive was adopted in 1994, at a similar time as opening of European transport markets started to take shape.** As noted in a study entitled 'Uneven Geographies of Capital and Labour: The Lessons of European Works Councils'<sup>46</sup>, EWCs are designed to bridge the information and representation gap for employees in transnational companies which are characterised by common corporate ownership and often by strong central control while being linked to complex webs of connection with small and medium sized firms (SMEs).

Further integration in the European transport sector was pursued throughout the rest of the 1990s, notably with the **establishment of the Trans-European Transport Network (TEN-T)**<sup>47</sup>. Having gradually expanded its activities to various transport subsectors, the key objectives of the TEN-T are to improve the inter-operability of all transport infrastructures across the EU in order to improve the mobility of persons and goods.

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<sup>44</sup> Based on a calculation that there are 29 active EWCs in the transport sector (29 EWCs out of a total of 1,048 active EWCs).

<sup>45</sup> The future development of the Common Transport Policy, White Paper drawn up on the basis of COM(92) 494 final [http://aei.pitt.edu/1116/1/future\\_transport\\_policy\\_wp\\_COM\\_92\\_494.pdf](http://aei.pitt.edu/1116/1/future_transport_policy_wp_COM_92_494.pdf)

<sup>46</sup> Wills, J. (2001): Uneven Geographies of Capital and Labour: The Lessons of European Works Councils, Queen Mary, University of London, London

<sup>47</sup> Decision No 1692/96/EC on Community guidelines for the development of the trans-European transport network

The scope of EU-level initiatives in the transport area became greater in the early 2000s building on the TEN-T and reflecting the ongoing concentration in the sector. The Commission's White Paper entitled 'European transport policy for 2010: time to decide' published in 2001 identified specific actions to be undertaken to achieve a modern transport sector based, amongst other things, on social considerations and environmental sustainability. This initiative was to guide EU transport policy until 2010 by promoting the integration and harmonisation of all modes of transport, the improvement of the end user experience and of working conditions for transport sector workers. Against this background, a number of rules were implemented to harmonise health and safety standards for transport sector workers such as under Regulation 561/2006 on the harmonisation of certain social legislation relating to road transport and Directive 2005/47/EC on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector.

Likewise, 2001 was the year of adoption of the First Railway Package<sup>48</sup> which opened up national railway infrastructures to competition from other EU Member States by enabling all EU rail operators to have access to the TEN-T on a non-discriminatory basis.

At the same time, consultations on a possible review of the EWC Directive started in the early 2000s, partly as a result of criticisms of the operation and effectiveness of existing EWCs (and underpinning rules) from the trade union side, and the increasing complexity of EU worker information and consultation legislation. It was particularly noted that definitions of key concepts such as 'information', 'consultation' and 'transnationality' were not sufficiently clear, not present in all legislation or differed between the various relevant EU Directives. Clarification was therefore seen to be required, among other things to allow EWCs to play their intended role more effectively in restructuring situations.

This was also borne out by a study carried out by ICF (at the time GHK as lead in the EPEC consortium)<sup>49</sup> which had pointed out a lack of clarity in the 1994 EWC Directive as regards which parties should be consulted first in restructuring cases and the lack of involvement of all employee representatives – ahead of major restructuring.

On 31 March 2005, the Commission issued a Communication entitled 'Restructuring and Employment'<sup>50</sup> which launched the second phase of consultation of the European social partners on company restructuring and EWC. The Communication emphasised that EWCs 'have an essential role to play in anticipating and managing restructuring operations' – especially those which are likely to have impacts on employment – by ensuring the involvement of workers' representatives on an ongoing basis in the running of trans-national companies.

Discussions between the Commission and the European social partners led to the adoption of the Recast Directive (Directive 2009/38/EC) in December 2008. The new Directive aims to enhance the effectiveness of EWCs by strengthening employees' transnational information and consultation rights, supporting the creation of new EWCs, enabling the continuous functioning of existing arrangements, improving legal certainty, and ensuring better links with other Community legislative instruments on the information and consultation of employees. The most important changes

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<sup>48</sup> Directives 2001/12/EC, 2001/13/EC and 2001/14/EC

<sup>49</sup> EPEC (2010); A Preparatory Study for an Impact Assessment of the European Works Councils Directive

<sup>50</sup> COM (2005) 120 Final

introduced were the clarification of the terms 'information', 'consultation' and 'transnational' for a better application of the rules.

At the same time, EU transport policies have increasingly taken into account employment-related considerations with the objective of building a skilled workforce whilst ensuring adequate working conditions for all employees in the sector<sup>51</sup>. This has taken place in the context of the Europe 2020 strategy.

In 2011 the Commission published its third White Paper: 'Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system' whose major objective is to set out a long-term strategy that would transform the EU transport system into a sustainable system by 2050. The White Paper emphasises the importance of policies to develop new skills for quality jobs and the responsibility of social partners in this process with proposals for information exchange on skills needs and best training practices. The aim is to address quality of work in all transport modes, regarding training, certification, and career development with a view to creating quality jobs, developing the necessary skills and strengthening the competitiveness of EU transport operators<sup>52</sup>.

The 2011 White Paper acknowledges the necessity to provide quality jobs and improve working conditions in the context of a transport market open to competition. For instance, it calls for the creation of a mechanism to analyse the impact of regulatory developments on working conditions for a socially responsible aviation sector. It also encourages dialogue between EU social partners in the road transport sector in view of an agreement on a social code for mobile road transport workers, addressing also the problem of disguised self-employment. It also recognises the need to further improve worker participation and involvement in transnational companies and EWCs to contribute to ensuring quality jobs and good working conditions.

In conclusion, the opening of transport markets has been accompanied by some EU level measures to ensure employee representation and information and consultation. The extent to which these goals have been realised in practice remain a subject of debate. This is also relevant to the discussion on the attractiveness and ultimately the competitiveness of the sector. In order to better understand differences in the development of employment and corporate structures it is necessary to analyse the policies affecting each transport subsector in particular. Thus a further assessment of policies and existing research has been carried out to understand effects of the development of the internal market potentially influencing the establishment and operation of EWCs. This analysis also contributes to further examine the role of EWCs in responding to restructuring as well as in contributing to enhancing working conditions and skills developments in the sector which are important to the further development of EU transport policy.

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<sup>51</sup> COM (2010) 682/3: An Agenda for new skills and jobs – Europe 2020 Flagship Initiative

<sup>52</sup> 2011 White Paper on transport, DG MOVE, 2011:

[http://ec.europa.eu/transport/themes/strategies/doc/2011\\_white\\_paper/white-paper-illustrated-brochure\\_en.pdf](http://ec.europa.eu/transport/themes/strategies/doc/2011_white_paper/white-paper-illustrated-brochure_en.pdf)

### **3.2 Effects of the development of the internal market on corporate organisational structures and employment in the transport sectors – factors influencing the establishment and operation of EWCs**

#### **3.2.1 General information on the EU transport sector**

##### **3.2.1.1 The size of enterprises in the EU transport sector**

The publication 'EU transport in figures – Statistical Pocketbook' for 2013 reveals that while more than three quarters of all EU transport companies operate in the road passenger and road freight transport subsectors, market concentration is far greater in the air and rail transport subsectors than in the road transport subsector.

At the same time, Eurostat data from 2012 shows that large (multinational) transport companies accounted for less than 2% of the total number of companies in the transport sector in the EU27<sup>53</sup>. This can also be explained by the predominance of SMEs in the road transport subsector. However, nearly 50% of workers in the EU transport sector are employed by large companies<sup>54</sup>. This is predominantly the case for the rail, air and postal services sector while in the road freight sector the share of large enterprises is relatively low.

The same figures provide an indication of the degree of market concentration in the various EU Member States. They show that the **British, French and German transport sectors are characterised by a higher number of large companies than the EU average**. Statistics also reveal that the air and rail transport subsectors in these countries generate relatively high turnover compared to other EU27 Member States. Conversely, in Spain, Poland and Greece the road freight transport subsector – predominantly made up of SMEs – generates a more sizeable proportion of turnover in the transport industry compared to other transport services.

Likewise, these figures also reveal that **EWCs are not distributed equally across the EU Member States**. A study conducted shortly before the deadline for the implementation of the Recast Directive confirms that significant differences exist between countries in EWC density based on the number of transnational companies headquartered. It shows that the largest economies in Europe (e.g. France, Germany, and the UK) top the EWC density ranking<sup>55</sup>.

One explanation for this trend is that national legislation on worker representation, information and consultation and well as national traditions and practices in this context, are particularly favourable for setting up EWCs. For example, worker representation in company works councils at national level plays a central role in Germany's national industrial relations model.

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<sup>53</sup> A recovery on the horizon? Annual Report on European SMEs 2012/2013, European Commission, October 2013

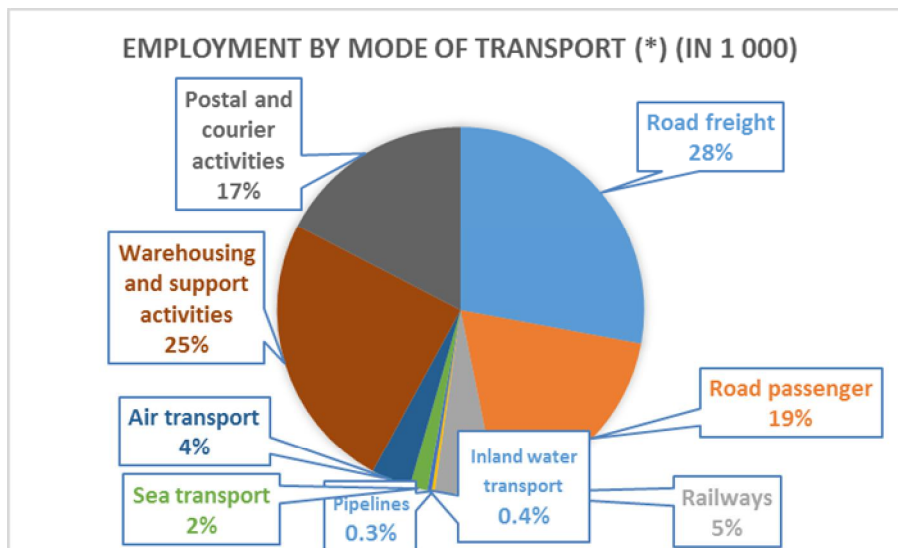
<sup>54</sup> Ibid. According to Eurostat data from 2010, the transportation and storage services sector appears to be dominated by larger enterprises. Around 3200 enterprises in the sector employ more than 250 employees and this makes up 46% of the total workforce.

<sup>55</sup> Jagodzinski. R., Pas, I., The EWC landscape on the eve of the transposition deadline of the Recast Directive Evidence from the ETUI database of European Works Councils, ETUI

### 3.2.1.2 Employment in the EU transport sector

In 2012, the **transport and related services sector employed around 10.5 million people, some 5%**<sup>56</sup> (around 6% including the manufacturing of transport equipment sector<sup>57</sup>) **of the total EU workforce.** Around 47% of them worked in road transport (road freight and road passenger transport), 24% in warehousing and supporting transport activities (such as cargo handling, storage and warehousing), 17% in postal and courier activities, 6% in rail transport, 2% in sea transport, 4% in air transport and the remaining 0.7% in inland water transport and pipelines<sup>58</sup>.

Figure 2. Employment by mode of transport in the EU, 2012



Source: European Commission, Statistical Pocketbook 2015

\*\*Including all urban and suburban land transport modes (motor bus, tramway, streetcar, trolley bus, underground and elevated railways)

Analysing the employment figures prepared by the European Commission in relation to the transport sector for the period 2008 – 2012 it can be observed that the economic crisis has impacted on employment levels in the period 2009 to 2012, slightly decreasing employment in sectors in particular for transport of goods by road, air, sea and inland waterways (and also impacting on warehousing and support services). The recovery has not yet brought a return to the employment levels of 2009 in these sub-sectors. While employment figures remained stable for road passenger transport, levels of employment in railways have continuously decreased. Postal and courier activities have also been affected by the crisis in 2009/2010 but in 2011 employment levels were again higher than in 2009. The latter subsector has been included in employment statistics for transport only since 2009 thus overall employment in transport has increased in the period 2008 – 2012. This is mainly due to increases in

<sup>56</sup> European Commission, Statistical Pocketbook 2015: [http://ec.europa.eu/transport/facts-fundings/statistics/pocketbook-2015\\_en.htm](http://ec.europa.eu/transport/facts-fundings/statistics/pocketbook-2015_en.htm)

<sup>57</sup> Employment in the EU Transport Sector. European Commission, 2014. [http://www.transport-research.info/Upload/Documents/201401/20140117\\_205136\\_81493\\_PB05\\_WEB.pdf](http://www.transport-research.info/Upload/Documents/201401/20140117_205136_81493_PB05_WEB.pdf)

<sup>58</sup> DG Employment: Sectoral social dialogue – Road transport: <http://ec.europa.eu/social/main.jsp?catId=480&langId=en&intPageId=1850>

employment in warehousing and support services, pipelines and postal and courier services subsectors. When looking at the period 2011 and 2012 the overall level of employment in transport and storage has slightly decreased.

A 2008 Eurofound report entitled 'Trends and drivers of change in the EU transport and logistics sector'<sup>59</sup> found that market opening has not necessarily led to significant cuts or increases in employment in the EU transport sector overall, but it has changed the distribution of employment across subsectors and companies in ways that can affect many workers adversely. For instance, the report points out that Full-Time Equivalent (FTE) employment per unit of transport volume in the civil aviation and rail subsectors have declined in recent years due to technological change and smaller crew sizes. More recently, the economic and financial crisis had a more important impact on employment levels in the transport sector when volumes of transport goods decreased.

Overall, the Eurofound report concludes that **increased flexibility is demanded both in occupational functions** (i.e. multi-skills jobs) and in **working time arrangements** which has a direct impact on the types of employment contract offered (e.g. increase in the number of short-term or 'on-call' contracts) but also on **remuneration packages** and, in some cases, health and safety standards. The a recent Eurofound brief (2015)<sup>60</sup> on the transport and storage sector analysing outcomes from the European Working Conditions Survey 2012 reports that after the crisis workers in the sector (in particular those working in micro companies) were faced with a reduction in working hours and salaries. Furthermore, employment conditions in the transport and storage sector are characterised by intensive work levels and low levels of autonomy in work organisation. Workers in this sector are often affected by high levels of stress and stress-related illnesses (cardiovascular diseases and mental illnesses). Most workers in these sectors are also affected by repetitive work and exposure to noise. Thus health and safety policies may be considered as an important subject for information and consultation procedures.

Another issue relates to the ageing of the workforce in the EU transport sector overall. This has been highlighted by a number of studies.<sup>61</sup> As such, labour shortages are expected in the transport sector in the years to come due to the high proportion of workers reaching retirement age. On the other hand, work in the transport subsectors is not considered as being "attractive" by the younger generation.

Further analysis of the changes in the organisation of transport sub-sector markets, recent economic trends and impact of the economic crisis shows that in all transport sub- sectors the opening to a single European transport market has generated further market concentration among key transport operators. Thus it can be assumed that the creation of EWCs continues to be challenging taking into account market pressures and high pace of market transformation which impacts on corporate structures and staff turnover.

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<sup>59</sup> Trends and drivers of change in the EU transport and logistics sector: Mapping report, Eurofound, 2008

<sup>60</sup> Transport and storage sector: working conditions and job quality, Eurofound, 2015 accessed 18 June 2015:

[http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1384en33.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1384en33.pdf)

<sup>61</sup> Eurofound, 2015, Transport and storage sector: working conditions and job quality, report – accessed 18 June 2015:

[https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1384en33.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1384en33.pdf);

Joint Research Centre, 2014, Employment, skills and working conditions in transport sector, policy reports, accessed 06 July 2015:

[http://publications.jrc.ec.europa.eu/repository/bitstream/JRC85348/move%20jobs%20midterm%20policy%20brief\\_v2.pdf](http://publications.jrc.ec.europa.eu/repository/bitstream/JRC85348/move%20jobs%20midterm%20policy%20brief_v2.pdf)

### 3.2.2 Transport of Goods, Post and Logistics

Studies relating to the transport of goods, post and logistics sector find that its situation is closely linked to the overall economic evolution of European Member States. From 1995 to 2007 the market for the transport of goods increased significantly. For instance, the road freight sector almost tripled the amount of cargo transported. This situation was more prominent in Western Europe<sup>62</sup>.

Since then, a European Commission report<sup>63</sup> notes that the economic crisis has negatively impacted the transport of goods in Europe. In 2008 there was a reduction of 2% in the activity of the road haulage sector and in 2009 this declined by a further 10%. In the following years the situation has remained variable and there has not been a complete recovery to pre-crisis figures. Moreover, the evolution has not been uniform in all Member States. Apart from the impact of the general financial and economic crisis, the rise in fuel prices has been one of the factors affecting the sector.

However, in future, the European Commission trend scenarios estimate an annual growth rate of road freight transport by 1.1% up to 2050.<sup>64</sup> According to another recent analysis, it is projected that the European logistics sector will reach a 2.9% of average annual growth rate in the short-term 2014-2019<sup>65</sup>. One of the key reason provided in this analysis which explains the positive expectations are national and EU investment initiatives in the sector and in the wider economy.

Whilst international or cross-border road transport is free from quantitative and qualitative restrictions in the EU, national transport is still subject to restrictions (e.g. as regards cabotage<sup>66</sup>) which is argued of having an adverse effect on the efficiency of the overall EU transport and logistics industry given that two thirds of all road transport in the EU is national. This situation is described in a recent Commission report on the state of play of the EU road transport market<sup>67</sup>. The report also highlights that company growth and market concentration remains fairly limited in road transport compared to other transport modes, given that many national markets remain closed to competition in the road transport subsector. On the other hand, cabotage is also seen as a driver for "social dumping" in the road freight sector due to the fact that so-called "flags of convenience" countries (those having lower business and labour costs) are used to decrease business and labour costs creating a downward spiral on workers employment conditions in the sector. For example it has been highlighted that in France, where most cabotage operations take place, labour costs are considerably higher than in other countries such as Spain or Poland. In addition, national labour legislation is stricter for this sector in particular on working times.

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<sup>62</sup> Report on the State of the EU Road Haulage Market. European Commission, 2014. <http://ec.europa.eu/transport/modes/road/studies/doc/2014-02-03-state-of-the-eu-road-haulage-market-task-a-report.pdf>

<sup>63</sup> Report on the State of the EU Road Haulage Market. European Commission, 2014. <http://ec.europa.eu/transport/modes/road/studies/doc/2014-02-03-state-of-the-eu-road-haulage-market-task-a-report.pdf>

<sup>64</sup> European Commission (2013) EU Energy, Transport and GHG Emissions, Trends to 2050, REFERENCE SCENARIO 2013; <http://ec.europa.eu/transport/media/publications/doc/trends-to-2050-update-2013.pdf>

<sup>65</sup> <http://nowthatslogistics.com/2015/01/31/good-news-for-european-logistics-projected-to-grow-at-a-cagr-of-2-9-over-a-period-2014-2019/>

<sup>66</sup> Cabotage refers to a situation in which a road transport operator registered in Member State A, carries out national transport in Member State B.

<sup>67</sup> COM (2014) 222 final: 'Report from the Commission to the European Parliament and the Council on the State of the Union Road Transport Market'



Thus, in the recent past French road freight businesses have suffered losses in profitability and the French road haulage market stagnates.<sup>68</sup>

In conclusion, with regard to the logistics and road freight transport sector, it is expected that because of the dominance of SMEs mainly active at national level, the number of large transnational corporations is limited. A question that remains is whether there is a network and linkage among road freight operators (joint ventures, or identical financial ownership (holdings); subcontracting chains that lead to the same client thus impacting on the structure of road freight operators and their economic performance), and whether these links need to be taken into account when analysing barriers of the establishment of EWCs as it can have an impact whether workers belonging to one operator need to be taken into account when examining the number of employees of another operator.

In the case of the postal services<sup>69</sup>, liberalisation dates back to the early 1990s. In order to face liberalisation and the increase in competition, European postal companies opted for internalisation and diversification strategies. The loss of their monopolistic situation pushed these companies to enter in new markets notably delivery services and logistics as a way to maintain or increase their revenues<sup>70</sup>. The internalisation strategy of these companies has however declined in the last years, due to difficulties in becoming a profitable competitor in other markets (e.g. logistics) within the context of the economic crisis. Thus incumbent postal operators tend to remain national operators typically not falling under the scope of the EWC Directive, with the exception of a few operators such as the German Post (DP DHL Group), the Finnish Post (Posti Group) or TNT Express (before part of the Dutch Post). From this analysis it appears that currently there is little additional potential among such companies to meet the relevant size threshold and set up EWCs.

In terms of the issues affecting these sectors (transport of goods and passengers, logistics, postal sector) which might be addressed through transnational information and consultation, the literature notes a decline in working conditions and job quality in particular in the recent past.

Trends towards increasing work intensity are a particular feature of the road transport sector. For instance, there has been an increase in the number of hours of active duty. This is particularly the case in the road freight and passenger transport subsectors.

Due to successive EU enlargements, there has been increasing demand for transport but also increased labour supply. This has put downward pressure on wages, particularly in the EU15. Indeed, the road transport industry has been characterised years by increased outsourcing to the EU12 Member States by EU15 companies, particularly in road freight. This has raised a number of issues around salary levels and working conditions for road transport workers across the EU 15 In this context,

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<sup>68</sup> European Parliament,(2013) Development and implementation of EU road cabotage, a study carried out by Steer Davies Gleave Consulting. Accessed the 18 June at:  
[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/495854/IPOL-TRAN\\_ET%282013%29495854\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/495854/IPOL-TRAN_ET%282013%29495854_EN.pdf)

<sup>69</sup> We have included this analysis to the report despite the fact that the postal sector does not belong under the remit of DG MOVE.

<sup>70</sup> The Liberalisation of European Postal Markets and the Impact on Employment and Working Conditions. Working Life Research Centre.  
[http://www.uniglobalunion.org/sites/default/files/files/news/post\\_report\\_forba.pdf](http://www.uniglobalunion.org/sites/default/files/files/news/post_report_forba.pdf)

the substantial differences in wages and working conditions between the EU12 and EU15 Member States has urged social partners to establish dialogue.<sup>71</sup>

Trade unions have raised concerns about potential social dumping<sup>72</sup> (i.e. reduction of wages, lowering the standards on health and safety such as not respecting rest periods for drivers or not paying social contributions in the country where the service is delivered)<sup>73</sup>. According to the European Trade Union Institute, the phenomenon of social dumping phenomenon has increased in recent years<sup>74</sup>. They highlight an example from Belgium where one of the transport workers' unions (BTB-UBOT) handed the authorities the names of 85 companies hiring drivers at well below Belgian minimum wage rates via Eastern European subsidiaries<sup>75</sup>. The recently adopted Enforcement Directive 2014/67/EC aims in particular to end abuses by introducing more information on posting and controls on the respect of the provisions of the Posting of Workers Directive 96/71/EC.

While trade unions have recently focussed more on the issue of social dumping the sector is however also affected by an ageing workforce and a growing need of a more highly skilled workforce due to the integration of new technologies. Nevertheless the sector struggles with the delivery of training measures and attracting in particular young people. Recent projects by social partners thus aimed to analyse the attractiveness of the sector, look into successful policies to attract more women, policies to keep older workers in the workplace up to retirement age and training.<sup>76</sup>

According to a study by the Working Life Research Centre, the liberalisation of the postal sector had a negative impact on working conditions. The main deteriorations identified are related to the extension of part-time contracts, the reduction of wages and the fragmentation of industrial relations. Additionally, outsourcing and self-employment have increased.<sup>77</sup>

### **3.2.3 Maritime Transport and Port Logistics, Internal shipping**

According to the European social partners in the sector, the EEA shipping industry represents more than 40% of the world fleet. This sector occupies a very significant role in Europe's international trade. In total, 90% of European external trade and over 41% of intra-EU transport is managed by shipping<sup>78</sup>.

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<sup>71</sup> Ibid, Eurofound 2008

<sup>72</sup> The term "social dumping" is often used in European public policy discourse to point to "unfair competition" between countries with very different wage and social protection levels (ETUI, The complex reality of social dumping)

<sup>73</sup> Single Market in Transport and Tourism. Cost of Non-Europe Report. European Parliament. [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/510985/EPRS\\_STU\(2014\)510985\\_REV1\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/510985/EPRS_STU(2014)510985_REV1_EN.pdf)

<sup>74</sup> <http://www.etui.org/News/Social-dumping-Belgian-unions-hit-out-at-transport-sector-fraud>

<sup>75</sup> Ibid.

<sup>76</sup> WISE – Women in public transport – ETF and UITP – more information at: <http://www.etf-europe.org/etf-3606.cfm>; WIR – Women in rail – 2012 a project by ETF and CER – more information at: <http://www.etf-europe.org/etf-3556.cfm>; Demographic change in the railway sector – a project by ETF and CER – more information at: <http://www.etf-europe.org/rw-demographic-change.cfm>; STARTS – training of professional drivers – a project by ETF and IRU – more information at: <http://www.etf-europe.org/rd-soc-partners-act.cfm>

<sup>77</sup> The Liberalisation of European Postal Markets and the Impact on Employment and Working Conditions. Working Life Research Centre.

[http://www.uniglobalunion.org/sites/default/files/files/news/post\\_report\\_forba.pdf](http://www.uniglobalunion.org/sites/default/files/files/news/post_report_forba.pdf)

<sup>78</sup> Sectoral social dialogue – Maritime transport. DG EMPL Website.

<http://ec.europa.eu/social/main.jsp?catId=480&langId=en&intPageId=1844>

Despite these figures, maritime transport is facing several challenges. One key challenge relates to the fact that the number of EU seafarers working on EU flagged vessels has rapidly dropped in the last years. In 2010, there were an estimated 225,000 workers in the EU maritime transport sector. However a 2011 Report of the Commission Task Force on Maritime Employment and Competitiveness argues that the globalised nature of the maritime transport industry and its flexibility – with the growing importance of temporary employment in this particular subsector – means that this figure may not be entirely accurate<sup>79</sup>.

According to a European Commission report<sup>80</sup> the practice of ‘flagging out’ has led to a decline in the EU seafarers employed on EU-flagged ships while the number of seafarers from non-EU countries has increased. The number of EU seafarers in the European maritime transport sector dropped by more than 40% between 1990 and 2010, while employment among non-EU seafarers increased by almost 20% during the same period. On the basis of this information it can be estimated that the number of companies in maritime transport (of goods) qualifying as Community-scale companies (having more than 1,000 employees and more than 150 workers in at least two Member States) is rather low. It must also be noted that the EWC Recast Directive excluded from its scope seafarers and left it up to Member States to include seafarers in the national implementation act. According to the European Commissions impact assessment on the exclusion of seafarers from the European employment Directives it was considered that currently 46% of seafarers in the merchant fleet are affected by the exclusion from the EWC Directive.<sup>81</sup>

One issue which affects EWCs in the maritime sector is the fact that seafarers continue to be one of the most vulnerable groups of workers in the EU. However the recent implementation of Directive 2009/13/EC on the Maritime Labour Convention and the 2013 proposal by the European Commission to include seafarers to the scope of employment Directives which was adopted by the Council in September 2015<sup>82</sup> (including EWC Directive and Directive on information and consultation) aims to improve working conditions and making the sector more attractive. The European Economic and Social Committee pointed out that “the gradual deregulation in the maritime labour market since the early 1980s” was a key factor in the process of degrading working conditions. Additionally, and related to this process of deregulation was the decline in the number of European seafarers as well as the shortage of properly trained workers<sup>83</sup>.

Competition by third countries present a key challenge for employment levels in the European shipping sector. These countries offer low taxes, soft social legislation and limited safety and environmental standards. As a result shipping companies operate ships under different state flags which is a challenge for worker organisation and representation.

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<sup>79</sup> Report of the Task Force on Maritime Employment and Competitiveness and Policy Recommendations to the European Commission, European Commission, 9 June 2011

<sup>80</sup> Study on the Labour Market and Employment Conditions in Intra-Community Regular Maritime transport Services carried out by ships under Member States’ or Third Countries’ Flags. European Commission, 2009.

<sup>81</sup> European Commission, 2013 impact assessment - SWD(2013) 462 final – accessed the 18 Sept. 2015 at: [http://csdle.lex.unict.it/archive/uploads/up\\_886787204.pdf](http://csdle.lex.unict.it/archive/uploads/up_886787204.pdf)

<sup>82</sup> Proposal by the European Commission on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC, COM(2013) 798 final

<sup>83</sup> Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC’ COM(2013) 798 final – 2013/0390 COD. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013AE8036&from=EN>

Another issue affecting the sector in the EU is the progressive ageing of their workforce. The attractiveness of the shipping sector specifically has deteriorated in the last years. Young people are not willing to accept a job that offers difficult working conditions such as long absences away from home<sup>84</sup>.

This is confirmed by another study which reveals that the question of finding suitable crews is not only economic but also is related to the attractiveness of the sector. The demands in terms of working hours or working/life and safety conditions on board are factors why it is difficult to attract new employees. As a consequence, crews are made up more and more of diverse nationalities. One of the issues that arise from this fact is that only slow progress is being made to achieve a global standard for maritime crew training and to ensure that all crew members have a sufficient knowledge of maritime English. Communication among staff members had been impacted.<sup>85</sup> The European sector Social Partners ECSA (employers) and the ETF (workers) have highlighted the issue of lack of professionals in the sector and the steady decline in the attractiveness of the sector. However, this is not only linked to the profession itself but also to misperception and lack of knowledge about the sector. Thus Social Partners have developed a common European project on professional career guidance.<sup>86</sup>

Additionally, European ports are facing a relevant challenge to meet the needs of the industry and the market. The fact that public investments on long-term infrastructures have been reduced due to the economic crisis which has limited the reaction capacity and corporate structure of the sector.<sup>87</sup>

In terms of corporate structure of port companies/ organisations, there are landlord ports which give concessions to container terminal operators (or passenger ship operators) thus they do not employ a high number of workers, or port authorities employ dock workers directly, though there are very few port authorities that employ a high number of workers and they are typically concentrated in one country. In addition there are private port companies which tend to be of medium size not exceeding the number of 1000 employees as required by the EWC Directive. Finally, there are only a few key international container terminal operators that could fall under the Scope of the Directive or have an active EWC (e.g. DP World).

The maritime passenger transport and the European cruise and ferry business has been recently impacted by safety issues and changes of environmental standards. It represents approximately 7% of traffic in European ports<sup>88</sup>. Due to its size it can be expected that only a small number of companies fulfil the criteria of the EWC Directive. According to the trade unions this sector is affected by international crewing models that affect working conditions in the sector and decreasing the number of those employed under European employment contract. This poses a risk for future employment opportunities and skill development of European seafarers<sup>89</sup>.

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<sup>84</sup> Carbajosa, Jesus. The Future of Maritime Education and Training. International Centre of Numerical Methods Applied in Engineering, CIMNE. KNOWME Final Conference, 2014.

<sup>85</sup> Silos, J. M., Piniella, F., Monedero, J., & Walliser, J. (2012). Trends in the global market for crews: A case study. *Marine Policy*, 36(4), pp. 845–858. <http://www.sciencedirect.com/science/journal/0308597X/36/4>.

<sup>86</sup> Career mapping project report available here: <http://www.ecsa.eu/projects/career-mapping-project>

<sup>87</sup> Impact assessment on: "Measures to enhance the efficiency and quality of port services in the EU". European Commission, 2013. <http://ec.europa.eu/transport/modes/maritime/studies/doc/2013-07-ia-port-services.pdf>

<sup>88</sup> [http://europa.eu/rapid/press-release\\_MEMO-13-448\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-448_en.htm)

<sup>89</sup> <https://www.nautilusint.org/en/what-we-say/nautilus-news/nautilus-to-lead-new-drive-on-eu-ferry-employment/>

### 3.2.4 Aviation

Air transport used to be a highly regulated industry, dominated by national carriers and state-owned airports<sup>90</sup>. According to a Report of the Commission's High Level Group on Aviation Research, technological leadership continues to be the major competitive differentiator and success factor for the EU air transport industry<sup>91</sup>.

The development of the single EU market for aviation (the Single European Sky initiative) has also contributed to the competitiveness of this subsector by gradual removal of all commercial restrictions since the 1990s, such as restrictions on routes, the number of flights and the setting of fares, as highlighted in a recent academic article entitled 'International Mergers and Acquisitions in the Airline Industry'.

As a consequence of these policies, the structure of the air transport industry has changed. Regarding the airlines for instance, the most relevant element is the increase in the number of low-cost carriers. According to a European Commission report, internal market liberalisation has been to the advantage of low cost carriers which managed to develop in some cases successful expansion strategies. Their presence has increased rapidly in the last years, representing 20% of the total seats offered on routes within the EU in 2005 to 32% in 2012<sup>92</sup>. Due to the success of low-cost airlines several European legacy airlines have created their own low-cost brand (e.g. Lufthansa/Germanwings, Iberia/Iberia Express, Air France/KLM/transavia).

This development has in particular impacted on the level of employment and on working conditions. Despite significant growth in air traffic (increase of around 36% in passenger numbers), the number of direct airline employees in the EU decreased by 1% between 1998 and 2010, with a minor decline recorded for the period 2007-2010. Around 700,000 direct employees were estimated in 2010, over half of them working with air transport operators. Furthermore, adding the number of workers in the aircraft manufacturing sector the estimation reaches the 1.1 million people employed.

A study from the European Commission<sup>93</sup> on the effects of the implementation of the EU aviation common market on employment and working conditions in the air transport sector over the period 1997-2010 reveals that the types of employment contract commonly used in this subsector are evolving towards those providing employers with greater flexibility. For instance, in the last years there was an increase in part-time work. It seems that it did not just create more flexible employment but a shift of employment structures as is revealed by another study published by the European Transport Workers' Federation<sup>94</sup>. This report further highlighted that there is a growing evidence of the use of temporary agency work and forms of bogus self-employment. In addition, certain low-fare airlines have developed anti-union strategies making any negotiation and worker participation also at EU level in a form of an EWC impossible<sup>95</sup>.

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<sup>90</sup> James Nolan, Pamela Ritchie, John Rowcroft (2014), International Mergers and Acquisitions in the Airline Industry, in James Peoples (ed.) The Economics of International Airline Transport (Advances in Airline Economics, Volume 4), Emerald Group Publishing Limited, pp.127-150

<sup>91</sup> 'Flightpath 250 – Europe's Vision for Aviation', Report of the High Level Group on Aviation Research (EC)

<sup>92</sup> Study on the effects of the implementation of the EU aviation common market on employment and working conditions in the Air Transport Sector over the period 1997/2010. European Commission, 2012.

<sup>93</sup> Study on the effects of the implementation of the EU aviation common market on employment and working conditions in the Air Transport Sector over the period 1997/2010. European Commission, 2012.

<sup>94</sup> Turnbull, P. and Harvey, G. (2014) Evolution of the Labour Market in the Airline Industry due to the Development of the Low Fares Airlines (LFAs), a report for the European Transport Workers' Federation

<sup>95</sup> Idem – see for example p. 4 of the report.

Another report published as the outcome of a project by the European Cockpit Association (ECA), the European Transport Workers' Federation (ETF) and the Association of European Airlines (AEA) within the European Social Dialogue Committee<sup>96</sup> also confirms the increase in atypical forms of employment, such as self-employment, temporary agency work and zero-hour contracts and the rising concern of abuse of such contracts. Within this study a survey was launched to inquire about working conditions of pilots and cabin crew, which received more than 6,000 replies. The majority of respondents with atypical contracts of employment were found among crew members and pilots working for low-fare airlines. The report also highlighted that the employment situation in the aviation sector resembled the situation for seafarers where airlines chose to establish crews of convenience opting for flexible types of employment and countries for employment as "home base" determining thus employment conditions and social security contributions.

This flexibility in the labour contracts did not affect all types of employees in the same way. Ground handling staff were more affected than the flight crew, cabin crew and air traffic handling.

Another characteristic of this period was the high frequency of international mergers and acquisitions in the airline industry. In the view of some commentators, this phenomenon would not have been so high without the Commission's market liberalisation initiative<sup>97</sup>. It is also suggested that there are important gains to be achieved from increasing airline size, such as greater market power over particular routes and hubs or improved bargaining power in operations. One could thus assume that in the future further concentration of operators can be expected. One needs to keep in mind that airport services and airport operations companies employ more and more staff for on-the ground services. The liberalisation of ground-handling services has thus created new key players in civil aviation (e.g. Frankfurt Airport, Aeroports de Paris) though with a few exceptions, they seem to remain currently national market players. On the other hand, private ground-handling services companies become more and more global operators (e.g. Swissport and Aviapartner).

In addition to the increasing use of flexible contracts, due to operational pressures in the aviation sector, there has also been an intensification of work<sup>98</sup>.

Moreover, the use of outsourcing in the air transport subsector has increased substantially in recent years. This trend towards outsourcing also raises a number of issues relating to possible differences in social conditions for employees. Outsourcing in the sector is also likely to lead to greater challenges for trade union organisation among an outsourced workforce. Additionally, the mentioned tendency towards flexible contracts may have raised wider concerns about job insecurity in the air transport sector.<sup>99</sup>

Finally, another major issue with regard to the potential creation of EWCs in the air transport sector is the characteristics of the workforce itself and the question whether the company actually has employees in different Member States (depends on the

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<sup>96</sup> Y. Jorens, D. Gillis, L. Valcke & J. De Coninck, 'Atypical Forms of Employment in the Aviation Sector', European Social Dialogue, European Commission, 2015 available at : [https://www.eurocockpit.be/sites/default/files/report\\_atypical\\_employment\\_in\\_aviation\\_15\\_0212\\_f.pdf](https://www.eurocockpit.be/sites/default/files/report_atypical_employment_in_aviation_15_0212_f.pdf)

<sup>97</sup> James Nolan, Pamela Ritchie, John Rowcroft (2014), International Mergers and Acquisitions in the Airline Industry, in James Peoples (ed.) The Economics of International Airline Transport (Advances in Airline Economics, Volume 4), Emerald Group Publishing Limited, pp.127-150

<sup>98</sup> [http://www.transport-research.info/Upload/Documents/201401/20140117\\_205136\\_81493\\_PB05\\_WEB.pdf](http://www.transport-research.info/Upload/Documents/201401/20140117_205136_81493_PB05_WEB.pdf)

<sup>99</sup> [http://ec.europa.eu/transport/modes/air/studies/doc/internal\\_market/employment\\_project\\_final\\_report\\_for\\_publication.pdf](http://ec.europa.eu/transport/modes/air/studies/doc/internal_market/employment_project_final_report_for_publication.pdf)

home base of the worker). In the case of Ryanair, trade unions alleged that the company declared that staff are only employed in Ireland thus the company is not a “transnational” company to qualify under the EWC Directive. It can be expected that creation of more EWCs in this sector will prove difficult in the future under the very competitive pressures that come from “inside of the EU” via low-cost airlines and from “outside of the EU” from airlines of third countries (e.g. Turkish Airlines, Emirates, Ethiad) entering the European market which can provide for different working conditions of their staff but serving the same routes as European legacy airlines. Companies have to adapt to the flow of passengers depending also on economic cycles (during the crisis fewer people went on holidays), fuel prices and other environmental regulations impacting on aviation, as well as competition on the air routes. Thus, as a result companies will rather focus on short-term planning which may leave less room for consultation on issues that are rather long-termed and time for European level consultation of workers.

In conclusion it can be seen that the air transport sector is strongly impacted by European transport policies and it may in particular be a sector where EWCs are challenged with a number of social issues and possibly struggling for good cooperation with management.

### **3.2.5 Passenger Transport and Rail**

In most EU Member States, the rail transport sector has been restructured on the basis of a vertical separation between infrastructure and operations and the opening of the market to various services that use the infrastructure, thus allowing competition between operators (i.e. train companies)<sup>100</sup>.

In 2010, the European rail transport sector employed around 680,000 people according to a Eurofound study<sup>101</sup>. Employment in both the railway freight and passenger transport sectors in Europe decreased in most of the EU Member States between 2001 and 2010, according to Eurostat data from the Labour Force Survey. Regarding its composition of the workforce by gender, it is still a male-dominated sector. According to a report on women’s employment in the European railway sector, in the last years there has only been a very moderate increase in the presence of women<sup>102</sup>.

The Eurofound study also points out that EU-level initiatives opening up the sector to competition has led to a process of corporate restructuring with the result of employee layoffs in this transport subsector. In the last years in most EU Member States the employment relationships are shifting from the public sector towards the private law.<sup>103</sup> In some Member States new ventures have been developed on certain domestic routes. Some private (and mixed ownership) rail companies have progressively entered the domestic rail passenger services market<sup>104</sup>. The recent acquisition of the bus and rail passenger operator Arriva Plc by Deutsch Bahn and

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<sup>100</sup> Cantos, P., J.M. Pastor and L. Serrano, 2012. "Evaluating European railway deregulation using different approaches", *Transport Policy*, 24, November, pp. 67-72

<sup>101</sup> Employment and industrial relations in the railways sector, Eurofound, May 2012:  
[http://www.eurofound.europa.eu/eiro/studies/tn1109030s/tn1109030s\\_3.htm](http://www.eurofound.europa.eu/eiro/studies/tn1109030s/tn1109030s_3.htm)

<sup>102</sup> Annual report on the Development of women’s employment in the European railway sector. Community of European Railway and Infrastructure Companies, 2015.  
[http://www.cer.be/index.php?eID=tx\\_nawsecuredl&u=0&file=uploads/media//2nd\\_Annual\\_Report\\_on\\_WIR.pdf&t=1426705660&hash=febca4e7f2453d80619b9e9a1a0f1c2cc0eac9a4](http://www.cer.be/index.php?eID=tx_nawsecuredl&u=0&file=uploads/media//2nd_Annual_Report_on_WIR.pdf&t=1426705660&hash=febca4e7f2453d80619b9e9a1a0f1c2cc0eac9a4)

<sup>103</sup> Ibid

<sup>104</sup> Report from the Commission to the Council and the European Parliament. Fourth report on monitoring development of the rail market. 2014.

further acquisitions by Deutsche Bahn of rail passenger operations in Eastern Europe<sup>105</sup> or acquisitions of Hungarian cargo operations by ÖBB (Austrian rail), or SNCF Groupe operating in cargo, urban transport (with Keolis) and rail passenger transport demonstrates that only a few operators employ a high number of workers across Europe thus falling under the scope of the Directive. The current sample shows that a number of operators in this sector have already set up an EWC.

Whilst issues around nationalization or privatization, competition or monopoly continue to generate heated discussions in the context of the Fourth Railway Package, the European railway industry continues to aim towards incentivizing better performance and improving customer service<sup>106</sup>. Furthermore the impact of tendering on social conditions and employment security in the sector has also be subject to scrutiny<sup>107</sup>.

In light of the developing competition, and with an increasing number of public service contracts being tendered out in passenger rail transport, the European social partners in the sector, ETF and CER, commissioned a study in 2012 to assess the current situation in relation to social aspects and transfer of staff in the sector. Articles 4(5) and 4(6) and Recitals 16 and 17 of the PSO Regulation (Regulation (EC) 1370/2007), which provide different options for the transfer of staff and to protect social standards are at the heart of this study. They allow competent authorities to require public service operators to meet certain minimum social standards in relation to the employment of staff to deliver the service. Another option is to require a transfer of staff to the new operator within the meaning of Directive 2001/23/EC even if the conditions of the Directive are not fulfilled. A combination of both options is also possible. It is within the remit of the competent authority whether or not to make use of these options offered by the Regulation; there is no legal requirement to use one or both options, unless this is required by national law.

The study found that the experience of competitive tendering in the award of public service contracts in the passenger rail sector in Europe is limited, but has increased significantly in recent years and is likely to grow. Social standards set in sector specific legislation and – more importantly – in sectoral collective agreements can play a critical role in creating a social level playing field by securing employment conditions for staff in tendering processes, but these are only present in a limited number of countries.

Despite the possibilities offered by Articles 4(5) and 4(6) and Recitals 16 and 17 of the PSO Regulation, the use of social criteria in tenders (without the requirement to transfer staff as another way of ensuring social standards) is very limited and the impact of the regulation remains minimal, with only one country enshrining respect for minimum social standards by virtue of the determination of social criteria (Germany).

The other option requiring transfer of staff is rarely explicitly based on the provisions of the regulation. In the 18 EU countries for which information was made available for the study, 5 had no provisions (either in law or collective agreement) to require the transfer of staff in the case of a change of operator; in 6 countries transfer of staff is optional and depends on such requirements being specified by the competent authority and in 7 countries transfer of staff is required and binding either in

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<sup>105</sup> [https://www.deutschebahn.com/de/konzern/im\\_blickpunkt/3929588/VTCE.html](https://www.deutschebahn.com/de/konzern/im_blickpunkt/3929588/VTCE.html)

<sup>106</sup> Jackson, Chris: 'Inching slowly towards a single railway area', Transportation Research Board (TRB), February 2013

<sup>107</sup> ICF GHK (2013); Social Aspects and the Protection of Staff in Case of Change of Railway Operator: The Current Situation



legislation or collective agreement, But even in these cases, this only applies to certain types of staff.

This was considered to have significant implications for social conditions and employment security in the future.

### **3.3 Effectiveness and impacts of the EWCs generally and in the transport sector specially**

Information on the impact of the EWC Directive (and its Recast) or on the impact of EWCs in general remains quite limited in the literature, with a few notable exceptions. Studies focused on the transport sector specifically could not be identified. This section looks at the findings from existing studies and excludes findings from this study.

A study by Eurofound (2007) looked at the impact of EWCs in transnational restructuring<sup>108</sup> and highlighted that this involvement in many cases proved less than satisfactory. One of the conclusions of the study is that while most EWCs seem quite well equipped to be informed and consulted regularly on restructuring issues, this is less so with regard to exceptional restructuring events. The study also shows that EWC agreements rarely include provisions allowing all interested parties to take part in meaningful consultations when restructuring plans are being drawn up. Further empirical evidence provided in the study confirms that in most cases the role of EWCs seems to be limited to one of communication with management providing information and employee representatives expressing their views. The evidence suggests that only a minority of EWCs have succeeded in going beyond this communication role by directly exerting some form of influence on company restructuring activities.

This sentiment is also echoed in a study carried out by GHK (2008) on behalf of DG EMPL which sought to assess the current state of play as regards EWC operations and the impact of potential changes to the EWC legislation<sup>109</sup>. However these two studies describe the situation with EWCs prior to the adoption and implementation of the Recast Directive.

Another study conducted on behalf of the ETUI (2009) looked at the impact of EWCs on social welfare<sup>110</sup>. The study identified four groups of key stakeholders in the context of a social welfare analysis. These stakeholders were employees, managers, shareholders and creditors. For each group, criteria were set to establish how the social welfare impact could be evaluated<sup>111</sup>. This study gathers data from various sources and it should be once again noted that most of the data was collected prior to the deadline for implementing the Recast Directive.

To evaluate the welfare impact of EWCs on shareholders, the criteria used was the impact on profitability and the stock market value of the company. For creditors, the welfare impact on this group was judged through the impact on the probability of default of debt payments<sup>112</sup>. The study found out that the presence of EWCs had no effect on either shareholders or creditors. There was no evidence that the EWCs had a negative impact but there had been no positive impact either.

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<sup>108</sup> Eurofound (2007); European Works Councils and Transnational Restructuring; <http://www.eurofound.europa.eu/publications/htmlfiles/ef0683.htm>

<sup>109</sup> EPEC (2010); A Preparatory Study for an Impact Assessment of the European Works Councils Directive

<sup>110</sup> Vitols. S. (2009) European Works Councils: an assessment of their social welfare impact, ETUI

<sup>111</sup> Ibid

<sup>112</sup> Ibid

To evaluate the welfare impact of EWCs on managers, criteria such as the impact on the ease or difficulty of operating the company across borders or other key management tasks were used. A survey of high level managers (e.g. human resource directors or CEOs) in a sample of European companies having EWCs<sup>113</sup> returned mainly positive results. Around two-thirds of the managers surveyed thought that EWCs in their company had a positive impact on communication with employees while only 2% thought the impact was negative. Other positive impacts of the EWCs included an improvement of employee commitment to company objectives and the effectiveness of implementation of management decisions. However, opinions were rather mixed as regards the speed of decision-making in EWC companies. The study therefore confirmed that EWCs are valued by managers as they provide a good platform for communication and enhance employees' commitment<sup>114</sup>.

Criteria such as corporate inclusion, wages, working conditions or career prospects were used to assess the impact of EWCs on employees' social welfare. The study used Eurofound data collected from worker satisfaction surveys. Spanish, Finnish and Czech responses show that worker participation or involvement at work increase job satisfaction. In that regard, EWCs play an important role in enabling worker to participate in the organisation. Other surveys used for this study also found that EWCs were considered useful by the majority of worker representatives<sup>115</sup>.

The study concludes that EWCs have had a positive impact for employees by improving workers' participation but also for managers who consider this as a useful platform to communicate with and involve employees. Finally, neither negative nor positive impact could be demonstrated on shareholders and creditors. Thus, the study gives a generally positive assessment of EWCs with two groups of stakeholders benefiting (employees and managers) and no visible impact on other two groups (shareholders and creditors).

However the practices of EWCs vary greatly from one company to another. Different classifications of types of EWCs have been developed in the literature. Stoeger<sup>116</sup> classifies EWC into four types according to their degree of interest representation:

- EWCs as collective actors with transnational influence- this type of EWC is characterised by an effective operational structure and is able to influence the direction of matters consulted on by the central management in a way to frame minimum conditions or setting of a framework of how matters shall be handled or implemented. Relations between management and workers representatives are characterised by trust and are friend-like so that also controversial issues can be discussed.
- EWC as a transnational support network. This type is characterised by the fact that it has no influence on matters informed by the central management but works rather as an effective body for information and experience exchange helping thus national worker representation to deal with issues with more impact at national level. This type of EWC has the possibility to deal with internal restructuring measures by mitigating impacts between different localities or agree on impacts at local level (social plans).

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<sup>113</sup> Ibid

<sup>114</sup> Ibid

<sup>115</sup> Vitols, S. (2009) European Works Councils: an assessment of their social welfare impact, ETUI

<sup>116</sup> Stoeger, H. (2011) Abstieg oder Aufbruch – Europäische Betriebsräte zwischen Marginalisierung und transnationalem Einfluss (The descent or rise of EWCs: between marginalisation and transnational influence), LIT Verlag, Vienna, pp. 43 -153.

- EWCs as a forum for presentation of the central management. This EWC has nothing to do with workers representation and they are solely used by management to legitimise their decisions that can have considerable impact on employment. In this type of EWC, there is a lack of trust between workers representations and actors intend to represent rather their national priorities. Workers intend to exchange among each other but communication lacks quality.
- EWC that are blocked. These EWCs exist solely on paper and are not actually active. This is due to disinterest of either the management side or a lack of coordination and trust of the workers side.

Lecher et al<sup>117</sup> have developed a slightly different classification also into 4 types:

- The symbolic EWC – which is a rather management driven EWC. These are joint bodies and questions can be raised about the practices to appoint EWC members. They in particular lack a real interest representation also among workers representative.
- The service-oriented EWC – is a form to provide support to strengthen local worker representation; they usually are characterised by a strong chair person who can mediate between conflicts of interests; in this type of EWC only information occurs and consultation is almost non-existent.
- Project-oriented EWC – is a more pro-active type which initiates projects via joint working groups and agrees on framework conditions; consultation and dialogue between management takes place but without actually impacting management decisions. The EWC is seen as a partner by HR as a European interest representation that can help develop HR strategies;
- Participation oriented EWC – is characterised by timely information and consultation procedures and actual participation in decision making and management appreciates advice.

A comparative case study conducted in 2008 on the establishment of a EWC for Dubai Ports World found<sup>118</sup> that there is usually considerable variation in the number of meetings held, in terms of how the key issues for discussion are defined as well as in terms of budgetary rules for funding EWC activities. Furthermore, it shows that existing modes of cooperation within a large transnational company and any conflicts between the Works Councils, the trade unions, industry federations and management will also influence the activities of the EWC. A lack of cooperation or understanding between different parties usually increases the likelihood of certain issues which are not the subject of an explicit agreement to be either addressed or conveniently ignored. In the absence of appropriate conditions, this increases the risk that certain established rights are not sufficiently exercised.

As this case study was conducted prior to the adoption and implementation of the 2009 Recast Directive, it is possible that the situation described above has changed given that the Recast Directive provides clearer definitions of information and consultation rights of employees and their representatives for those EWC falling under the new rules.

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<sup>117</sup> Lecher W., Nagel B. & Platzer H.W. (1999), The establishment of European Works Councils. From information committee to social actor, Ashgate Publishing, Aldershot; and Müller, T and Hoffmann, A. (2001) EWC Research: A Review of the Literature, Industrial relations Unit, University of Warwick available at <http://www2.warwick.ac.uk/fac/soc/wbs/research/irru/wpir/wpir65.pdf>

<sup>118</sup> Altmeyer, W., Hahn, E. (2008): Case study: The agreement to establish a European Works Council for Dubai Ports World, European Commission & LINKS

With regard to the effective operation of EWCs and the recognition of the rights of worker representatives, it is also important that national legislation provides for effective access for EWC to judicial procedures that enforce their rights as well as sanctions that will effectively impact on management to implement the goals and create an effectively operating EWC. However as a recent analysis by the ETUI (2015)<sup>119</sup> of the implementation of the 2009 Recast Directive shows sanctions were not sufficiently severe or dissuasive to ensure efficient implementation of the Directive's goals – namely “real” European/transnational information and consultation processes.

As explained earlier, the number of EWCs in the transport sector remains relatively low compared to the number of transnational transport companies eligible to establish an EWC. A study entitled ‘The Establishment of Enterprise Works Councils: Process and Problems’<sup>120</sup> conducted in 2006 indicates that the establishment and early development of works councils are dependent upon a number of factors such as employer orientation, labour force stability, the legal and institutional context, as well as trade union engagement and support. The study focuses on the establishment of works councils in France, Germany and Spain across different sectors. It shows that reluctance to establish a work council is greater among smaller firms (which only just meet the size threshold for establishing a works council) and this could be one of the reasons to explain the low number of EWCs in the road passenger and freight transport subsector. The study also identified high labour turnover as a factor that can potentially undermine the consolidation of a works council<sup>121</sup>. This may also be a way of explaining why the number of EWCs in the transport sector as a whole remains relatively low with flexible employment contracts having become commonplace – particularly in the civil aviation and rail transport subsectors. Indeed, the study explains that high labour turnover makes it more difficult to establish a core of union members from which works council delegates could be drawn as well as a consistent pattern of EWC activity.

Legal or institutional differences at national level can also have an influence on the establishment of works councils and EWCs. For instance, the study shows that employers in Spain are more likely to agree to the establishment of a works council because companies are legally obliged to implement sectoral agreements even if not affiliated to the relevant employers’ federation<sup>122</sup>. Conversely in France, the availability of alternative forms of employee representation – in the form of personnel trade union delegates, for instance – make works councils more attractive to employers as a substitute to trade union representation. The study in fact points out that the engagement of trade unions in establishing and consolidating works councils is critical. As such, it mentions that the ambivalence of French trade unions towards works councils appears to reduce their engagement in the institution. The study goes on to reveal that French unions are not as proactive in seeking to establish works councils as trade unions in Germany or Spain<sup>123</sup>.

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<sup>119</sup> Jadodzinski, R. (2015) Implementation of enforcement provisions of the European Works Council Recast Directive: are sanctions really effective, proportionate and dissuasive? ETUI policy brief, 7/2015

<sup>120</sup> Rigby, M., O’Brien Smith, F., Contrepois S. (2006): The Establishment of Enterprise Works Councils: Process and Problems, Centre for International Business Studies (CIBS), Paper Number 2-06

<sup>121</sup> Ibid

<sup>122</sup> Ibid

<sup>123</sup> Rigby, M., O’Brien Smith, F., Contrepois S. (2006): The Establishment of Enterprise Works Councils: Process and Problems, Centre for International Business Studies (CIBS), Paper Number 2-06

This study focuses on works councils at the national level however many of the national legal or institutional issues can be expected to influence the establishment and the functioning of EWCs as well.

On the other hand, a study conducted shortly before the deadline for the transposition of the Recast Directive points out that annual rate of establishment of new EWCs has been gradually decreasing and reached a new low in 2010. It goes on to explain that this recent drop could be due to uncertainty concerning the legal regime applicable to agreements signed in the transposition period between May 2009 and June 2011, but points out that ongoing cooperation difficulties faced by workers and trade unions may also be one of the causes<sup>124</sup>. The adoption of the Recast Directive did not lead to a surge in the creation of EWCs, as was the case with the 1994 Directive. The study therefore concludes that cautious monitoring of progress towards achieving one of the Recast Directive's goals of increasing the number of EWCs is needed<sup>125</sup>.

### 3.4 Summary of key findings

On the basis of the above findings of the literature review the following conclusions can be highlighted:

- The development of the EU single market in the transport sector has gone hand in hand with **infrastructural integration and market concentration**. Further analysis at the level of transport sub-sectors has confirmed this trend in particular for the air and rail modes of transport.
- The creation of a European single market in the transport has also created new multinational actors satisfying the criteria for EWCs (e.g. ground-handling services; airport management, port-terminal operators, urban transport providers across Europe, coach services).
- Market concentration has resulted in the creation of a **few large multinational corporations** in the transport sector in particular in the rail passenger transport sector and civil air transport **thus decreasing the number of companies that fall under the scope of the EWC Recast Directive**
- On the other hand, the road freight sector is dominated by SMEs, which means that the number of companies which meet relevant size thresholds is more limited; however there are a number very large multinationals providing a comprehensive logistic solutions by air, sea and land transport.
- Large multinational corporations tend to outsource operations to affiliated companies, thus increasing the complexity of company structures. This can create difficulties for worker representation and transnational cooperation among workers, as it can be difficult to establish which organisations belong to one undertaking.
- Further analysis of transport sub-sectors confirms the assessment that due to re-organisation of transport markets and changes in financing and investment in transport modes has further contributed to **restructuring and corporate changes**.
- **Competitiveness, the need of integrating new technologies in the transport sector has impacted on workers' skills requirements** and resulted in the development of flexible employment contracts and contributes to

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<sup>124</sup> Jagodzinski. R., Pas, I., The EWC landscape on the eve of the transposition deadline of the Recast Directive C Evidence from the ETUI database of European Works Councils, ETUI

<sup>125</sup> Ibid

unattractiveness of the sector. On the other hand the transport sector needs more qualified personnel to respond to changing requirements.

- The increase of **flexible employment and changing working conditions have impacted on worker organisation and representation**. The economic crisis had an impact on the overall level of employment in the transport sector which led to restructuring. The increasing use of flexible contracts and outsourcing has fragmented industrial relations and collective bargaining in the sector. **Low unionisation in CEE countries and missing experience with information and consultation procedures creates challenges for worker cooperation.**
- Continuous restructuring can impact on the size thresholds for the establishment of EWCs and existing EWCs, including the representation of employees from different countries.
- The precise role played by EWCs in the transport sector in restructuring situations is difficult to assess from the literature, beyond the more general reflections in existing research, that the level (and timing) of information and consultation provided in such situations can be problematic.
- Research found different classifications of EWCs in terms of their operation and effectiveness. While a number studies show a positive impact of EWCs on the companies' business, the structure, coherence among workers' representatives; attitude of management; cultural understanding, foreign language skills and ability to communicate impact significantly on the performance of an EWC and its impact on management decisions or corporate strategy.
- The implementation of the 2009 Recast Directive does not appear to have had as strong an impact on the creation of new EWCs in the sector (apart from some individual cases) compared to the original Directive, but has helped to improve existing EWCs by setting out more precise procedures for information and consultation.

## 4 EWCs in the EU transport sector: potential and practice

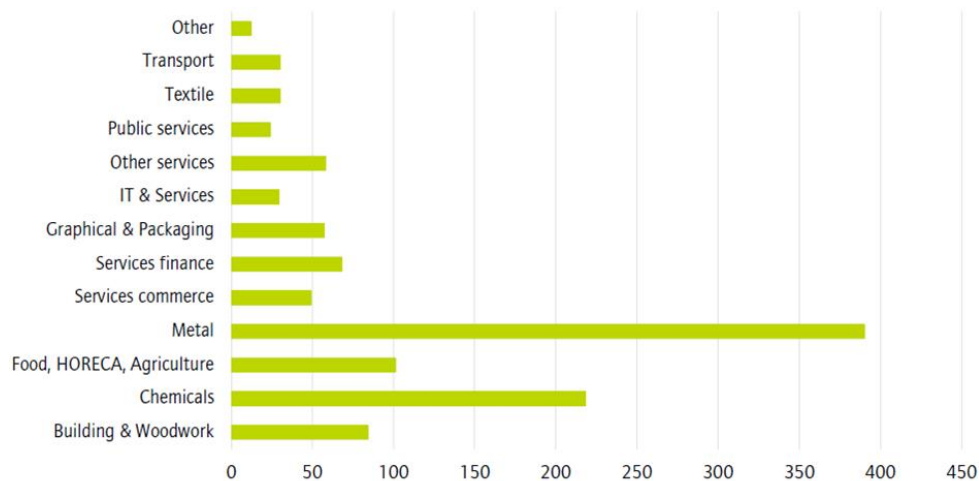
The aim of this section is to give further information on the potential of EWCs in the transport sector especially in terms of how many companies may fall under the scope of the Recast Directive now or in the future.

### 4.1 Background

Before going deeper into the analysis it should be recalled that there is no obligation to set up a European Works Council. Either management takes the decision or a request of 100 workers from at least two Member States will lead to the opening of a negotiation procedure and the creation of a Special Negotiating Body. During negotiations it is left to both parties to decide if they agree on an alternative procedure for information and consultation, establish an EWC or decide to stop negotiations.

The number of EWCs in the transport and logistics sector is rather low compared to other sectors such as the metal sector. The metal sector is by far the sector with the largest number of EWCs active with almost 400 EWCs at the end of 2013. The chemical sector is the second largest sector in terms of active EWCs with just over 200 in 2013. It is worth noting that these sectors have in general a tradition of being well-organised as far as employee representation is concerned. Other sectors such as 'food, horeca and agriculture', 'building and woodworking sector', 'financial services sector' and 'graphical and packaging sector' had between 50 and 100 EWCs active in late 2013. On the contrary, 'textiles', 'transport' and 'public services' represented the sectors with the fewest active EWCs in November 2013.

Figure 3. EWCs bodies currently active, by sector of activity



Source: European Trade Union Institute (ETUI), EWCS database, 11/2013

It is for this reason that it is important to further investigate the *potential* for creation of more EWCs in the sector. We do this by reviewing the number of companies potentially qualifying for an EWC in the sector.

## 4.2 Potential

As previously stated, the **majority of transport and logistics companies are SMEs** with some 10 – 249 employees, thus falling below the size criteria set out in the Recast Directive. In addition a number of large enterprises in particular in the **maritime transport and maritime transport services sectors only operate from one European Member State** such as port authorities (e.g. some of the largest port authorities like the one in Hamburg with 1,800 employees and in Antwerp with 1,650 employees). While a number of logistics and transport services companies may be considered to be large, they have **rather small national representations worldwide**, thus remaining below the threshold of 150 employees in at least two Member States.

Nevertheless, there are still a number of global transport operators and service providers that satisfy the criteria of being a “community-scale” undertaking by ‘having more than 1,000 employees in EU Member States and more than 150 in each of at least two Member States’ and therefore accounting for an important share of workers in the sector. The following table provides the first results from our research of transport companies identified as potentially qualifying for an EWC but not operating one. The full list of companies can be found in Annex 2.

*Table 5. Number of transport companies identified as potentially qualifying for an EWC but not operating one by sub-sector*

Headquarter country	Post, Passenger (by road and rail) , Road Transport and Logistics	Maritime transport (incl. passengers) and maritime services	Aviation (incl. passengers and cargo) and aviation services	Tourism
DE	15		2	
FR	3	1	1	
NL	4	3		
IT	2	1		
DK	1	1		
FI		1		
HU			1	
PT	1		1	
IE			2	1
ES			1	
SE	2		2	
AT	1			
LT			1	
UK			2	
BE		1	1	
LU	2	1	1	
CH	1	1	2	



Headquarter country	Post, Passenger (by road and rail) , Road Transport and Logistics	Maritime transport (incl. passengers) and maritime services	Aviation (incl. passengers and cargo) and aviation services	Tourism
Japan	2			
US	2			1
Australia	1			
Taiwan		1		
China	1	2		
Singapore		1		
Russia			1	
UAE			1	
Turkey			1	
Total	38	14	1920	2
Total (%)	52%	19%	27%	2.5%
Total (all)	73			

Source: ICF

As shown by Table above, **73 companies have been identified** as fulfilling the EWC size criteria but not currently operating an EWC. The ETF estimates that up to 80 transport companies may fall into the scope of the Directive but were only able to provide details for 40 such companies (this estimate was based on research in 2008). As specified earlier, the remaining information was collected on the basis of primary research and information from other social partners<sup>126</sup>. Given that 29 active EWCs have been identified operating in the transport sector (34 in the wider sector), the current evidence base suggests that close to **70% of all transport companies falling into the scope of the Directive are yet to set up an EWC.**

However, the **results should be read with caution and be seen as indicative only** as it was not always possible to find out information on the national employment levels of companies. In addition it should be noted that the Recast Directive does not cover seafarers. Thus, it was voluntary for Member States to extend application of the Directive to the maritime sector. Countries that did not apply the Recast Directive to seafarers are: CY, EE, EL, HU, IT, LT, LV, MT, and RO. This will change within the coming years as the Council has adopted a Directive in September 2015 to include seafarers in five EU labour law Directives (including the 2009 EWC Directive). This Directive is to be transposed by September 2017.

The results show that most logistics transport companies are headquartered in Germany, followed by France and the Netherlands. One of the French logistics leaders Norbert Dentressangle that operated in all EU countries was recently taken over by the leading American logistics company XPO and is becoming a major global player in the logistics sector together with Kuehne + Nagel and CEVA Logistics. The latter two already have EWCs. We also identified six logistics companies with a significant

<sup>126</sup> Further work will be undertaken, as explained before.

presence in Europe but which are headquartered outside the EU. In the aviation sector the biggest European airlines already operate an EWC, with the exception of Lufthansa (where an EWC has been established, but is not active). New big players in this transport sub-market are those that provide airport and airport management services.

The **sub-sectoral classifications used in the table are rather broad** and do not adhere to the NACE codes **due to the fact that many large companies operate in different types of goods transport (road, rail and ship) and offer logistics, warehousing and storage services.** Thus the first category 'post, passenger, road transport and logistics' covers all those multi-modal freight companies offering other types of transport services, land passenger transport (rail and urban transport) and postal and delivery services. The second category 'maritime transport and transport services' covers all shipping companies, terminal operators, ferry operators, container terminal operators and other maritime services (in ports). The third category 'aviation and aviation services' re-groups all providers in air passenger transport or purely air freight providers as well as airport services including mobile food providers. Finally we added the category 'tourism' which covers only those agencies which operate their own travel/airline services.

Therefore, the findings suggest that **the majority of 'community-scale' companies not currently operating an EWC are in the sub-sector 'road transport and logistic' representing 52% of all companies identified.** This is followed by 'aviation' (27%) and maritime transport (19%). There are also two more global tourism operators (2.5 %) that could qualify as 'community-scale' undertakings (see Table 4.1).

If we look at the sub-sectors of active EWCs in the transport sector by using the same classification of sub-sectors, 'road transport and logistics' is again the largest sector with 55% of all active EWCs in the transport sector, followed by 'aviation' and 'maritime transport', thereby following largely the same trend (see Table 4.2).

Table 6. Overview of transport companies with an active EWC

Countries	Post, Passenger (by road and rail), Road Transport and Logistics	Maritime transport (incl. passenger transport), maritime services	Aviation (passenger and cargo), aviation services	Tourism
DE	3	2	2	2
FR	6		1	
NL	1			1
UK	1		3	
AT	1			
FI	1			
SE		1		
US	2			
UE		1		
CH	1			

<b>Countries</b>	<b>Post, Passenger (by road and rail), Road Transport and Logistics</b>	<b>Maritime transport (incl. passenger transport), maritime services</b>	<b>Aviation (passenger and cargo), aviation services</b>	<b>Tourism</b>
Total	16	4	6	3
Total (%)	55%	14%	21%	10%
Total (all)	29			

Source: EWC database, ICF research

### 4.3 Share of active EWCs, by sub-sector

The following picture emerges from the available data: the percentage of active EWCs in the 'maritime transport' sector is lowest with 21%, followed by 'aviation' (27%) and then the 'road transport and logistics' sector with 30%. The 'tourism' sector comes out on top with more than half of the companies identified operating an EWC.

Table 7. Representatives of transport EWCs from all transport companies potentially qualifying for an EWC

<b>Type</b>	<b>Post, Passenger (by road and rail), Road Transport and Logistics</b>	<b>Maritime transport (incl. passengers), maritime services</b>	<b>Aviation (passenger and cargo), aviation services</b>	<b>Tourism</b>
Transport companies potentially qualifying for an EWC but not operating one	38	14	20	2
Transport companies operating an EWC	16	4	6	3
Total	54	18	26	5
Representatives of active transport EWCs from all transport companies	30%	22%	23%	60%

Source: ICF, preliminary findings

These findings strongly point out that there is more potential for EWC creation in the transport sector.

#### 4.4 Challenges in establishing new EWCs

**Up to 80 transport companies qualify for the establishment of an EWC**, according to the European Transport Workers' Federation (ETF)<sup>127</sup>. In total, 73 companies were identified by this study as meeting the size threshold to potentially establish an EWC. This is in addition to the 29 (or 34 in the wider sector) transport companies which already operate one. These figures suggest the **29 active EWCs in the sector account for approximately 40% of all potentially eligible companies in the sector** and for 2.8% of all EWCs<sup>128</sup>. When looking at these figures the question remains what are the main reasons for challenges and barriers in establishing EWCs. Throughout the study this question has been asked to EWC experts, national trade union representatives dealing with EWCs and using insights from the interviews held with established EWCs.

In a recent press release, the ETF notes that the **strong resistance of some major companies** and the specific conditions of the industry, such as **a high level of territorial decentralisation**, are among the key obstacles to the start of negotiations for the setting up of new EWCs in the sector and also more generally<sup>129</sup>.

Other challenges include:

- Complex corporate structures of transport companies: the transformation of operational markets leading to higher competition (nationally and internationally) has led to a high number of mergers and acquisitions resulting in corporate restructuring and new market positioning in particular of the big market players. This situation has in particular led to further lack of transparency with regard to company structures and information of the number of employees that are employed – thus making it difficult to determine whether a company is eligible or not;
- Geographical dispersion of employees which can make communication difficult;
- Declining trade union membership resulting in a lack of expertise, willingness or 'drive' on the part of employee representatives to drive forward the setting up of EWCs;
- Language barriers and lack of understanding of national industrial relations systems;
- Lack of knowledge of European legislation and thus resulting in a lack of expertise in negotiating EWC agreements;
- Insufficient means and resources of European trade unions to support and assist workers in setting up an EWC.

In many cases the efficiency of a EWC depends on the quality of the EWC agreement to guarantee at least a good start in the functioning of a EWC. However it has also been highlighted that this certainly needs expertise on the workers side and depending on the duration of negotiations and persuasion of the workers representatives to stick to a specific standard and not to conclude the agreement before the standard is achieved. This can in some cases prolong negotiation periods and delay the setting up of the EWC. It was argued in interviews that the negotiation periods could in some cases be decreased if the rules of the EWC Directive would be

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<sup>127</sup> <http://www.etf-europe.org/ewc.cfm>

<sup>128</sup> List of EWCs: [http://www.ewcdb.eu/search\\_results\\_ewc.php](http://www.ewcdb.eu/search_results_ewc.php) - the assessment has been carried out in 2009

<sup>129</sup> <http://www.etf-europe.org/ewc.cfm>

clearer in particular with regard to procedures of information and consultation, transnationality and facilities granted to operate a EWC (e.g. in particular budget).

#### **4.5 Reasons for 'failure' of EWCs**

This section considers cases where negotiations on establishing a EWC have begun but failed to bear fruit, or EWCs are no longer active. It also takes into account those EWCs that have an agreement but are not active. In general, once negotiations start EWCs formally exist because even if no EWC agreement is concluded, transnational information and consultation can take place via a EWC established under the EWC Directive subsidiary rules.

We have carried out three interviews with workers representatives from companies where either there were intentions to start negotiations or EWC negotiations are still ongoing.

From the information the following reasons for inactivity or 'failure' emerged:

- Lack of a common strategy of workers representation and mistrust among workers' representatives – sometimes also caused by to the fact that local management had appointed workers representatives to the special negotiating body and which were not accepted by others as being legitimately elected;
- Lack of a common interest between workers representation for the set-up of the EWC
- Lack of a common interest to deal with transnational issues in the EWC or simply because management already provides more extensive information also concerning transnational matters despite not being obliged to within national level information and consultation procedures; and sometimes national workers' representatives feel that they would have more impact in the national industrial relations framework with regard to national specific solutions and thus not having an interest in negotiating minimum levels at transnational level;
- Unwillingness on the management side to create an EWC and seeking to prevent its establishment using negotiating practices such as very slow negotiation processes; delays in replies; etc.);

The level of mistrust between workers and employers was too great to hold effective meetings and information exchange.

## 5 Key features of EWCs in the transport sector: background information

After reviewing the potential for further EWC creation in the transport sector, the report now moves on to discuss the key features, operational arrangements, achievements and challenges of existing EWCs in the transport sector.

Information in this chapter almost fully derives from primary research conducted as part of this assignment; the analysis in the remaining report is based on an in-depth review of 23 active transport sector EWCs out of 29 included in the original sample.

### 5.1 Characteristics of transport sector companies with EWCs

The transport sector companies operating active EWCs are, in general, very large, multi-national companies. The average global number of employees in the transport companies in the sample is **130,000 of which around 82,000 are employed in the EU/EEA**. The average number of workers in the European headquarter country is 57,000.

Table 8. Table 5.2 Number of employees in the transport companies hosting EWCs

Scope	Average	Lowest*	Highest*
Global	116,600	5,500	489,000
EU/EEA	72,670	3,700	322,000
European HQ country	56,570	1,400	214,000

\*Note: Figures are rounded

Sources: based on information from annual reports and interviewees from 17 (for which figures were received) out of 23 companies in the sample

Therefore, **the companies hosting EWCs in this sector**, in general terms, **far exceed the general minimum 'eligibility criteria' for EWCs** of employing at least 1,000 employees in companies or groups of companies in the EU/EEA, with at least 150 employees in each of two Member States. This trend is in line with general trends in EWC 'take-up' rates which indicate that the size of the workforce is an important factor. Early ETUI studies showed that the likelihood of establishing a EWC increases when having a workforce size from 5,000 to more than 10,000<sup>130</sup>. This has also been confirmed by more recent research which showed that the rate of establishment of EWCs among companies of different sizes (meeting the EWC size thresholds)<sup>131</sup> is:

- 32% in large companies with more than 10,000 employees in the EEA
- 15% in medium-sized companies with between 5,000 and 10,000 employees in the EEA
- 35 % in small companies with less than 5,000 employees in the EEA

<sup>130</sup> Kerckhofs, P. (2002) European Works Councils: Facts and Figures. ETUI.

<sup>131</sup> De Spigelaere, J., Jagodziński R. (2015), European Works Councils and SE works councils in 2015: Facts and Figures, ETUI

- 19% in companies with number of employees unknown

Overwhelmingly, 17 out of the 23 transport companies in the sample (for which data were available) had more than 10,000 employees: only two of the companies had fewer than 10,000 workers. Thus, given the large size of some transport sector companies, it is not surprising that **the rate of establishments of EWCs among the largest transport companies is higher** than among smaller transport companies.

There are, however, considerable differences in the sizes of companies in this group. The smallest company in this group has some 5,500 workers globally while the largest has closer to half a million employees. The companies have a minimum of 1,400 workers in the European HQ country, further demonstrating the importance of these companies as employers in their countries of origin.

On average, these companies operate in **16 different EU/EEA countries**: the smallest company in the sample in terms of country coverage has employees in three countries while the largest companies have employees in 29-30 countries. In addition to contracted employees, several companies indirectly employ staff in additional countries through joint ventures with partners.

Table 9. Table 5.3 Number of EU/EEA countries where the company has employees

Scope	Average	Lowest	Highest
Number of countries	16	3	30

Source: Based on information from interviewees from 16 out of 23 companies in the sample

## 5.2 Background and triggers for the set-up of transport EWCs

Transport EWCs include both brand new as well as some of the oldest EWCs in the EU. The average **time EWCs in the sector have been active is 9.4 years**. Two EWCs signed their very first agreement before the first EWC transposition deadline in 1996 and therefore have been operational for 19 years. The newest EWC in the sector was established earlier this year (2015). There do not appear to be any particularly prevalent trends linked to the age of EWCs in this sector, although it is worth pointing out that over a third of EWCs in the sample (7 out of 23) were established in the last five years. In some individual cases, **the representatives of EWCs highlighted the 'publicity' and 'awareness' linked to the revision of the EWC Directive as one of the contributing factors to the set-up of their EWC**, thereby at least partially explaining the recent increase in EWCs in this sector.

Table 10. Table 5.4 Number of years transport EWCs have been operational

	Average	Youngest	Oldest
Number of active years	9.5	< 1	19

Source: Based on information from interviewees from 23 out of 23 companies in the sample

The **majority of transport EWCs are brand new EWCs** in that they were created from scratch, as opposed to being created as a result of a de-merger from another company which already had an active EWC, or as a result of a merger with a

company, which operated an EWC. As shown by Table below, four out of five (79%) transport EWCs are brand new.

Table 11. Table 5.6 Background of transport EWCs

	Brand new EWC	De-merger / merger	Total
Number	18	5	23
Percentage	78%	22%	100%

Source: Based on information from interviewees from 23 out of 23 companies in the sample

The main **triggers for the establishment** of transport EWCs include:

- Requests of trade unions / employee representatives to set up an EWC;
- A joint management and employee decision to set up an EWC, following internationalisation of the company;
- A greater awareness of EWCs raised by the revision of the EWC Directive;
- Evolution from a 'voluntary' international employee and employer information forum, to an EWC;
- De-mergers from / mergers with companies with active EWCs.

One of the transport EWCs was created following several years of resistance by the management, which led to fines been imposed on the employer. A change in management structures and a court decision to disclose the number of employees in different countries finally led to a change in the situation and to a start in negotiations for the EWC set-up.

Overall, these findings suggest that the sectoral trade union activity in this field, but also, although to a lesser degree, the publicity surrounding the launch and revision of the EU Directive (first Directive 94/45/EC and then the Recast Directive and consequent changes in national legislation) have played and continue to play an **important role in the creation of EWCs in the transport sector**. This trend appears to be in line with trends in other sectors.

### 5.3 EWC agreements in the transport sector: legal background and potential changes

On the basis of evidence from interviewees, the transport sector is overwhelmingly dominated by EWC agreements following the rules of the Recast Directive. **Three-quarters of all agreements in the sample (65%) are so-called 'recast agreements'**: EWCs created since the transposition of the new Directive or older EWCs which modified their agreements to be in line with the rules of the Recast Directives. This is a much higher rate than expected, especially given that the review of EWC agreements recorded in the EWC database ([www.ewcdb.eu](http://www.ewcdb.eu)) indicates that in the region of 7-12% of all 1,081 EWC agreements in the EU are following the new rules introduced by the recast Directive<sup>132</sup>.

<sup>132</sup> Based on an indicative ICF calculation that out of the 1,081 agreements in the [www.ewcdb.eu](http://www.ewcdb.eu) database: 363 (34%) are Article 13 agreements; 570 (53%) are Article 6 agreements; 49 (5%) were established between the launch of the Directive and the transposition deadline (09.06.2009-05.06.2011), which means that EWCs set up during this time were able to decide whether to follow the Article 6 or recast rules; 81



Table 12. Table 5.7 Legal background of transport sector EWCs

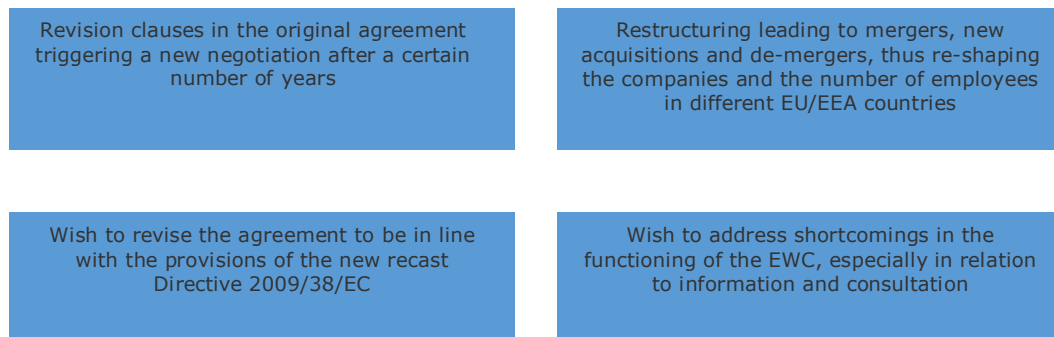
	Article 13	Article 6	Recast EWC	Total
Number	2	6	15	23
Percentage	9%	26%	65%	100%
Explanation	Agreements concluded before the deadline for transposition of the original Directive 94/45/EC (22.09.1996): exempt from the provisions specified in the original Directive	Follows the rules of the original EWC Directive 94/45/EC: agreement concluded or revised between 22.09.1996 – 06.06.2011	Follows the rules of the Recast Directive	

Source: Based on information from interviewees from 23 out of 23 companies in the sample

Overall, this trend of a high number of so-called recast agreements in the sector appears to be due to the relatively high number of new agreements concluded in the last five years (in comparison to the sample) but also as a result of extensive renegotiation work (due to restructuring and trade union demands, for example) undertaken since the adoption of the Recast Directive (and consequent changes in national legislation). Indeed, **nearly half of the transport EWC agreements have been renegotiated and revised their agreement** since they were first drawn up. This applied to 42% of EWCs in the sample. A further 16% had been slightly amended through addendums, rather than starting negotiations for a brand new agreement. Overall this means more than half of all transport sector EWC agreements have seen some type of agreement changes since they were first drawn up.

Four main reasons for formal (and non-formal) modifications to the transport sector EWC agreements were identified and they are summarised in Figure below.

Table 13. Main reasons for the modification of EWC agreements in the transport sector



(7%) were set up after the transposition deadline of 06.06.2011 meaning that they automatically follow the recast rules; and 18 (2%) are unknown.

*Source: Interviews with employee and employer representatives of transport EWCs*

The figure shows that fairly standard **revision clauses in the agreements, changes brought by the Recast Directive, restructuring and shortcomings in the functioning of the EWC were some of the main triggers for renegotiation.** It is however worth mentioning that despite many agreements having revision clauses, these are not always used, for example, due to lack of 'drive' (on the part of employees) or willingness (on the part of employers) to do so; lack of 'need' to do so as a result of good relations between the two 'sides' or as a result of the employees and management agreeing on some changes without formalising the changes in a form of a new agreement. This is possible when there is a relationship of trust between employees and management, but if distrust/disputes exist, like in the case of a small number of EWCs included in the sample, both sides may be hesitant to start a new round of negotiations. In one particular case, the employee side was hesitant to start re-negotiations due to fear of not being able to achieve the same standards as agreed in the original negotiations.

A small number of interviewees from both employee and employer sides wanted to avoid spending time on revising the actual agreement as it would be a time-consuming exercise involving internal and external experts. Instead, they preferred open discussions and negotiations within the select committee and then in the plenary to make changes to the working arrangements of the EWC rather than on the agreement per se. They felt that the focus on revision of the agreement took the emphasis away from what really mattered and placed the focus on formalities and 'wordings' and possibly deteriorating existing relationships between the two parties, instead of working together to make the EWC work better.

However, the most **commonly reported changes concerned definitions, rights, processes and timings related to information and consultation.** This was followed by changes in the number of representatives in different countries, select committees and the EWC in general. The rights of employee representatives, especially in relation to training, were another commonly reported change achieved by renegotiations.

Other, more individual changes to the EWCs concerned:

- Strengthening of definitions or focus related to 'transnational' matters;
- Introduction of sub-committees/working groups to drive forward certain areas of work or one created for each specific area/sub-sector of the business;
- Increases, and in one case, decreases to the number of plenary or select committee meetings;
- A right for employee representatives to travel to other countries/parts of business to see how things are working;
- A right for employee representatives to call an extra-ordinary meeting;
- A number of official languages for the EWC, including clarification of rules concerning translation;

In the majority of cases, no particular difficulties were encountered in renegotiations. Often a revised version of the agreement was drafted by members of the select committee, which was then discussed with other employee representatives in a preparatory meeting before bringing it to the attention of the management. In a small number of cases problems were caused by disagreements on specific issues (e.g. definition of 'transnational') or an employer's wish to stick to the minimum legal

requirements and limited willingness to take part in negotiations aimed at 'improvements' in agreements from the perspective of the employee side.

No information was gathered in a systematic manner on the use of experts in renegotiations, but it is apparent that sending a new or revised agreement to experts and contacts at (national) sectoral or cross-sectoral unions and employer's federations is a fairly commonplace practice in the sector. Indeed, some sectoral organisations have dedicated EWC coordinators who support EWCs in their regular work and also in possible renegotiations.

The EWC agreements in the sector are **largely governed by the national legislation of the country where the company's European headquarters** are based. This is the case in 17 out of the 23 EWCs in the sample (73%). Only six EWCs have chosen a legislation of another country (only in three cases due to more favourable standards for workers information and consultation rights).

Therefore a general trend can be identified that in most cases the legislation of the European headquarter is chosen and the decision for governing legislation is not necessarily taken on the basis of which legislation that is deemed being most favourable for workers' information and consultation rights.

## 6 Practical operation of EWCs in the transport sector

This section looks at the practicalities related to the operation of transport sector EWCs, and compares the findings, where possible, with EWCs from all sectors (on the basis of evidence from other studies). Specifically, this section looks at the composition of transport EWCs, the appointment of employee delegates, rights of employee representatives, frequency of meetings, operation of supportive EWC structures such as select committees and working groups and use of extra-ordinary meetings to ensure timely information and consultation, especially in restructuring situations.

### 6.1 Composition of transport EWCs

Transport sector EWCs are largely **considered as 'workers only' bodies**, even if the meetings may be chaired by the management. In practice this refers to EWC 'members' being employee representatives only: this is a similar trend to EWCs in other sectors too.

The meetings are typically attended by **one to five representatives of the management**, of which up to two or three tend to be actively involved and others come in to do presentations on specific topics during plenary meetings, for example. This is also in line with trends in EWCs in other sectors.

**Huge variations are apparent in the number of employee representatives in transport sector EWCs.** The **average number is 25**, with the smallest transport EWC in the sample having just 8 employee representatives and the largest one up to 50 members. This trend is also largely in line with EWCs across all sectors: according to the 2008 preparatory study on the revision of the EWC directive, the number of employee EWC delegates varies from 5 to 47, with an average of 23<sup>133</sup>.

There are considerable differences in the number of delegates when the number of delegates from HQ countries are compared with those from non-HQ countries. Typically, the smallest countries in terms of the number of employees have just one delegate but the number of delegates from the HQ country ranges from just 2 up to 12 per transport EWC. Indeed, a total of 7 out of 18 EWCs which provided detailed information on the background of employee delegates declared having ten or more delegates from the European HQ country. This indicates **that transport companies hosting EWCs tend to have a fairly concentrated workforce in terms of the HQ country** employing a significant percentage of all employees of the company. This is rather natural, for example, for rail, airline and postal companies, which have a high concentration of employees in the host country and then smaller logistics and other services in other countries across Europe.

On the whole, **the size of EWCs in transport companies have remained stable** over the past years, although a third have seen an increase. The increases are typically **a result of mergers and acquisitions** but in some cases also a result of being able to 'recruit' new employee delegates from countries with a smaller pool of employees, countries where the company owns units which may be more 'distant' from the core activities of the business, and countries with a weaker or more recent tradition of worker information and consultation; in other words, **countries where the EWCs may have struggled to identify and engage members in the past.**

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<sup>133</sup> GHK (2008) A preparatory study for an impact assessment of the European Works Councils Directive. EC.

Table 14. Details about the constitution of transport EWCs

Employee delegates	Transport EWCs*	All EWCs**
Number of delegates:		
- Average	25	23
- Minimum	8	5
- Maximum	50	47
- From the EU HQ country	2-12	N/A
Trend:		
- Increased	35%	62%
- Stayed the same	55%	30%
- Decreased	10%	8%

Sources:

\*Based on information from interviewees from 17 out of 23 companies in the sample

\*\*GHK (2008) A preparatory study for an impact assessment of the European Works Councils Directive. EC.

## 6.2 Appointment and representatives of employee delegates in transport EWCs

The **procedure for appointing employee delegates is mainly in line with each country's rules and regulations**. In practice, this usually means elections in some countries and appointments by trade unions or works councils in others. Some transport EWCs have clarified some further rules in their agreement about the appointment/election procedure. These include, for example, ensuring that the election of employee delegates is carried out by using secret ballots. Typically, transport EWC employee delegates must be (permanent) employees of the company.

The **appointment of delegates is a significant challenge for a small share of EWCs operating in the transport sector**; a problem which is shared by companies in other sectors too. This concerns difficulties in identifying and finding employee delegates from all countries where the number of employees meets the minimum threshold for EWC representation. As mentioned above, primarily, this tends to affect countries with limited or a more recent tradition of worker information and consultation as well as countries where the company operates non-core business activities. In one case, the management and employee representatives from the host country of a transport company worked together to encourage workers from certain countries to come forward as employee representatives and explained the principles and the availability of training to do so. This has involved travelling to the countries in question to do so too. However, in spite of joint efforts between the two sides, some companies/EWCs continue to face problems in this regard.

Another problem faced by a couple of EWCs in the sector includes management wishing to appoint one or more of the employee delegates, even if this goes against the rules of democratic elections. In some cases, this has been done against the specific wish of the EWC and in others this has happened on the initiative of local management due to inability to find anyone else to represent the country in the EWC.

In a number of EWCs it was mentioned that the worker representation election for the EWC represented in particular a challenge in CEE countries and in the UK.

As shown in the table below, **the typical term of office for employee delegates of transport EWCs is four years.** Indeed, this applies to 91% of EWCs in the sample. Only two companies in the sample operate a term of just three years. In practice, the overall length of time employee delegates remain in their role within the EWC varies strongly from person to person and country to country. In some cases delegates have remained in their role since the EWC was first established (in some cases since 1996), while other EWCs and countries see frequent changes in representation; in some cases these changes are annual.

*Table 15. A summary of key features of appointment procedures for EWC employee delegates*

Key features	Transport EWCs
Process for selecting and appointing employee delegates	According to applicable rules and regulation in each country
Main problems in the appointment of employee delegates	Difficulties in identifying and appointing employee delegates in all countries
	Management appointing employee delegates
Term of office	Usually 4 years (89% of transport EWCs)

*Sources: Based on information from interviewees from 23 out of 23 companies in the sample*

In about half of transport EWCs (52%), each EU/EEA country is represented by their own delegate – at least on paper. When there are countries with no EWC representation, for example, due to the low number of employees or if the company’s ownership of business units in the country is less than 50%, the employees are often represented by a member from another country – or a group of countries is given one dedicated representative. In other cases, the HR has taken a responsibility to inform workers in non-representative countries, or the views of employees in such countries are simply not taken into consideration.

The European and international trade unions are playing a growing role in transport EWCs, especially in the EWCs of the largest companies in the sector, which tend to have firmer links with trade union activity at these levels. Such trade unions have played a role as advisors and trainers, for example. Many smaller transport EWCs tend to have stronger links with national rather than European/international unions.

### 6.3 Rights of EWC employee representatives

No areas of significant concern, apart from individual cases, were detected in the rights of employee representatives of transport EWCs in relation to training, time-off to undertake their role as EWC representatives, appropriate facilities and access to external experts. The agreements provide protection by guaranteeing access to these rights in 95-100% of the cases, depending on the ‘right’ in question.

The more complex matter is the realisation of these rights in practice; in other words, whether the employee representatives actually have an access to these rights. The study results confirm that overall, **the great majority (89-91%) do not experience problems in this regard, although individual issues were identified**

– including issues within individual EWCs due to different local management practices with some being more supportive than others. These statistics should however be read with caution due to relatively small number of respondents.

Table 16. A summary of rights of EWC employee delegates

Rights related to duties as EWC employee delegates	A right stipulated in the EWC agreement	The extent to which this materialises in practice
Training	100%	91%
Time off	100%	90%
Facilities	95%	90%
Access to external expertise	95%	89%

Sources: Based on information 22 respondents per question

Note: the results should be read with caution due to small sample sizes.

No obvious trends were detected in employee delegates' rights over the past five to ten years. Typically the situation has remained the same or slightly improved. No reports of deterioration in rights were received, apart from some individual cases involving a member or members from certain countries.

With reference to training for employee delegates of transport EWCs, this typically concerns:

- The operation of EWCs including legal matters (i.e. the changes brought by the EWC Directive) and the rights of employee delegates;
- Language training (English);
- Industrial relations (in different countries); and/or
- Business management (i.e. stock market rules).

It is **often either a policy or a practice to combine EWC training with plenary meetings**. This means that training takes place a day before the plenary meeting as part of the preparatory meeting, for example. In most cases EWC related training is funded by the central management while in others training matters are dealt with locally. Some interviewees reported a low take-up and demand for training especially when the organisation and funding of training is left for local branches. Also, some individual examples of delegates from certain countries being denied access to training were reported when the training decisions were left for local branches to make.

Only a minority of transport EWC agreements specify the total number of training days available per employee delegate. These agreements tend to define such days for the duration of the term of office for each delegate. One agreement allows for a total of eight days of EWC related training per delegate during a four-year term, while other two agreements put this figure at six and four days respectively. One agreement is more generous, promising up to 35 hours of language training and 35 hours of trade union training per year (rather than term of office).

Turning to look at time off for employee delegates to carry out their **duties as EWC delegates, the extent to which this materialises in practice depends quite strongly on national practices and local management cultures**. Delegates from

countries with a strong tradition of worker representation do not tend to experience problems in this regard, especially when some EWC delegates are also worker representatives at national / local levels, meaning that they work either on a full or part time basis on duties related to worker representation. The situation can be very different for delegates from countries with no similar culture or tradition. Some individual cases were reported where the central management of large transport companies had to intervene to ensure that participation in the EWC's work for representatives from some parts of the business does not lead to reductions in pay, for example.

In a total of 5 out of the 18 companies for which information was available, the amount of time EWC members of transport companies can dedicate on EWC duties per year or month has been specified as hours/days. In three of these cases, a different amount has been specified for the chair, members of the select committee and other EWC members. Significant discrepancies are apparent in these time allocations, which are presented in Table 6.4 below.

*Table 17. Time allowed for EWC employee delegates to carry out their EWC duties (hours per year)*

	<b>EWC chair</b>	<b>Select committee members</b>	<b>Other EWC delegates</b>
Company 1	320	120	60
Company 2	120	60	20
Company 3	70	40	12
Company 4	100		
Company 5	60 + time for meetings and travel		

*Source: Interviews with employee delegates of transport EWCs*

## 6.4 The frequency of meetings

The frequency of meetings can have an important impact on the quality of information exchanges between management and employees as well as the extent to which the EWC is used as a forum for consultation on important matters affecting employees in more than one country. A summary of different types of meetings related to EWCs is provided in the table below.

*Table 18. A summary of different types of EWC meetings*

<b>Types of meetings</b>	<b>Explanation</b>
Plenary	Plenary meetings are the main meetings between employee delegates of the EWC and the central management that take place at least once a year: <i>"European Works Council shall have the right to meet with the central management once a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly."</i>



Types of meetings	Explanation
Select (or steering)	A select committee, also known as a steering committee, is established <i>"in order to permit coordination and greater effectiveness of the regular activities of the EWC, together with information and consultation at the earliest opportunity where exceptional circumstances arise"</i> . The Recast Directive stipulates that the maximum number of employee delegates in the select committee should be five. The select committees tend to meet more frequently than the whole EWC.
Preparatory	Preparatory meetings are employee-only meetings taking place the day or morning before the plenary meeting allowing employee delegates to discuss matters and consider questions for the central management, for example: <i>"Before any meeting with the central management, the European Works Council or the select committee... shall be entitled to meet without the management concerned being present"</i>
Working group	Some EWCs operate working groups to deal with specific subjects or allow employee delegates from different branches/sub-sectors of the business to discuss matters concerning them. The working groups tend to feature a very diverse mix of structures, compositions and meeting arrangements. Those working groups that operate without any specific time limit tend to meet one to three times a year but working committees set up for a given period to investigate a topic in greater detail tend to meet on more regular basis.
Extra-ordinary	Extra-ordinary meetings may be called in in situations of restructuring or other exceptional circumstances affecting employees in more than one country: <i>"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 select committee or, where no such committee exists, the European Works Council 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 within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted"</i> .

Sources: Direct quotes taken from the Recast Directive

In general terms, **EWCs in the transport sector appear to operate a slightly more frequent programme of plenary meetings than EWCs across all sectors.** Half of EWCs in the sample organise one annual plenary meeting while the other half operate two plenary meetings per year. Around 60-75% of EWCs across all sectors organise just one annual meeting. There has been no particular trend in the number of annual plenary meetings: the number of meetings has remained the same in the great majority of transport EWCs. The meetings last anything from half a day to three days, with employee-only preparatory and post meetings. Video-conferencing does not appear to be frequently used in the context of annual transport EWCs meetings (although is more commonplace in the operation of select committees and working

groups) but all transport EWCs operate a system of employee-only preparatory and post-meetings.

Table 19. A summary of details related to plenary meetings

Indicator	Transport EWCs*	All EWCs**
Number	50% have 1 annual meeting 50% have 2 annual meetings	70% have 1 annual meeting 23% have 2 annual meetings 63% more than 3 annual meetings
Trend in the number of meetings	Stayed the same (90%)	Not measured
Average length	Weak evidence base: from half a day to 3 three days, with preparatory and post meetings	Not measured
Preparatory meetings for employee members only	All (100%) allow and organise such meetings	44% of EWCs*** foresee an employee only preparatory and debriefing meeting

Sources:

\*Based on information from interviewees from 20 out of 23 companies in the sample

\*\* Data is based on European Trade Union Institute (ETUI), *European Works Councils and SE works councils in 2015: Facts and figures,- frequency of meetings, 2015.*

All apart from one transport EWCs operate a select committee, of which core activities tend to include organisation of meetings, fixing agendas, management of relationship with the employer contact point(s), and a more active role in information and consultation exchanges, especially in extraordinary circumstances. The select committees of transport EWCs tend to meet around three times a year, with the average ranging from just one to six such meetings a year.

A third of transport EWCs (41%) operate a working group. This is a slightly higher share than across all EWCs (29%). The topics of working groups in the transport sector, include, for example:

- Organisation of transnational work by each sub-sector (e.g. passenger rail, cargo rail and logistics / airline and customer services);
- Health and safety;
- Use of temporary agency workers; and
- Financial and economic development.

The experiences of EWCs on the working group activity is mixed, with some seeing the working group activity as vital for their EWC while others lack drive and interest to take them forward, as a result of difficulties in finding and committing the time required. On average working groups in transport EWCs meet four times a year.

Table 20. A summary of details related to select and working group activity

Indicator	Transport EWCs*	All EWCs**
Select committee		

Indicator	Transport EWCs*	All EWCs**
- Exists	96%	86%
- Number of meetings per year	Average of 3, ranging from 1 to 6	8% once a year 9% twice a year 4% three times a year 5 % five times a year 3% more than 5 times a year 11% upon simple request by employee representatives 59% of agreements do not specify the number of meetings
Working groups		
- Exists	41%	Not measured
- Number of meetings per year	4	Not measured

*Sources:*

*\*Based on information from interviewees from 23 out of 23 companies in the sample*

*\*\*Data is based on European Trade Union Institute (ETUI), European Works Councils and SE works councils in 2015: Facts and figures,- frequency of meetings, 2015.*

All but one EWC in the sample (96%) have provisions in their agreement to hold extra-ordinary meetings in situations of transnational change / restructuring. This is largely in line with the trend across EWC in all sectors: 96% of agreements include a provision to hold extra-ordinary meetings.

## 7 Functioning of EWCs: Objectives and performance of information and consultation procedures particularly in restructuring situations

The previous sections have been largely descriptive focussing on detailed basics related to the operation of EWCs in the transport sector. This section is more analytical, looking at:

- The key objectives of EWCs in the transport sector;
- Transport EWCs' overall performance against their key objectives;
- EWCs' respective achievements in fulfilling their key objectives;
- The practice of information and consultation, particularly in processes of restructuring.

### 7.1 Objectives of EWCs in the transport sector

The objectives of EWCs in the transport sector correspond broadly to the objectives set in the 1994 and 2009 Directives.

On the basis of interviews carried out to date, **improving the exchange of information between management and staff** appears to be the main and most common objective of EWCs in the transport sector. This is the view of both employer and employee representatives.

EWC members consider that the flow of information between management and staff about the economic and financial situation of the company is of high importance. This also implies that EWCs are seen as serving as forums for the communication of all company decisions ranging from investments and working conditions to organisational changes and restructuring, whether employees may be directly affected or not by such decisions.

Equally important is the communication of decisions taken in specific Member States in which the company has operations, allowing local or national-level information to be shared with everyone. This also allows members to gain a better understanding of the company's situation overall, as economic or financial performance may differ substantially between countries. Employee representatives also see the EWC as a platform to exchange national or local-level information in order to compare working conditions applying in the countries where the company operates.

For employee representatives from transport EWCs, the central objective of the EWC is **to defend or protect the rights of employees**. Thus, employee representatives place considerable importance on the consultative function of EWCs whereby they are given the opportunity to discuss decisions which can impact on employment or staff working conditions. Employee representatives therefore see the EWC as a platform for contributing to the strategic planning of business operations. In certain cases, employee representatives see the EWC as being the major forum for defending the rights of employees in Member States that do not have works council structures or strong union traditions. However, several employee delegates also **emphasised the importance of seeing the company perform well as an important goal**.

For employer representatives, EWCs are important to **foster stronger links between staff from different countries** and to **improve relations between management and staff**. This is also regarded as particularly important for

developing a common corporate culture and a sense of belonging among staff. On the other hand, the interviewed employer representatives generally tend to downplay the consultative function of EWCs while favouring the broader notion of 'discussion' or 'exchange of views' between management and staff on strategic decisions.

The figure below provides an overview of the objectives of EWCs from the perspective of employer and employee representatives from transport EWCs interviewed for this study.

Table 21. Overview of EWC objectives for employer and employee representatives

Employer representatives	Employee representatives
Improving the communication of information to employees about company's economic and financial performance and major (transnational) decisions	Receiving information from management about company's economic and financial situation and decisions of relevance to employment and working conditions
Communicating business decisions made locally or nationally to further expand the flow of information between management and staff	Exchanging information with employee representatives from other Member States on country-specific employment situations and working conditions
Improving relations between management and staff and fostering stronger links between staff from different countries	Defending the rights of employees through consultation with management on all relevant strategic decisions
Allowing for an exchange of views between management and staff on strategic decisions	Allowing employee representatives from countries with weak union representation to voice their opinion

## 7.2 Functioning of transport sector EWCs in relation to information and consultation particularly in restructuring situations

The key function of an EWC is to allow its members to **obtain information from central management in a timely manner on issues of a transnational nature so as to allow for a consultation process to take place**, after which an agreement can be reached between employer and employee representatives on the most optimal course of action to adopt.

In order to understand the performance as well as the strengths and weaknesses of EWCs in the transport sector, it is important to examine the way in which certain notions such as information, consultation, but also transnationality are defined in EWC agreements and interpreted in by EWC members in practice.

### 7.2.1 Analysis of transport EWC agreements in relation to information transmission

Of all the EWCs analysed, **most have the notion of *information* defined in their respective agreement.** In many cases, the process is defined as the "*transmission of information or data from central management*" to the EWC and its select committee "*to enable them to acquaint themselves with the subject matter and to examine it*". This broadly corresponds to the definition in Article 2.1(f) of the Recast Directive. References to the transmission process are present in 11 out of 23 assessed EWC agreements.

The EWC agreements of companies covered by this study were in fact either established or renegotiated in or after 2011. As such, their respective definition of "information" is in fact very close to the definition given in Article 2.1(f) of the Recast Directive. Again, the definitions under these agreements make reference to the timely and appropriate transmission of information "*to enable employees' representatives to undertake an in-depth assessment of the possible impact*".

Moreover in the two EWC agreements, a reference is made to the timely transmission of information to the EWC to enable the company "*to adopt decisions rapidly in a very competitive international environment.*" This implies that the EWC should be regularly kept up-to-date on the latest market developments in a fast-changing environment.

Evidence therefore suggests that the **inclusion of the definition of *information* in the Recast Directive has led to a higher degree of harmonisation as regards the process of information transmission among transport EWCs** established or with agreements renegotiated in or after 2011.

There are however exceptions to this rule. For instance, one EWC agreement merges together the definitions of *information* and *consultation* whereby the notion of "*dialogue*" between management and EWC members is emphasised. Nevertheless, this merged definition does refer to the importance of ensuring that information is provided "*within a reasonable time*" for EWC members to express their opinion. In yet another EWC agreement it is stated that information should be transmitted by central management to the EWC "*without any undue delays*" and also provides an exhaustive list of topics on which information is to be transmitted.

Regarding EWCs with agreements predating 2011, there is some variety in their respective definition of *information*. This can be explained by the fact that the 1994 Directive does not contain a detailed definition of "*information*", although many references to information are made throughout the text. Indeed, Article 6.3 of Directive 94/45/EC refers to information as relating "*in particular to transnational questions which significantly affect workers' interests.*"

As such, the pattern observed with agreements predating 2011 is that definitions vary substantially in terms of length and detail. Such definitions may cover the notions of *consultation* and *transnationality* or include specific topics on which information exchange should take place. A number of examples are provided in the box below.

#### Sample definitions of information in transport sector EWC agreements

##### EWC 1

"Once every calendar year, the EWC receives detailed information regarding the development of the business situation and the future perspectives from the group

*management. In particular, this concerns: The structure of the company group; the expected development of the business and marketing situation; strategies for the business and marketing policies; the employment situation and its expected development; strategies for the employment policies; the (planned) investments; fundamental changes of the organisation; relocation, mergers or closure of substantial company portions. In unusual circumstances that are of great effect to the interests of the employees, the EWC receives from the group management, detailed information in time, on presentation of the required documentation. Unusual circumstances are in particular: The relocation and/or closure of companies, businesses or important business portions; intended mass dismissals."*

## **EWC 2**

*"Content of activities: The European Works Council functions as a forum of open information flow, opinion exchange and dialogue between corporate management and staff representatives in any matters that are important for the corporation and its employees, and that apply across the whole corporation of at least to two countries (...). The aim is to bring up any matters that significantly affect employees and their status in the council before final decisions are made. Communications and subsequent hearings should be organised so that their timing, content and activities allow staff representatives the opportunity to evaluate the information they receive in detail, and to express their opinion on the basis of their evaluation"*

## **EWC 3**

*"The EWC must at least be consulted on all transnational matters that have a substantial impact on the employees as described below. Transnational matters shall be considered to have a substantial impact whenever there is any significant and material change in the organisation affecting employees (headcounts) in at least two Member states according to the thresholds, in each Member State concerned as described below:*

*at least 5 employees in Member States normally employing less than 20 workers*

*at least 10 employees in Member States normally employing at least 20 and no more than 59 workers*

*at least 15% of the number of workers in Member States normally employing at least 60 and no more than 249 workers*

*at least 40 employees in Member States normally employing at least 250 and no more than 499 workers*

*at least 50 employees in Member States normally employing at least 500 and no more than 1999 workers*

*at least 100 employees in Member States normally employing 2000 workers or more*

*In addition, if a minimum of 150 workers (in the scope of this Agreement) are affected in any transnational matter where the above country thresholds are not reached, the issue will also be deemed to have a Substantial Impact.*

*Employees' headcount to be taken into account is the average headcount of the previous quarter, as issued by the Finance Department. The previous quarter is the one preceding the time of consultation on the project under consideration.*

*If a matter involves two undertakings or establishments located in two different Member States, but in one of the two member States, the threshold as described above is not met, the matter is not considered as having a Substantial Impact. As a consequence, the consultation of the EWC is not required but it will nevertheless be*

*informed.”*

#### **EWC 4**

*“Information means the transmission of data by management to EWC members in order to enable them to acquaint themselves with the subject matter and to examine it: information shall be given at such time in such fashion and with such content as are appropriate (i.e. the information used by management in arriving at a proposal) to enable EWC members to undertake an in depth assessment of the possible impact and, where appropriate, prepare for consultation with the Central management.”*

Of all the EWCs analysed, only a small minority of agreements predating 2011 do not contain a definition of *information*. In two cases, the definition is in fact replaced by a list of topics and items on which the EWC is to be informed and consulted.

On a more general note, **there is considerable variation in the agreements reviewed so far as regards the notion of timely data transmission**, regardless of the year in which they were established or renegotiated. This is partly because neither the 1994 Directive nor the Recast Directive give a precise indication of the period of time which guarantees a timely transmission of information. Therefore, as highlighted in this subsection, the notion of timeliness in the agreements can be expressed in various ways (e.g. *“within a reasonable time”*; *“once every calendar year”*; to enable the company *“to adopt decisions rapidly”* etc.).

### **7.2.2 Actual practice of information transmission in transport EWCs**

The views of employer and employee representatives as to the effectiveness with which information is transmitted from central management to the EWC are very diverse. The overall rating given by the interviewed representatives on information transmission was just over **3 out of 5**. Employer and employee representatives who did not give a rating expressed concerns as to what constitutes the timely transmission of information. This was the case with newly-established EWCs. The absence of rating may also be explained by the fact that the EWCs have only recently become operational.

In other cases, employee representatives who did not give a rating argued that they often had to ask central management for obtaining information in a timely manner or that more comprehensive information could in fact be obtained from national works councils.

Employee representatives who gave a rating below 3 expressed the view that information was not transmitted in a way which would give them enough time to formulate well-founded opinions. One employee representative also mentioned that the transmission of information was more effective between central management and EWC working groups (or operations sub-committees) than between central management and the EWC as a whole.

A considerable number of employee representatives gave a rating above 3 regarding information transmission. This was the case with EWC agreements established or renegotiated both before and after the full implementation of the Recast Directive. High ratings tend to be supported by the view that relations between management and staff are healthy and ‘open’, and also tend to be linked to the number of meetings.



The trend with regard to information transmission seems positive overall according to interview feedback. It appears that the frequency of meetings plays an instrumental part in this respect. Another important factor is stability in EWC composition or membership which improves the flow of information from management to EWC members. Stability of membership of the EWC can strengthen and improve working relationships between workers and management.

### 7.3 Consultation

Both the 1994 Directive and the Recast Directive contain a definition of *consultation*. While both Directives define it as the establishment of dialogue and exchange of views between employee representatives and central management, the Recast Directive specifies that consultations should occur “*at such time, in such fashion and with such content as enables employees’ representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related*”.

#### 7.3.1 Analysis of transport EWC agreements in relation to consultation

Concerning the sample of EWCs interviewed so far, similar patterns as regards the definition of *consultation* can be observed in their respective agreements to those regarding the definition of “information”:

- Agreements established or negotiated in or after 2011 all contain a definition of consultation. In most of these agreements, the definition has been directly transcribed from Article 2.1(g) of the Recast Directive. Therefore these agreements refer to the timeliness of consultations to allow employee representatives to express an opinion.
- For the other EWCs in the sample with agreements either established or renegotiated in or after 2011, there is some variation in the extent to which details relating to the timeliness of consultation are provided. For example, as mentioned in the previous subsection on information, the consultation function of one EWC is to allow its members “to adopt decisions rapidly in a very competitive international environment.” The definitions of information and consultation are merged in one of the EWC agreements assessed.. As mentioned previously, the “information-consultation” definition included in this agreement states that information is to be provided “within a reasonable time” for EWC members to express their opinion.

The following two examples of **EWC agreements have time limits** for employee representatives to express an opinion as part of the consultation process, as shown in the box below.

#### Examples of definitions of consultation in EWC agreements in the transport sector

##### EWC 1

*“Consultation means the establishment of dialogue and exchange of views between the European Works Council and management at such time, in such fashion and with such content as enables the European Works Council to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related without prejudice to the responsibilities of the management and within a reasonable time which may be taken into account within X in case the European Works Council intends to express an opinion on the basis of the information provided about a proposed measure, it has to do so within a reasonable*

time. However **a maximum of four weeks** following the date at which the European Works Council has been informed and consulted by the management.”

## **EWC 2**

“Consultation means the establishment of dialogue and exchange of views between EWC or Select Committee and Central Management or any more appropriate level of management, at such time, in such fashion and with such content as enables EWC or Select Committee to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and **within 15 Days**, which may be taken into account within the Community-scale company or Community-scale Group.”

Of the reviewed EWC agreements established or negotiated after the full implementation of the Recast Directive, we have found references to the possibility for employee representatives to express their opinion in written form. In three cases, the scope of the consultation process appears to go beyond the traditional notion of exchanging views during meetings.

In the sample analysed, most EWC agreements predating 2011 include a definition of *consultation*. In many cases, however, these definitions tend to be less detailed compared to more recent EWC agreements and predominantly focuses on the notion of dialogue between central management and EWC members.

There are however a number of exceptions to this rule according to the EWC agreements reviewed so far:

- Example of an EWC agreement, that states that the consultation process should “take place in such a timely manner that the EWC or workgroups that are appointed by it can develop points of view that can influence the final decision of the group management”. This requirement effectively goes beyond the definition provided in Article 2.1(f) of Directive 94/45/EC.
- Similarly, the scope of consultation in another example of EWC agreement goes beyond the definition provided in the 1994 Directive. This agreement, which was renegotiated after the revision of the 1994 EWC Directive, states that: “Consultation involves oral or written exchanges of views and the establishment of a dialogue between the management and members of the EWC due to special circumstances (...) such consultation must be at a time that it is still meaningful”. This definition thus includes a reference both to the notion of timeliness and to the option of communicating opinions in written form.

Again, only a small number of agreements predating 2011 contain a definition of *consultation*. Instead, they only contain list of topics or items on which the EWC is to be informed and consulted. As the consultation process is not established under such agreements, this implies that there are no formal requirements for central management to take into account the opinion of employee representatives.

### **7.3.2 Actual practice of consultation in transport sector EWCs**

Feedback gathered from interviews reveals in many cases that there is a gap between theory and practice as regards EWC consultations. On average, employee representatives gave a rating of **2 out of 5** in relation to consultation. Very little feedback was provided by employer representatives in this respect, and the overall rating they gave was also fairly low.

Employee representatives who gave a low rating argued that their consultative role is in fact rather limited. This was in many cases explained by the fact that **they are usually given little information upon which action is still possible**. In other words, information tends to be communicated by central management only once decisions have already been taken. In one particular case, central management was said to classify certain types of information as confidential therefore precluding EWC members from being consulted on a number of issues of relevance to employees.

Views from certain employer representatives suggest the **consultation process can be subject to tensions** between central management and staff representatives. The overall message from them was that employee representatives sometimes refuse to give an opinion as it is considered that they do not have sufficient information, or that they are unable to formulate opinions on management issues that are specific to multinational companies.

It generally appears from the sample that **Directive provisions under which transport EWCs operate have had little influence on the way in which consultations are conducted in practice**. For instance, there are no discernible improvements among EWCs with agreements established or renegotiated under the Recast Directive. More positively, there is the recognition among employer and employee representatives in certain EWCs that the consultation rights of members are duly upheld and critical to guarantee the good functioning of the EWC. Overall, it appears that EWC consultation activities have a limited impact on restructuring decisions (see also section 7.8 below). In most cases, this is because the information required is not communicated in a timely manner. In other cases, employee representatives may not be in a position to radically alter the decisions to be enforced by central management. In this context, it appears that the consultation process in the context of an EWC is above all conciliatory.

## 7.4 Focus of EWCs on transnational matters only

Given the eligibility criteria for companies to establish a EWC (c.f. *Community-scale undertaking* definition), it is assumed and understood that EWCs should deal exclusively with issues of a transnational nature. These **eligibility criteria have remained unchanged** since the introduction of the first EWC Directive in 1994. On the other hand, the 1994 Directive only makes a number of references to transnationality whereas the Recast Directive clearly establishes the rule that the scope of EWCs should be limited to transnational issues (c.f. Article 1.3).

### 7.4.1 Analysis of transport EWC agreements in relation to focus on transnational matters only

Based on the sample of EWC agreements reviewed, **almost all of them include a clear reference to the transnational scope or nature of EWC activities**, i.e. corresponding to issues or decisions affecting employees in at least two different Member States where a company has operations. This delimitation of the scope corresponds broadly to the characteristics of *Community-scale undertakings* described both in the 1994 and 2009 Directives.

While most agreements only refer to the concept of *Community-scale undertaking* to set out the minimum conditions under which a EWC can address issues, a number of agreements include further details and conditions for defining the scope of EWC activities. Again, there is considerable variation as to the details and conditions set out in these different EWC agreements. An overview is provided in the box below with agreement specificities highlighted in bold.

### Examples of definitions of transnationality in transport sector EWC agreements

#### EWC 1

"Transnational matters are measures that concern the Community-scale Company or Community scale Group as a whole, or at least two businesses or companies situated in different Member States and **having detrimental and serious impact upon either at least 5 percent of the staff within each country or at least 50 employees in each country being affected**; if the measure constitutes a reduction in staff, the minimum threshold for mass redundancies provided for under the national law of the country affected - rather than the aforementioned thresholds - must be reached, on the basis of the planned dismissals."

#### EWC 2

"Projects or events are transnational when they concern all the companies members [ ] which fall into the scope of this Agreement, or at least two of them AND when this **affects at least 150 employees of the Group distributed in at least two countries** falling within the scope of this Agreement **and at least 80 employees in one of the countries concerned.**"

#### EWC 3

"Issues affecting the whole company or one of its divisions as a whole or at least two sites situated in different EEA countries are affected. **100 workers must be affected.**"

#### EWC 4

"Due to the premises that the responsibility of the EWC is limited to substantial organisational changes within the company which have a pan-European impact, the EWC is responsible for all issues listed in the following that concern at least two businesses or companies in different Member States. **The EWC cannot deal with subjects that fall solely within the purview of a national labour representation; this does not apply if these subjects could have substantial effects on the employees in other countries.**"

#### EWC 5

"Transnational issue is one concerning undertakings or companies operating in two different countries **or an issue involving one country but whose scale is such that it will by its very nature impact undertakings in another country or the group as a whole**".

#### EWC 6

Transnational matters are all those concurrently affecting of the company (European scope), or at least two undertakings or establishments located in two Member States. These **include matters which, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between at least two Member States covered by this Agreement to locations outside of the European scope.**

Based on the interpretation of the above mentioned agreement provisions, it is possible to observe that the scope of activities in three examples of EWC agreements can go beyond addressing issues or decisions affecting workers in at least two Member States. In these particular cases, issues only affecting one country with the potential of having substantial effects or impact in another country may also be dealt with by

the EWC. In one of these examples (EWC 3) the number of affected workers was determined by the Agreement.

Conversely, the scope of EWC activities can be interpreted as being more restrictive under the agreements when EWC agreements contain minimum thresholds on the number of employees affected by an issue for it to be dealt with by the EWC.

Only two EWC agreements of the sample analysed do not contain a definition of the notion of *transnationality*. In some cases however, both employer and employee representatives appeared to have a clear understanding of the remit of their EWC.

#### **7.4.2 Actual practice in transport sector EWCs in relation transnational focus**

Reviewing the feedback obtained from interviews with employer and employee representatives, it appears again that there is a gap between theory and practice as regards the scope of activities undertaken in transport EWCs. The overall rating given by the interviewed employee representatives as regards the transnational scope of their respective EWC was **2.5 out of 5**. Feedback from employer representatives was once again less extensive and very few gave a rating. For those who did, the overall rating was **3 out of 5**.

Both employer and employee representatives have argued that it is generally difficult to keep EWCs as forums for information and consultation on transnational issues, in accordance with the provisions set out in the various agreements. Similarly in this respect, there seems to be no discernible improvement among EWCs with agreements established or renegotiated under the Recast Directive.

In other words, many representatives have explained that certain EWC members tend to bring up national or local issues at meetings instead of focusing on issues affecting the company as a whole. It was also mentioned that certain topics and discussions of a transnational nature have a tendency to revert back towards national or local issues. The interpretation of *transnationality* thus remains problematic for many EWCs. In some cases, interview feedback has also revealed differences of opinion between employer and employee representatives as to what a transnational issue is or should be.

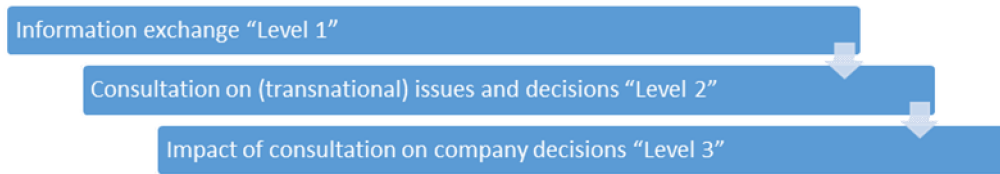
Problems have also been identified regarding the **interpretation of the effects of central management decisions in a transnational context**. A same decision can indeed have very different, even conflicting impacts or outcomes across two or more countries. There is thus the impression that while decisions are generally transnational in scope, issues resulting from such decisions tend to remain national or local.

### **7.5 Performance of EWCs with regard to information and consultation**

Interview feedback from employer and employee representatives suggest varying levels of achievement among EWCs against their main objectives.

Achievement levels may be defined based on the key objectives of EWCs, as defined under the 1994 and 2009 EU Directives. These levels of achievement are presented in the figure below.

Table 22. Levels of EWC achievement



### 7.5.1 Information exchange (“Level 1”)

Generally, **interview feedback reveals that most EWCs have delivered against their objective of facilitating information exchange.** Positive engagement and the seriousness with which management and employee representatives fulfil their roles were generally seen as instrumental in this respect. Another important factor identified was the inclusive nature of EWCs, where all countries can be represented, leading to higher volumes of information being shared on a greater diversity of experiences.

Examples of EWC achievements relating to effective information exchange are provided in the box below.

**Employee representative:** *"The main achievement so far has been the ability to start the process of having regular meetings between the EWC and central management [which has led to improved] information exchange between management and employee representatives from different countries on one hand, and between employee representatives from different countries on the other."*

**Employer representative:** *"Management [now] receives feedback from employee representatives from non-HQ countries. Before, information exchange was mainly limited to management and employee representatives from the HQ country. For example, through the EWC, the management learnt about issues around reporting and addressing workplace health and safety incidents. The [response] was improved and made more consistent across countries after learning about issues in non-HQ countries."*

**Employee representative:** *"[EWC] really has improved information flows although passing on information to the national level / receiving information from national level is still a challenge. [However] in some countries the status of works councils members / workers representatives is not well protected which means EWC tasks have to be carried out outside working hours, often hindering more effective communication"*

**Employee representative:** *"[There has been] a joint effort from management and EWC members to launch an internal survey. An [information] booklet was created by the members [about the role of the EWC]. After each meeting the minutes are [published in the members' respective] native language."*

Where EWC performance was judged to be relatively poor by employee representatives, achievements in terms of information were deemed to be fairly limited due to a **lack of engagement overall and a perceived lack of support from management.** Where EWC performance was judged to be relatively poor by employer representatives, this was mainly due to their view of many employee delegates **lacking commitment and background** to engage in transnational corporate management matters.

While many achievements have been reported with regard to information exchange, shortcomings were identified by a considerable number of respondents in relation to EWC consultation activities. Feedback therefore reveals that a fairly sizeable proportion of EWCs only partially fulfil their set objectives.

### 7.5.2 Consultation on transnational issues ("Level 2")

Several shortcomings were identified by the interviewed respondents in this respect. **Typically, the fact that decisions were discussed in EWCs after they had been made by management was the main reason why they felt that almost no legitimate consultation had taken place.** This point was raised both by employee and employer delegates.

Overall, the analysis of interview feedback reveals that **effective communication between the select committee and the wider EWC members, a higher meeting frequency and stability in EWC composition or membership are as many factors contributing to the achievement of EWC consultation objectives.**

Achievements in terms of consultation generally lead to jointly agreed actions between employer and employee representatives, as described in the box below.

**Employee representative:** *"[The members are] working towards reaching an agreement on minimum standards of dismissals for all those affected by the current restructuring process."*

**Employer representative:** *"[There is an] improved culture of consultation within the company. There is transparent communication on management processes across the group, [and even] the possibility to use the network of employee representatives to [discuss] projects outside formal consultation and information procedures."*

**Employee representative:** *"[We have been] constantly consulted via "Requests for Opinion", EWC-Opinion and Management-response on a written basis. We negotiated and agreed a Social Framework for employees in countries without a Social Plan (...) and agreed to a Management Code of Conduct."*

Social charters have been adopted in two EWCs with a special focus on ensuring that subcontractors with whom the company works must also respect the principles protected in the Charter concluded between the management and the employees. This can be seen in the two examples below.

#### **Example from an EWC interviewed - Corporate Social Responsibility Charter**

*The Charter has been signed by the top management and the Chair of the EWC. All management and employees' representatives commit to "defend, communicate and respect the outcomes and decisions and negotiation processes."*

*The Charter contains specific provisions ensuring inter alia the following rights for employees in all sites:*

- non-discrimination and gender quality
- Freedom of association and the right to collective bargaining
- Prohibition of forced labour and child labour
- Health and safety at work

*The Charter also contains a clause encouraging the Group that to use subcontractors who respect in line with national rules and labour law. It also mentions that "the Group should refuse to do business with partners who engage in unacceptable social practices worsening working and income conditions".*

**Employee representative:** *"The Corporate Social Responsibility Charter and the European Recommendations on quality of life at work signed by the top management and the employees' representatives is a major achievement."*

**Employer representative:** *"The management and the employees managed to discuss on some issues and find solutions. For instance, the Corporate Social Responsibility Charter sets principles on how to manage subcontracting. The next topic will be on stress at work."*

#### **Example from another EWC interviewed - Social Rights and Ethics Charter**

*This Charter applies to all employees in all the company and subsidiaries. It aims at "fostering a climate of enhanced mutual trust and respect in a work environment in which no form of discrimination or harassment may be tolerated". In an annex a Corporate Social Responsibility statement is also attached and "ensures that the activity of the company goes hand in hand with the promotion of social values and environmental quality".*

*The Charter covers*

- Health and safety and dignity at the workplace
- Employment, wages, working time and working conditions
- Equality
- Social dialogue

*This Charter also puts a strong emphasis on making sure that all the principles and fundamental rights enshrined in this text is respected by "all subcontractors with whom [the company] maintains relations anywhere in the world."*

These examples show that achievements relating to consultation are still rare and limited to individual transport EWCs, but where consultation related progress has been made, they have started to play a role in influencing decisions within companies. This is further discussed below.

### **7.5.3 Impact of EWC consultations on company decisions ("Level 3")**

Some evidence has been gathered on the achievements of EWCs with respect to protecting the rights of employees or negotiating favourable outcomes for employees in corporate restructuring situations. For example, as previously mentioned, the Management Code of Conduct negotiated by one of the logistics EWCs sets out a number of rules for employer representatives and guarantees for employee representatives which also apply in situations of corporate restructuring. In this case, the EWC employee representatives were also able to negotiate higher severance payments for employees that were recently made redundant in Europe following a failed merger attempt with a competitor.

Achievements of an even greater scale were achieved by another larger transport sector EWC, as shown in the box below.



**Employee representative:** *"The EWC has been able to have a positive effect in restructuring situations. [For instance, with the] facilities management project piloted in three countries with the aim of outsourcing a number of tasks. In the three pilot countries, this affected 300 workers. EWC representatives were able to meet with all outsourcing contractors to discuss employees' working conditions [with their] new employer. It was ensured that all benefits (even extra-contractual ones) [would be] transferred across. This was achieved. EWC [representatives were] able to [discuss directly with] each affected worker. Nobody was made redundant and the [contractual] Terms and Conditions were protected for three years. An agreement was also reached that in the roll out of the project to other Member States, affected employees would obtain the same benefits as those agreed for the pilot countries."*

In other restructuring situations, individual EWC achievements have been modest, although some process effects have been acquired (restructuring related achievements are further discussed in section 8.4).

**Employee representative:** *"While the EWC has not been able to change a restructuring process, it [has impacted on its] timing via the consultation process; the EWC prepares statements for all the consultation processes and in some cases lessons [have been learned] on both sides (...). [Now] management rather approaches some projects by first testing results and evaluating [its] implementation effects; this [also improves] cooperation between both sides and gathers further insights on the restructuring project."*

**Employee representative:** *"A framework agreement has been adopted on how to conduct the negotiations in all the Member States [in which the company operates]. It is not binding but [national] trade unions [have welcomed] this initiative"*

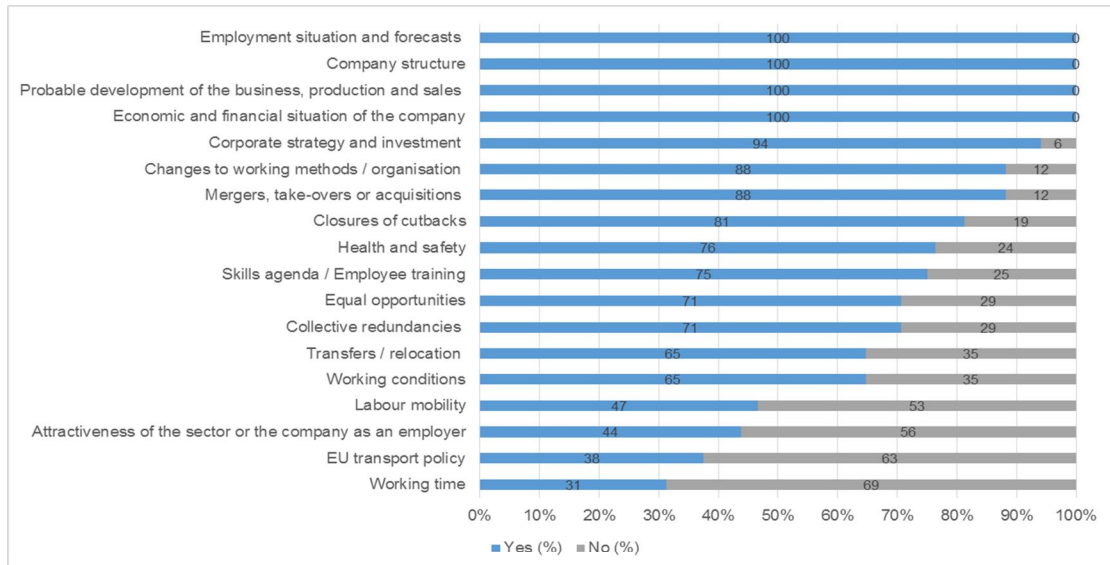
## 7.6 Coverage of European issues addressed by transport EWCs

Figure 7.3 below presents the coverage of European issues addressed by transport sector EWCs. It shows that financial, employment and market development issues dominate EWC meetings, with all interviewed EWCs addressing these matters as part of their regular meetings. In terms of frequency with which these issues are addressed, these are followed by corporate strategy, restructuring and organisational questions. Health and safety as well as training and development are also discussed by three-quarters of EWCs. The skills agenda has tended to concern the general availability of staff training within the company or skills shortages. Health and safety has become an issue for individual EWCs as a result of serious work accidents and has prompted enterprises to further develop as well as unify health and safety policies and monitoring systems across all parts of the company.

The attractiveness of the sector is not one of the most commonly debated matters, although it is increasing in importance now that some companies, after some years of staff reductions, are experiencing high staff turnover and struggling to fill vacancies. It is for this reason that it has become an important issue for some individual EWCs. One EWC representative explained that they have used the EWC as a sounding board to find out more about staff dissatisfaction issues in specific parts of the company and sought to further develop their staff satisfaction survey.

EU transport policy matters are rarely a direct topic for debate among EWCs in the sector, unless they have an immediate impact on the company in question with practical competitiveness, employment, strategy or restructuring implications.

Table 23. Coverage of European issues addressed by transport EWCs (%)



Source: ICF, on the basis of information from 15-23 EWCs per question

## 7.7 Role of transport sector EWCs in restructuring situations

On the basis of findings from the previous sections, **the role of transport sector EWCs in restructuring situations is in many cases limited to that of an information exchange forum.** In many EWCs, concerns remain around the timeliness of data transmission from central management to employee representatives. A considerable number of employee representatives expressed the view that information tends to be communicated by central management once decisions have already been taken. This means that the EWC cannot really fulfil a consultative role.

The low frequency of meetings (e.g. only one EWC plenary meeting per year) is seen by many employee representatives as preventing them from following up on transnational issues effectively. While extraordinary meetings would be the ideal format to discuss restructuring decisions, some employee representatives have argued that even these meetings serve almost no purpose as they tend to happen once decisions have been taken by central management.

For some employer representatives, the fact that certain employee side delegates bring up national or local issues at EWC meetings weakens the consultative role of EWCs. More generally, problems around the interpretation of the notion of *transnationality* can be an issue limiting the role of EWCs in restructuring situations (e.g. where issues considered to be transnational by the employee side and not interpreted to be such by management).

Another issue raised by certain employee representatives is that EWCs are sometimes constrained in their actions due national and sectoral differences as regard labour laws or collective agreements. As in many countries, **national works councils remain in a stronger position** to negotiate with management in restructuring situations, some employee side representatives prefer to focus their efforts at this level.

In a small number of cases, however, **evidence has been gathered on the positive effects of EWC consultations in restructuring situations.** These effects are relatively modest in scope, meaning that EWC employee representatives are understood as not being in a position to overturn or radically alter decisions made by central management in multinational transport companies. But there is evidence to suggest that EWCs can change central management's approach to communicating and discussing restructuring plans with employee representatives. In this regard, certain **EWCs have generated so-called process effects.** In a small number of cases, EWCs have been successful in securing better outcomes for employees in restructuring situations and even in discussions on corporate organisational matters.

**Employee representative:** "*[EWC discussions led to] improved remunerations for redundant employees [following the failed merger with...].*"

**Employee representative:** "*[When operations were outsourced], EWC representatives were able to speak to the new outsourcing company and ensure [workers'] terms and conditions were [kept unchanged]. [There were] no redundancies. Another example was the financial shared services programme piloted in the UK. EWC representatives obtained access to all affected workers and were able to speak to all of them about their options. As a result it is possible to redeploy a significant number of workers.*"

**Employee representative:** "*[Plans to open] a call centre outside the EU were cancelled after consultation in the EWC*".

Analysis of the interview feedback suggests that more information sharing and discussions take place in EWCs where select committees are strongly engaged. This can ensure a more open and constructive dialogue between management and staff representatives in restructuring situations.

In summary, factors that strengthen the consultative role of transport sector EWCs in restructuring situations include:

- Clarity in agreements regarding the description of information exchange and consultation processes;
- Timely flow of relevant information from central management to employee representatives;
- Stability in the composition of the EWC and experience of members;
- Engaged select committee;
- Trust between EWC employer and employee representatives;
- Clarity in agreements regarding the transnational scope of EWC activities;
- Understanding among members as to the remits of an EWC;
- Frequency of restructuring situations; and
- Frequency of EWC (including select committee and extraordinary) meetings.

Finally, it is instructive to see how EWCs assess their own performance against their objectives (it should be noted that the majority of this feedback came from employee representatives as not all interviewees were willing to comment on this issue). Asked to rate EWC performance from 0 to 5, a majority of the respondents representing employees gave **3 out of 5.**

On the whole, **employee representatives felt that more could be achieved by their respective EWC.** It was argued that EWC activities tend to be limited to

facilitating the exchange of information among the members. The other main criticisms in order of importance were as follows:

- The EWC is only a forum for information exchange and not so much for consultation;
- Discussions only happen once decisions have already been made;
- The frequency of EWC meetings is too low; and
- Varying levels of engagement among the members.

**Performance with regard to consultation appears to quite poor overall.** One employee representative made the remark that the *"EWC has become a talking shop, with discussions always happening post-event."*

Many employee representatives also expressed the view that **EWC activities tended to slow down or repeat themselves over time.** The slowdown of activity can be explained by a growing lack of interest among certain members, which is partly due to the fact that the low frequency of meetings does not enable members to engage in continuous discussions on corporate decisions. One remark was that *"at every annual EWC meeting, members have to go back to the beginning of discussions each time"*. Another reason for the varying levels of engagement among EWC members related to national differences in terms of industrial relations and union maturity, with sometimes members from countries with well-established works councils being more engaged overall.

Employee representatives giving their EWCs a performance rating of **2 out of 5** argued that the management side was not providing enough support to the EWC, with the occasional lack of communication between the select committee and the EWC. One employee representative explained that this lack of support from management can be explained by the fact that the EWC may be seen as a hindrance to short and medium-term corporate objectives.

More positively, a small number of employee representatives gave their EWC a performance rating of **4 out of 5**. The main reason was that they were able to secure better working conditions for the employees. An underlying reason was also the relatively high frequency of EWC and select committee meetings, which related to the takeover bids recently made by major market competitors.

A number of employee representatives who preferred not to give a rating argued their respective EWC had enabled some degree of networking among employee representatives from different countries.

Employer representative feedback as regards EWC performance was rather limited, however it corroborated the broader views of the employee representatives in that the EWC is primarily an information exchange forum and that *"more could be done"*. The overall performance rating given by employer representatives was **3.5 out of 5**, slightly higher than the rating given by employee representatives overall.

There was **very little criticism among the interviewed employer representatives as to the performance of their respective EWC.** A considerable number of employer representatives argued that the EWC as a structure gives employee representatives a stake in the company.

One employer representative's performance rating was 4 out of 5. The main arguments put forward was that the EWC brings together *"seasoned professionals that*

*know the business and the employees very well” enabling them to have a “pragmatic, open and transparent dialogue” about company decisions.*

## **8 Strengths and weaknesses of transport sector EWCs**

This section looks into the main challenges both in regard of the set-up of new EWCs and the running of existing bodies. It also addresses the strengths and weaknesses of existing EWCs.

### **8.1 Challenges faced by existing transport EWCs**

Interviews highlighted the following main types of challenges facing the operation of their EWC:

- Challenges due to the nature and the composition of the EWCs;
- Challenges due to the legal framework of the EWCs;
- Challenges due to the nature of discussions in the EWCs; and
- Challenges due to the changes in the company and sector.

Each of these types of challenges is analysed in turn.

The challenges due to the nature and the composition of the EWCs arise mainly due to:

- The large number of languages spoken amongst EWC representatives and the resulting difficulties which arising in having good-quality discussions. In addition to providing high quality interpretation, one idea put forward by an employer representative is to organise sub-groups of the EWC for those who need interpretation and for those who do not need interpretation.
- The balanced representation of the EWC representatives across the countries and types of jobs. Here, views of the employer and employee representatives somewhat diverge. Employer representatives reported that management has no control over the appointment of EWC representatives, whereas the employee representatives raised the issue of management choosing worker representatives, especially in countries lacking a tradition of worker information and consultation.
- The different traditions of social dialogue between the EWC representatives from different countries affects the extent to which a common ground in the discussions can be developed between the EWC representatives. Some country representatives are used to strong and extensive consultations (e.g. France, Germany), whilst representatives from Central and Eastern Europe may lack experience of consultation structures.
- Finally, the lack of committed representatives and the high turnover both from the management and employee sides was considered to be a challenge for EWCs to function properly. Here, employee representatives pointed out the lack of sufficient time to engage in the EWC's work as a hindering factor.

The following challenges arising from the legal framework were mentioned by employee representatives in particular:

- A lack of competence to reach transnational agreements on topics affecting employees in different parts of the company, such as temporary agency work and part-time work;
- In some Member States (e.g. Germany, the UK) sanctions were not found to be sufficiently dissuasive to ensure management respects information and consultation rights. It was also considered to be a problem where sanctions do not

provide for the possibility of the decision making process to be stopped pending the outcome of a legal challenge.; and

- In some Member States (e.g. UK) it is not clear how workers can bring a case to the national labour courts in particular if the EWC is a shared body – including members of management and workers.

The main challenges relating to the nature of discussions in the EWCs were identified by the interviewees as follows:

- Ensuring that EWC meeting and discussion topics are genuinely transnational and that national matters are resolved at the national level;
- A related challenge is to ensure that the EWC remains a strategic body, discusses meaningfully the company-wide issues and provides an EU wide worker representation;
- Difficulties in ensuring constructive and high-quality dialogue in EWC meetings.
- Low meeting frequency (mentioned mostly by the employee representatives) where an annual meeting is not considered to be sufficient. An alternative to hold two meetings per year was suggested.

The interviewees identified the following key challenges due to the changes in the company and sector:

- The difficulties to engage with representatives from company subsidiaries;
- The need to respond to globalisation and learn to work across national boundaries and different national working cultures;
- The need to respond to the constant changes in the sector such as ongoing reductions of staff in the postal sector, the diversification of transport companies into other types of businesses and (sudden) staff shortages, linked to the attractiveness of the sector as an employer.

In terms of some sub-sector and country specific challenges, it was highlighted that many logistics companies are family owned companies that market their companies by emphasising working relationships like in “a family”. From the experience of some existing EWCs from the logistics sector, the long struggle to set up an EWC was linked to the fact that the family owners did not seem to support the creation of an EWC. This may be linked to the fact that family owners/managers rather prefer a more informal employee-management relationship.

Although compared to other countries German based companies are most likely to have an EWC, interviews with German based EWCs for this study found that even where a strong tradition of employee representation exists, it can still be a challenge to establish a well-functioning EWC. German transport companies seem to be managed from Germany, copying the German business structure in other countries. Major decisions will be approved or only taken by central management in the HQ. This management style impacts also on the organisation of the EWC. Testimonies confirmed that it took a number of years to build relationships of trust between management and European workers representatives, to establish a timely information and consultation process and to ultimately also transform into a more international company by providing insights about decision making processes of central management. A similar situation was also observed in French based companies.

On the other hand, this type of management could also be favoured by unions in countries with strong national information and consultation rights in particular to

preserve their national interests and employee voice with central management and thus, not to request a negotiation of an information and consultation procedure for transnational issues.

## 8.2 Strengths of transport EWCs

Given the role of EWCs in providing a forum for information exchange and consultation, one of the most common strengths identified from the interview feedback so far is **trust between management and staff representatives**.

Trust can be understood here as a sign of positive and constructive industrial relations ensuring open and transparent communication and cooperation on corporate strategic matters.

From the perspective of employee representatives, one of the strengths of the EWC is to bring them all together and enable them to **develop common positions for the good of all employees across all countries**. As such, the EWC is seen as a means of strengthening trust between employee representatives from different countries.

For employer representatives, the strength of the EWC is that it is a forum enabling them to **strengthen relations with employee representatives**. This again relates to the notion of trust in industrial relations.

Interview feedback from employer and employee representatives of a rail sector EWC gives evidence of the importance of trust and networking among members.

**Employee representative:** *"A lot of efforts have been [made] to improve the presence of the EWC at local level (...) which helps to increase knowledge of the functioning of the company/ branches of activity and also allows EWC members to meet workers in different offices [and to] learn about different professions inside the company."*

**Employer representative:** *"The fact that a number of EWC members are now working in the EWC for a number of years has increased the trust and exchange among management and workers - the work has become more constructive. This makes the EWC a partner for management to discuss more broadly strategic management issues and reach decisions."*

The other strengths commonly identified by the EWC members interviewed include:

- Engagement of the select committee;
- Support from external experts on technical issues; and
- Stable composition or membership within the EWC.

A strongly engaged select committee is regarded as a factor which can drive the EWC forward. By adopting a proactive approach, engaged select committees ensure an effective functioning of their respective EWC and give employee representatives the confidence to voice their opinion.

The involvement of external EWC experts, such as trade union members or legal advisors, is also considered as a major strength in many EWCs. Their technical expertise guarantees the effective implementation of EWC agreements and is also seen as useful for representatives to gain a better understanding of their rights and duties. At the same time, external experts can offer valuable assistance to select committees in driving EWC operations forward.



Last but not least, a stable composition both within select committees and among employee representatives is also regarded as a major strength in as much as it maintains a high degree of trust between EWC members. In other words, **a stable EWC membership ensures its effective functioning.**

### 8.3 Weaknesses in transport EWCs

Interview feedback reveals that perceived weaknesses vary from one EWC to another. There are a number of factors which are mentioned frequently:

- Lack of engagement or interest from EWC members;
- Difficulties in finding EWC delegates from certain countries and related high turnover;
- No opportunities for consultation; and
- Focus shifting to national or local issues as opposed to transnational ones.

The **lack of interest and engagement** is seen as a major weakness by many EWC representatives. The interview feedback suggests that a general lack of interest leads to situations where communication from the select committee as well as among members is relatively poor or infrequent. In most cases, this means that the EWC's only function is that of an information forum where no legitimate consultation takes place (i.e. before decisions are taken by management).

The lack of engagement or interest may also be a direct consequence of the low number of EWC meetings. If company developments tend to occur at a fast pace, infrequent meetings mean that the EWC is not able to keep up with company changes more generally. In this context, infrequent meetings again may imply that EWC members are not given the opportunity to be consulted in time on planned changes, which goes some way to explaining their disinterest.

Another weakness identified relates to the **difficulties in keeping the EWC as a forum for transnational issues** (i.e. common issues affecting workers in at least two Member States). A number of employer and employee representatives highlighted the fact that certain members do not have a good understanding of issues relating to the management of a multinational company and use the EWC as a platform to discuss domestic issues, or issues affecting their specific branch operations only. As a result, EWC members' attention is drawn away from key issues affecting the industry as a whole or having high relevance to the overall economic and financial performance of the multinational group.

The box below summarises interview feedback from two employer representatives relating to the difficulties in keeping EWCs as a transnational forums:

**Employer representative:** *"We find it hard to have an open and constructive exchange of information as some members do not seem interested and lack understanding of matters related to the management of an international company like ours. If the EWC consisted of more high ranking union representatives with an understanding of business management and worker information and consultation, then the EWC could achieve more. There are such members, but not all. For example, some work in operational roles from different business divisions and they want to focus or are able to only discuss matters to do with their immediate surroundings, rather than the business as a whole."*

**Employer representative:** *"Too many local debates. This hinders the work of the*

## EWC''

As mentioned previously, there is considerable diversity in terms of the weaknesses affecting the performance of EWCs. On the basis of the interviews completed so far, other weaknesses that have been mentioned include:

- Members' lack of time and other work commitments;
- Lack of dedicated facilities for information exchange;
- Inexperience within newly established EWCs;
- Differences in national approaches to industrial relations; and
- Language barriers making it difficult to communicate outside meetings where interpretation is usually offered.

## 9 Conclusions

The purpose of this section is to summarise the key findings and conclusion of this study with regard to the issues it sought to address:

- The practice and potential of EWCs in the sector: establishing how many EWCs are currently active (by mode of transport); how many have become defunct and for what reason; as well as an assessment of how many companies in the sector could qualify for the creation of an EWC in line with the conditions laid down in the Recast Directive;
- The structure, scope and function of existing EWCs;
- The reality of information and consultation structures, the determination of 'transnational issues' and their effectiveness particularly in times of restructuring;
- The themes EWCs in the transport sector are addressing, both in regard to their core information and consultation tasks, as well as broader work, for instance in working groups;
- The strengths, weaknesses and particular challenges facing EWCs in the sector and how they can be overcome.

These questions will be addressed in turn in the subsequent sub-sections, while section 10 of this report addresses any recommendations arising from these findings and conclusions.

### 9.1 The practice and potential of EWCs in the transport sector

The European transport industry is characterised by intensified internationalisation, regulatory changes and restructuring since the 1990s. As a result, more transport companies fall under the scope of the Directive as mergers and acquisitions create larger, more transnational entities in some sub-sectors of the industry. Other characteristics of specific transport sectors also influence the number of EWCs which have/can be established. For instance, market concentration is far greater in the air and rail transport sub-sectors than in the road and logistics transport sub-sector. Although some large employers can be found in maritime transport services sectors (in many cases maritime transport companies tend to not employ seafarers under EU contracts) it has to be kept in mind that seafarers are so far not covered by the provisions of the Recast Directive<sup>134</sup>. In the cases of port authorities including some terminal operators, many (though not all) only provide services in one Member State thus do not qualify as Community-scale undertaking. Furthermore, while a number of logistics / transport service companies are large, they have rather small national representations, thus remaining below the criteria of 150 employees in at least two Member States.

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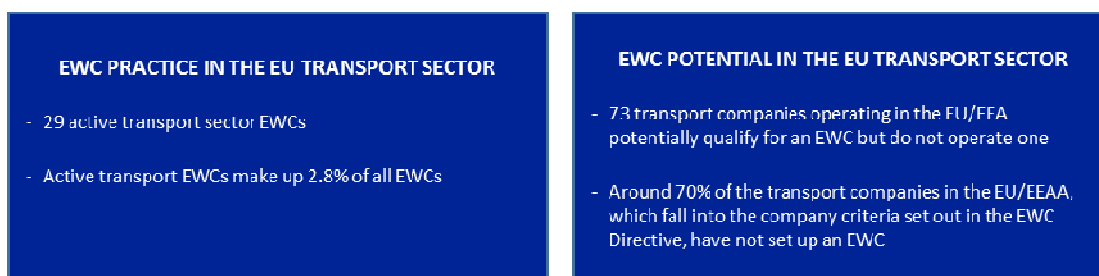
<sup>134</sup> Unless Member States have explicitly included seafarers under the scope of the implementing provisions of the Recast Directive. Proposal for a Directive of the European Parliament and of the Council on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC, COM(2013) 798 final - 2013/0390 COD aims to include seafarers under the provisions of the EWC Directive in general in all Member States..

Overall, large (multinational) transport companies account for less than two per cent of the total number of companies in the transport sector in the EU-27<sup>135</sup>. However, nearly half of the workers are employed by large companies<sup>136</sup>.

With these market developments in mind, a total of 29 active transport sector EWCs have been identified<sup>137</sup> and it can be estimated that at least a further 73 transport companies meet the size threshold to establish an EWC<sup>138</sup> but none has been established<sup>139</sup>. The precise number of EWCs in the sector and the potential for creation depends on the precise delimitation of the sector. For instance, in a presentation to the seminar organised as part of this study, Hellmut Gohde (an expert on EWCs in the transport sector) suggested a number of 40 EWCs being established in the transport sector and 80 further companies with the potential to establish such bodies. This includes EWCs that have been established on paper, but have not been active since (e.g. Lufthansa and Alitalia). These figures also include some companies not captured by the research for this study such as companies mainly active in other sectors which also have operations in the transport sector (e.g. Oetker operating Hamburg Süd Containers). The precise number therefore depends on the delimitation of the sector.

Based on the sectors agreed for this study, the figures show that the 29 active EWCs in the sector account for approximately 29% of all potentially 'eligible' companies in the sector and some 2.8% of all active EWCs (with around 2% of the EU workforce being active in the transport sector).

*Figure 4. A summary of key facts related to EWC practice and potential in the transport sector*



*Source: ICF, 2015, on the basis of preliminary findings based on [www.ewcdb.eu](http://www.ewcdb.eu), ETF, desk/literature review and sectoral social partner consultations*

Findings suggest that there is most potential for new transport sector EWCs in the sub-sector 'post, passenger, road transport and logistic' (52%), followed by 'aviation' (27%) and maritime transport/services (19%). There are also two more global tourism operators with their own passenger transport companies (2.5 %) that could qualify for a EWC.

<sup>135</sup> A recovery on the horizon? Annual Report on European SMEs 2012/2013, European Commission, October 2013

<sup>136</sup> Ibid.

<sup>137</sup> Further 10 were identified through [www.ewcdb.eu](http://www.ewcdb.eu) which had however ceased to exist or were never set up

<sup>138</sup> In particular employing more than 1,000 Employees in the EEA area – though the criteria of employing more than 150 employees in two Member States could not be verified.

<sup>139</sup> According to ETF, the figure may be a slightly higher with up to 80 transport companies qualifying for an EWC but no operating one.

The barriers for the set-up of new EWCs in the transport sector are diverse and include, for example, complex corporate structures of transport companies, making it difficult to establish which entities belong to the same company and therefore the total number of employees, as well as difficulties for employees to establish contact; a lack of legal requirement to report numbers of employees in different countries; intensified competition and corporate restructuring in the industry leading to fluid corporate structures; geographical dispersion of employees; declining union membership and absence of worker representatives resulting in lack of knowledge or 'drive' on the part of employee representatives of companies to drive forward the set-up of new EWCs. Management resistance is also encountered in some cases<sup>140</sup>. Other legal constraints were also highlighted at the seminar held on the 10 September in Brussels (organised within the context of this study including participants from EWCs interviewed and representatives from European social partners), including the possibility for some companies to claim that all employment contracts with the company are registered in one country, even if these individuals work elsewhere.

Furthermore, some existing EWCs have been dissolved as a result of changes in corporate structures; dissolution of European operations or mergers and take-overs (e.g. Wincanton, DHL, Arriva etc.). Some of these now exist in new 'incarnations' (e.g. Arriva under the Deutsche Bahn EWC; DHL represented under Deutsche Post DHL etc.).

Thus, because of the scale and frequency of restructuring in the sector, the picture is a fluid one which needs to be monitored and updated on a regular basis.

## 9.2 The structure, scope and function of existing EWCs

The active transport sector EWCs operate largely in the 'post, passenger, road transport and logistics' sub-sector with 55% of all active EWCs in the transport sector, followed by 'aviation' and 'maritime transport'. Nearly a third of the active EWC in the sector are headquartered in Germany (31%), followed by France (24%), the UK (14%) and the Netherlands (7%)<sup>141</sup>.

Table 24. Overview of transport companies with an active EWC

Total	Post, Passenger (road and rail), Road Transport and Logistics	Maritime transport (incl. passengers), maritime services	Aviation (passenger and cargo), aviation services	Tourism
Number	16	4	6	3
Share (%)	30%	22%	23%	60%

Source: EWC database, ICF research

The main triggers for the establishment of transport EWCs so far include: 1) requests of trade unions / employee representatives; 2) de-mergers from / mergers with companies with active EWCs; 3) a joint management and employee decision, following internationalisation of the company; 4) a greater awareness of EWCs raised by the revision of the EWC Directive, and 5) an evolution from a 'voluntary' international

<sup>140</sup> Based on interviews and surveys undertaken as part of the research as well as material of ETF.

<sup>141</sup> Other countries where transport EWCs are 'located' include: AT, FI, SE, US, UE, CH

employee and employer information forum to an EWC. Key characteristics of transport EWCs are outlined in the box below.

#### **CHARACTERISTICS OF TRANSPORT COMPANIES HOSTING EWCs**

Transport companies operating EWCs tend to be very large, multi-national companies: the average global number of employees is 130,000 of which around 82,000 are employed in the EU/EEA.

These companies operate, on average, in 16 different EU/EEA countries.

#### **CHARACTERISTICS OF TRANSPORT EWCs**

Transport EWCs include both brand new as well as some of the oldest EWCs in the EU. The average time EWCs in the sector have operated is 9.4 years.

The sector is dominated (74%) by EWC agreements following the rules of the Recast Directive (as a result of many new agreements and renegotiation of existing ones).

The EWC agreements in the sector are largely governed by the national legislation of the country where the company's European headquarters are located; no evidence of companies in the sample preferring a governing legislation of a country where the legislation related to work information and consultation is deemed as being weaker than in other countries.

Transport EWCs largely considered as 'workers only' bodies with an average number of employee delegates of 24 (ranging between 8 and 50). This is in line with sizes of average EWCs across all sectors.

EWCs in the transport sector appear to operate a slightly more frequent programme of plenary meetings than EWCs across all sectors (half with one and the other half with two plenary meetings)

Almost all have a select committee, which tends to meet three times a year. A third of EWCs have set up at least one working group.

#### **RIGHTS AND ROLES OF EWC EMPLOYEE DELEGATES**

The procedure for appointing employee delegates is mainly in line with each country's rules and regulations; but the appointment of delegates is a significant challenge for a small share of EWCs in the sector, particularly affecting countries with limited or a more recent tradition of worker information and consultation.

The typical term of office for employee delegates of transport EWCs is four years.

No areas of significant concern, apart from individual cases, were detected in the rights of employee representatives of transport EWCs; where problems had been encountered, they were often due to differences in local management practices.

*Source: Based on a sample of 23 EWCs from the transport sector*

### **9.3 The reality of information and consultation structures and the role of EWCs in restructuring situations**

According to the stakeholders consulted for this study, most transport EWCs have delivered against their objective of facilitating and improving information exchange. Prior to the establishment of the EWC information exchange was mainly limited to management and employee representatives from the headquarter country. Positive engagement and the seriousness with which management and EWC members fulfil their roles were generally seen as instrumental in this respect. Another important factor identified was the inclusive nature of EWCs, where all countries can be

represented, leading to higher volumes of information being shared on a greater diversity of experiences.

However, several shortcomings were identified in relation to consultation concerning transnational matters. Typically, the fact that decisions were discussed in EWCs after they had been taken by management was the main reason why they felt that little or no consultation had taken place.

Overall, traditions of information and consultation, effective communication between the select committee and the wider EWC members, a higher meeting frequency and stability in EWC composition were identified among the factors contributing to the achievement of EWC consultation objectives.

It generally appears from the sample that the specific Directive provisions under which transport EWCs operate have had little influence on the way in which consultations are conducted in practice. For instance, there are no discernible improvements among EWCs with agreements established or renegotiated under the 2009 Recast Directive.

Overall, EWC consultation activities were shown have a limited impact on restructuring decisions; indeed, in practice the role of transport sector EWCs in many restructuring situations is limited to that of an information exchange forum. In most cases, this is because the needed information is not communicated in a timely manner. In other cases, employee representatives may not be in a position to alter decisions made by central management. The low frequency of meetings is seen by many employee representatives as preventing them from following up on transnational issues. While extraordinary meetings would be the ideal format to discuss restructuring decisions, some employee representatives argued that even these meetings often come too late to influence decision making.

For some employer representatives, the fact that certain employee representatives bring up national or local issues at EWC meetings weakens the consultative role of EWCs. More generally, problems around the interpretation of the notion of *transnationality* and *substantial impact on employees* are considered to be detrimental to the role of transport sector EWCs in restructuring situations.

Another issue raised by some employee representatives is that EWCs are sometimes constrained in their actions due to national and sectoral differences as regard labour laws or collective agreements. In such cases, national works councils remain in a stronger position to negotiate with management in restructuring situations.

In a small number of cases, however, evidence has been gathered on the positive effects of EWC consultations in restructuring situations. These effects are relatively modest in scope, meaning that EWC employee representatives are understood as not being in a position to overturn or radically alter decisions made by central management in multinational transport companies. But there is evidence to suggest that EWCs can change central management's approach to communicating and discussing restructuring plans with employee representatives. In this regard, certain EWCs have generated so-called *process effects*. For example, while they have not managed to achieve changes to restructuring plans, in some cases outcomes for employees could be improved and consultation processes led to a better understanding of the reasons why decisions were being taken.

These different realities are led analysts to distinguish between different types of EWCs. For example, Lecher et al distinguish between the following four types:

- Symbolic EWCs which are very much management driven, often based on Article 13 of the original Directive and can sometimes have questionable member election practices (e.g. management nominations)
- EWCs acting as Service Providers for Representatives mainly acting to support local dialogue and information sharing but with little meaningful consultation and sometimes local conflicts in the election of representatives
- Project oriented EWCs which present their own initiatives and can negotiate transnational accords as well as receiving information and being able to feed into a consultation process
- Participation oriented EWCs which receive timely information and are involved in decision making. They have a high level appreciation from management

At the seminar organised as part of this study, it was argued that most transport sector EWCs fall into the second and third category, although some EWC representatives present considered their body to be a participation oriented EWC.

It is also interesting to note that a number of EWCs had specifically worked (or are working on) on agreeing process descriptions for information and consultation which set down on paper what type of information needs to be provided and when; what shape consultation should take (issuing opinions etc). In some cases this was building on national information and consultation traditions (e.g. the Netherlands) and in some cases processes were being developed specifically for the EWC.

Factors that strengthen the consultative role of transport sector EWCs in restructuring situations include:

- Clarity in agreements regarding the description of the process of information exchange and consultation procedures (including for example definitions of topics and level of detail);
- Timely flow of relevant information from central management to employee representatives;
- Stability in the composition of the EWC and experience of members, including an understanding among members as to the remit of an EWC;
- Engaged select committee;
- Trust between EWC employer and employee representatives;
- Expert advice on technical issues; and
- Clarity in agreements regarding the transnational scope of EWC activities.

#### **9.4 Themes being addressed by transport sector EWCs**

Maybe unsurprisingly, the economic performance and developments in employment within the company dominate transport EWC meetings, followed by corporate strategy, restructuring and organisational questions. Discussions around the skills agenda have tended to focus on the general availability of staff training within the company or skills shortages. Health and safety has become an issue for individual EWCs as a result of work accidents and differences in procedures between national sites. The attractiveness of the sector is not one of the most commonly debated matters, albeit it is increasing in importance now that some companies, after some years of staff reductions, are experiencing skill shortages.



EU transport policy is rarely a direct topic of EWCs in the sector, unless they have an immediate impact on the company in question with practical competitiveness, employment or strategy implications. The reason for this is the fact the main role of a EWC is to discuss company related matters on restructuring in particular affecting jobs and working conditions. The EWC does not have the competency to be involved in European policy making. However, half of the respondents in the interview carried out for this study saw potential for a more political role for EWCs. One of the reasons was that EU transport policies have an impact on company strategies and market positions, thereby affecting the work of EWCs. The EU policies and tools mentioned include, for example the 4<sup>th</sup> Railway Package, environmental policies, safety policies, EU investment and sector strategic policies (e.g. TEN-T, DG REGIO and structural funds, Roadmap to a Single European Transport Area and Motorways of the Sea). Also, employment policies have been a subject of reflection in relation to overall employment strategies, sector skills development and EU labour legislation (i.e. related to Temporary Agency Work Directive 2008/104/EC or the Posting of Workers Directive 96/71/EC).

In practice however interviewees identified a number of factors that currently hamper EWCs potential role in this regard. These factors include:

- EWC budgets that are strictly limited to company affairs;
- Irregular, too infrequent EWC meetings to allow time for broader policy discussions;
- Lack of cooperation and networking between EWCs (including from the same sub-sector); and
- Potential lack of expertise and interest of EWC delegates of broader operational and policy issues, thus necessitating need for further training.

Only one EWC was identified which has used the opportunity to link to a European campaign of ETF (the Railway Packages) and wrote an official letter to the European Parliament. On the other hand, one EWC employee representative stated clearly that EWCs should not get involved in political issues.

## 9.5 Strength, weaknesses and particular challenges facing EWCs in the transport sector

Perceived strengths and weaknesses vary relatively considerably from one EWC to the other. Evidence gathered so far however suggests that there are a small number of recurring strengths and weaknesses affecting the performance of EWCs and these have also been included in table below.

Strengths	Weaknesses
Improved trust between management and staff representatives	Only a forum for information exchange and not so much for consultation; discussions only happen once decisions have already been made
Ensuring a European representation level of staff to central management	The frequency of EWC meetings too low; too few face to face meetings
Improved flow of information between management and staff representatives	Lack of time to undertake EWC duties for EWC members, or lack of engagement or interest from EWC members or management
Strengthening trust between employee representatives from different countries; ability to come together to develop common positions for the good of all employees across all countries	Difficulties in finding EWC delegates from certain countries and related high turnover
	Focus shifting to national or local issues as opposed to

<b>Strengths</b>	<b>Weaknesses</b>
Engagement of the select committee	transnational ones
Support from external experts on technical issues	Inexperience within newly established EWCs Differences in national approaches to industrial relations
Stable composition or membership within the EWC	Language barriers

*Source: Interviews with management and employee representatives of transport EWCs*

The stakeholder interviews and the study seminar also raised a number of issues linked to the Recast Directive, which particularly stakeholders on the employee side considered needed to be addressed. These included:

- A remaining lack of clarity of what constitutes a transnational issue despite further detail added to the definition in the Recast Directive;
- The absence of the implementation of sufficiently dissuasive sanctions for not meeting information and consultation standards at the national level;
- Continuing lack of clarity on what consultation really means and when this should take place (e.g. information and consultation being two distinct processes; right for employee side views to be considered and company having to provide reasoned response);
- Strong link with national information and consultation processes and as part of this the establishment of credible processes in all countries for the election of employee side representatives.

Employers did not support these views and there are also differences of opinion as to the types of decisions or 'agreements' EWCs should be able to reach at European level and their link with national information and consultation structures.

## 10 Policy Recommendations

Policy recommendations arising from the findings of this study can be summarised under the following headings:

- Supporting the creation of further EWCs and enhancing the operation of existing EWCs;
- Clarity of legislation and implementation of EWC;
- Ways to interlink EU transport policy and the work of EWCs.

### 10.1 Supporting the creation of further EWCs and enhancing the operation of existing ones

The creation of further EWCs was one of the goals behind the Recast Directive in 2009. This study clearly shows that there remains significant potential for the creation of such bodies in EU transport companies. At the same time, it was emphasised by stakeholders that the creation of additional EWCs should not be at the expense of paying attention to the 'quality' of these structures and indeed the quality of the operation of existing EWCs.

Factors which can support the creation and operation of EWC are therefore addressed in turn below, with an understanding that the enhanced operation of EWCs can also be a factors encouraging the additional creation of EWCs.

#### 10.1.1.1 Supporting the creation of EWCs

In order to recommend measures which might support the creation of further EWCs it is important to recall the factors which were identified as currently inhibiting their establishment. The table below summarises these barriers and sets out possible solutions to address them:

*Table 25. Barriers to the establishment of EWCs and possible solutions*

<b>Factors inhibiting the creation of additional EWCs in the transport sector</b>	<b>Barriers to overcoming these factors</b>	<b>How these could be addressed</b>
Lack of information concerning the structure of the undertaking or the group of undertakings and its workforce  Instability of corporate structures (e.g. due to frequent restructuring) and workforce size;	Fragmentation and complexity of corporate structures; lack of formal access to information on employee numbers in different countries by employee representatives;  Ongoing drive towards market opening and further intensified global competition in certain sectors mean restructuring trends are likely to continue	The Recast Directive (Art 4.4) requires that central and local management provide the information necessary for negotiations to be opened to set up a new EWC. The implementation of this provision and its impact are currently being assessed by a study on the implementation of the Recast Directive commissioned by DG EMPL. Based on such an assessment it will be

Factors inhibiting the creation of additional EWCs in the transport sector	Barriers to overcoming these factors	How these could be addressed
		<p>possible to establish whether these provisions are sufficient to allow for negotiations to be opened or whether further legal or other measures may be required to increase transparency in corporate structures (which would allow employee representatives to decide whether their company meets the size threshold to establish an EWC).</p> <p>European social partner organisations could also be of assistance in assessing which companies might meet the relevant size thresholds (as previously done by ETF for example).</p> <p>Under the Recast Directive, management is required to provide information in situations of transnational restructuring affecting employment and working conditions in more than one Member State. A study currently under way for DG EMPL is assessing how this has been implemented and information and consultation processes (and the definition of transnationality) operate in practice. As a result of the findings of this study it will be possible to establish whether these provisions are sufficient to inform workers in cases of transnational restructuring or whether further measures need to be taken. Beyond this, information on the impact</p>

Factors inhibiting the creation of additional EWCs in the transport sector	Barriers to overcoming these factors	How these could be addressed
		<p>of restructuring is currently being gathered by the European Monitoring Centre for Change (EMCC) hosted by Eurofound. Such information could be used by social partners and employee representatives to monitor company level developments. It must be borne in mind that this information is based on press reports which may not record accurate details of all restructuring cases.</p>
<p>Strong geographical dispersion of employees</p>	<p>Lack of information flow between employee representatives on different sites; lack of communication</p>	<p>Providing resources to employee representatives to meet, exchange and initiate requests to set up a Special Negotiating Body, SNB, (e.g. through workshops/seminars/hearings at EU level of transport companies meeting size threshold for EWCs). Two budget lines are <b>available for such activities within DG EMPL such as:</b></p> <p>Information, consultation and participation of representatives of undertakings" (which notably covers projects related to EWCs)</p> <p>social dialogue and training of the workers representatives</p> <p>Relevant European sectoral social partner organisations could also facilitate such exchanges.</p> <p>Database of contacts for information sharing and advice. For instance, <b>existing databases such as the European Works Councils database managed by ETUI could</b></p>

Factors inhibiting the creation of additional EWCs in the transport sector	Barriers to overcoming these factors	How these could be addressed
<p>High prevalence of 'medium sized' transnational companies in the transport sector (not large multinationals)</p>	<p>Smaller companies (meeting the EWC size threshold) are more likely to consider transnational information and consultation as a financial and administrative burden, and an insufficiently flexible solution for their requirements..</p>	<p><b>be enhanced to add such information.</b></p> <p>Better information sharing with transport companies with EWCs (e.g. through workshops/seminars/hearings at EU level of transport companies meeting size threshold for EWCs).</p> <p><b>European social partner organisations in the sector do already and can further assist to facilitate such exchanges (potentially with support from relevant DG EMPL budget lines).</b></p> <p>The Commission could also encourage research on the productivity benefits of good employee information and consultation structures.</p>
<p>Language barriers</p>	<p>Interpretation or language training not available in the phase of establishing whether a company qualifies for an EWC; fears of high costs of translation and inability to communicate effectively without it</p>	<p>Database of contacts for information sharing and advice to allow employee representatives to locate individuals who can advise them (in their own country or with the appropriate language capacity).</p> <p>Enhanced role of European social partner organisations to bring together relevant representatives for initial information exchange.</p>
<p>Lack of information on relevant employee side counterparts to initiate requests for set up of SNB</p>	<p>Lack of information on employee representatives in other countries and number of employees in other countries</p>	<p>Providing resources to employee representatives to meet, exchange and initiate requests to set up SNB (e.g. through workshops/seminars/hearings at EU level of transport companies meeting size threshold for EWCs)</p>

Factors inhibiting the creation of additional EWCs in the transport sector	Barriers to overcoming these factors	How these could be addressed
		through existing social partner networks (at sectoral and cross-sectoral level).
Lack of experience of information and consultation structures in certain countries leading to a lack of drive to push forward transnational information and consultation processes	Low levels of trade union organisation or traditions of collective bargaining not suited to increase this experience without possibility of information sharing	Training and ability to meet and exchange information on different industrial relations and information and consultation structures; Budget lines to support the development of industrial relations and social dialogue are available within DG EMPL.  Database of contacts for information sharing and advice (see above).
Management resistance	Larger transnational companies from countries with experience in information and consultation structures often already have EWCs; smaller companies are more likely to lack this experience and fear implications of transnational information and consultation without further knowledge of potential benefits	Studies showing the productivity benefit of good employee information and consultation structures could be encouraged and results disseminated.  Contacts for information sharing and advice could be included in the ETUI database currently listing all active EWC (contact details could then be asked on request to the ETUI).  Enhanced role of European social partner organisations in communicating the benefits of transnational information and consultation structures

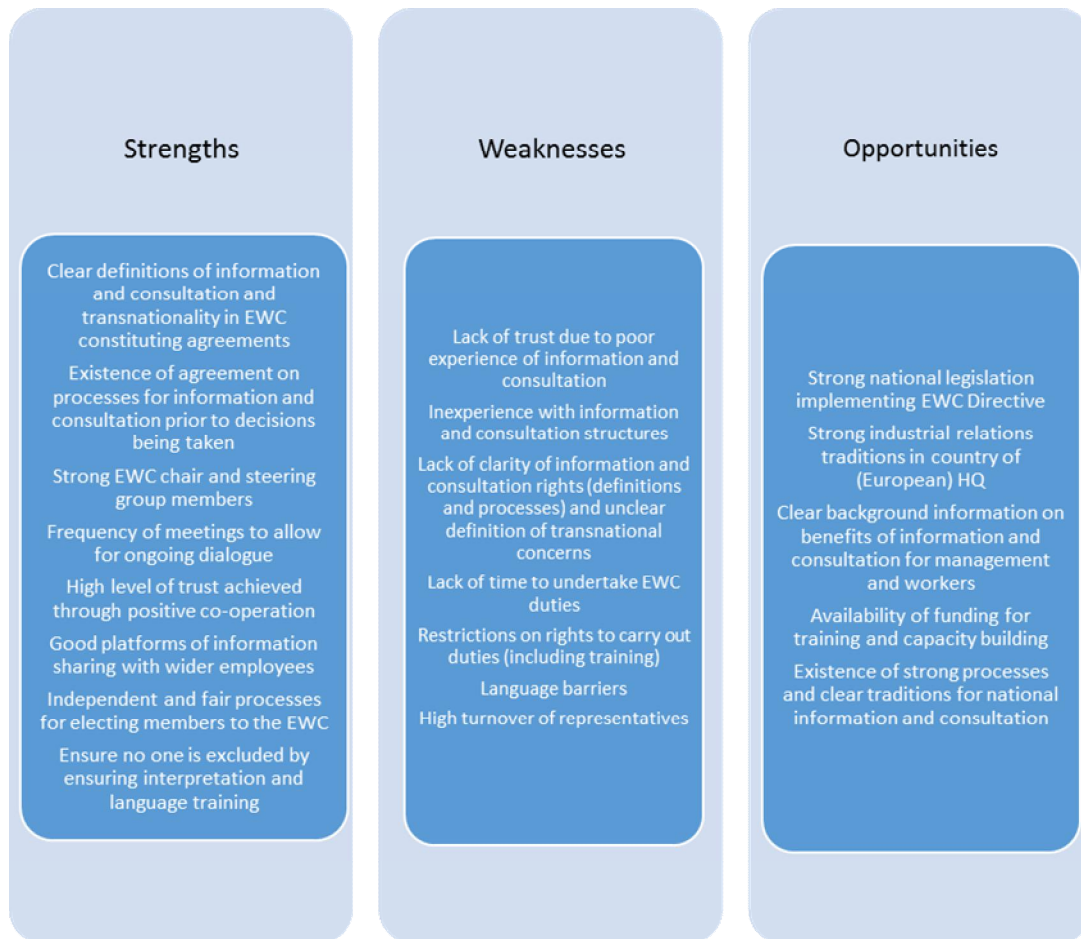
### 10.1.1.2 Supporting the effective functioning of EWCs

Throughout the research for this assignment and the seminar organised as part of the study process, a number of factors were identified which weaken the effectiveness of EWCs. At the same time a number of features of successful EWCs were highlighted which could serve as inspiration for others. These features do not evolve in a vacuum, but are often conditioned by factors such as existing industrial relation traditions

(including employee representation at company level) or long standing experience of transnational information and consultation.

Recommendations for actions which can support the development of the features of effective EWCs are therefore presented in the form of the analysis of strengths, opportunities, and weaknesses).

Potential ways in which elements which contribute to the strength of EWCs can be supported and weaknesses could be overcome are discussed in turn below.



### 10.1.1.3 Ensuring clear definitions for information, consultation and transnationality

The **integration of clear definitions of information, consultation and transnationality** within EWC set up agreements can support the clarity and rigor with which these processes are undertaken and issues to be discussed are identified (although it is not a guarantee in practice of effective functioning). This study found that EWC agreements negotiated or revised following the entering into force of the Recast Directive are more likely to contain such definitions. Opportunities provided by the recast Directive for the re-negotiation of existing agreements could therefore be used to add such clarifications. In the absence of this, the agreement between the EWC and management of specific steps for the process of information and consultation to be followed could provide an alternative to the revision of the EWC set up



agreement. Examples of such **process agreements** were identified as part of this study and were found to be helpful in structuring information and consultation processes.

The clarity of the national legislation's provisions transposing the Recast Directive's provisions on information, consultation and transnationality can also play a role. Implementation is currently being assessed in a separate study carried out for DG EMPL and no conclusions on this are available thus far.

For new agreements, including such clear definitions from the outset could make the process of reaching agreement more difficult if there is disagreements on what these concepts entail and how such processes should be organised, but experience from this study shows that many EWCs established since the recast utilise the formulations contained therein more or less verbatim. For existing agreements, re-negotiations can mean additional meetings of steering or select committee which can bring additional costs, but there is little evidence to indicate that such processes required an extensive programme of meetings. Some stakeholders expressed concerns that re-negotiations of existing agreements could prove difficult and therefore preferred to reach process agreements with the management.

The costs of re-negotiating agreements fall within the operating costs of EWCs and are to be borne by companies.

#### **10.1.1.4 Ensuring the legitimacy and representativeness of EWC members**

This study found that EWC are more likely to function effectively if members are considered to be legitimate and democratically elected representatives of their national workforces. Legislation and established processes and procedures for the election of employee representatives also have an important role to play as these tend to act as model or source for the election or appointment of EWC representatives. In countries without a long-standing tradition or clear processes in this area, **further capacity building may be of assistance. Trade unions at national and European level could play a role here in providing training and supporting the exchange of information**, but may also require further know-how, manpower or budgetary capacity in order to be able to fulfil this role. Social partner or expert advice in the set up processes of EWCs could be used to ensure that election methods approved by national/local trade unions and/or employer representative bodies are used.

Good communication is also supported by ensuring that no-one is excluded, which makes language capacity and the appointment of representatives from all parts of the operation (and all countries) of particular importance. If it does not prove feasible (within the parameters set by the Directive or the EWC agreement) to appoint members from all countries, **clear arrangements should be made for the representation of employees in these countries by another nominated EWC representative** who must establish regular communication with employee representatives in these countries and should be provided with the means to carry out such a task.

Finally, it is important to bear in mind that EWC representatives need to communicate with the employees they represent (whilst respecting requirements for confidentiality). **The means and necessary access should be provided to allow this (two way) communication.** Access to this is specified as a right in the Recast Directive.

A means of achieving this should be agreed and included within the EWC agreement.

#### **10.1.1.5 Ensuring access to rights to training and time off to perform EWC duties**

A high level of trust between employee side and management was considered to be important by most stakeholders consulted for this study. The best way to generate this is through **the regular flow of good information and the use of clear consultation processes** from the outset and respect for confidentiality requirements from the employee representative side. However, further work might be required to foster better understanding both of business information, as well as of industrial relations cultures and misunderstanding in this area could be overcome through training, use of experts and/or capacity building events (which could involve both sides). **Training resources for EWCs (as required by the Recast Directive) can be exploited to increase awareness in these areas.**

Time available and respect for rights to carry out EWC duties are conditions that are implemented by transposing legislation of the Recast Directive, national information and consultation traditions and the text of the EWC agreement itself.

As previously indicated, many of the requirements for the efficient functioning of EWCs are more easily achieved by EWCs in companies headquartered in countries with a strong tradition of information and consultation, as well as larger multi-national companies which often have greater experience of such requirements.

Additional **capacity building support** could therefore be foreseen for EWCs in countries where this is not the case and for smaller companies meeting the EWC size threshold. This could be **facilitated either by European social partners and/or with the use of DG EMPL budget lines to support social dialogue/industrial relations.**

Overall, a clear link needs to be established with national information and consultation bodies and processes again in support of fair election processes and a stronger basis for national employee information and consultation.

National trade unions also have a role to play in term of membership development which can also serve to raise awareness of the importance of transnational information and consultation structures. Company management at national level shall ensure that employees are appropriately represented at plant level following national rules on employee representation for information and consultation purposes.

On the other hand there are other tools that can be used to promote the value of EWCs to address current social issues of the sector. The experience from some EWCs that participated in this study shows that within the framework of information and consultation they have developed joint approaches on subject matters that shape the sector such as influence of EU and national policy on their business and businesses' strategy and possible pressures on the companies' operations; international competition, mergers and needs of keeping a skilled workforce and remain an attractive employer.

Better communication on achievements of EWCs and the promotion and recognition of companies at EU level that are particularly engaged in employee involvement and best practice examples can lead to a different operational and social climate.

### **10.1.1.6 Overcoming language barriers and ensuring regular communication**

Employee representatives consulted for this study often remarked on barriers relating to language skills, both in the establishment of EWCs and in their operation. It was also considered that a higher frequency of meetings can serve to create a better basis for ongoing exchange and the building of trust between the employee and management side. Employers on the other hand were keen to minimise the expense associated with transnational and interpretation into multiple languages, as well as the cost arising from multiple annual (plenary) meetings. In order not to exclude employee representatives from some countries, translation/interpretation or indeed language training remains important. In the set up process of a EWC, the availability of a database of contacts – or contacts established via European social partner organisations can help to place employee representatives in touch with individuals speaking a common language who can provide advice and guidance. In the absence of strict legislative provisions in the Directive requiring interpretation/translation into all languages required by delegates, these items need to be agreed clearly within EWC agreements. In the case of restructuring situations, meetings of an expanded Steering group (including members of the Steering Committee and representatives from countries affected) could provide a solution to limit costs of full plenary meetings, provided that steps are in place to cascade information to all representatives. Working Groups can also provide a relevant vehicle for the exchange of information among smaller groups of EWC representatives on specific issues affecting them. However, regularly plenary meetings need to be maintained to ensure the involvement of all EWC representatives and good structures to cascade information are key.

### **10.2 Clarity of EWC legislation and its transposition and implementation**

A process is currently under way to evaluate the implementation of the Recast EWC Directive and its impact on the operation of EWCs. As this is not yet completed, only views and recommendations made by stakeholders throughout the process of this study can be reflected here. These point to the fact that while information flow appears to be relatively well assured, its timeliness could still be improved and processes for consultation are often largely symbolic and make little or no difference to final decision making. Uncertainties clearly remain in relation to what type of company decisions and initiatives should be considered to be transnational.

Strong and clear legislation with credible sanctions was clearly seen by the employee side as an important factor in further demonstrating the importance of EWCs as information and consultation bodies (and thus the further creation of such bodies). At present, in some countries sanctions available were not considered to be sufficiently dissuasive in cases of failures to consult in a timely fashion. On the employer side there are concerns that more stringent rules in this field would slow the process of establishing further EWCs. As a more detailed study on the implementation of the Recast Directive is currently under way, no further recommendations pertaining to EWC legislation are included here.

### **10.3 Ways to interlink EU transport policy and the work of EWCs**

When considering the issues that EWCs are dealing with on a daily basis, it is clear that EU and national transport policy and social legislation has an important role to play in shaping the topics covered, even if this is not recognised as such in the context of the day to day operation and strategic planning of the business. A better dialogue and fora for exchange could assist in highlighting these links (e.g. regular participation

to EU level EWC training events), as well as allowing EWCs to contribute more effectively to policy making.

The very shape and evolution of EWCs in the transport sector is to a certain degree a reflection of aspects of transport policy and should therefore be monitored and updated on an ongoing basis.

Stakeholder consultations and the seminar demonstrated the clear appetite for additional information exchange between EWCs in the sector, which were currently found to be lacking (and had in some cases previously been provided for). On a very practical level there were calls for a database of members of EWCs to allow the flow of communication as well as the facilitated sharing of good/innovative practices. Such a **database** could contain the following:

- Texts of agreements establishing EWCs in the transport sector (including a regular reporting of revisions to such agreements);
- Database of members of EWCs in all companies having established such a body (regularly updated) with contact details;
- Texts of joint documents agreement (guidelines, tools, charters etc.) to address key issues affecting companies in the transport sector;
- Events of relevance to EWCs in the transport sector and relevant documents.

Much of this already exists in the ETUI's European Works Councils Database, but further elements such as lists of contacts and text agreed could be added to this. EU funding streams can play a role in this, and European sectoral social partner organisations were seen to have a particular role in facilitating such processes. The organisation of information sharing events is possible under the auspices of respective social partner organisation and could be supported with applications to relevant DG EMPL budget lines.

## Annex 1 - A list of transport companies which may qualify for an EWC but do not currently operate one

Company Name	HQ	Countries active in EU/EEA	Assessment	Useful Documents - Links
Passenger transport / post and logistics sector				
Norbert Dentressangle / XPO Logistics	US	UK, ES, PT, DE, PL, HU, IT, CZ, RO, BG	52,000 employees (worldwide, majority of staff in EU employed in FR, ES, UK)	<a href="http://www.norbert-dentressangle.com/">http://www.norbert-dentressangle.com/</a> Recently bought by XPO, a US company
Nagel Group	DE	DE, AT, BE, DK, ES, FR, UK, HU, IT, NL, PL, RO, CZ, SK, SE	10,730 employees	<a href="http://www.nagel-group.com/fr/">http://www.nagel-group.com/fr/</a>
HAVI Logistics	DE	BE, BG, HR, CZ, DK, EE, FI, FR, DE, HU, IT, LV, LT, NL, NO, PL, PT, RO, SK, ES, SE, UK	5,745 employees	<a href="http://www.havi-logistics.com/">http://www.havi-logistics.com/</a>
Arcese	IT	AT, BE, BG, HR, CY, CZ, DK, EE, FI, FR, DE, EL, HU, IE, IT, LV, LT, LU, MT, NL, NO, PL, PT, RO, SSK, SI, ES, SE, UK	2,600 employees	<a href="http://www.arcese.com/">http://www.arcese.com/</a>
BLG Logistics	DE	DE, PL, SK, SI, IT, HR, CZ	16,000 employees	<a href="http://www.blg-logistics.com/de/kontakt/standorte">http://www.blg-logistics.com/de/kontakt/standorte</a>
Deufol	DE	AT, FR, BE, IT, DE, CZ, SK	2,000 employees (DE and CZ mainly)	<a href="http://dlogistics.com/">http://dlogistics.com/</a>
Dachser	DE	AT, BE, CZ, DE, DK, FI, FR, UK, HU, LU, NL, PL, PT, RO, SK, ES	24,988 employees worldwide. Europe: AT: 451, BE: 300, CZ: 454, DE: 13,058, DK: 437, FI: 59, FR: 2,940, UK: 321, HU: 285, LU: 30, NL: 411, PL: 332, PT: 190, RO: 73, SK: 118, ES: 197	<a href="http://www.dachser.com/">http://www.dachser.com/</a>
Ferrovie dello Stato Italiane	IT	IT, DE, FR, NL	69,425 employees	<a href="http://www.fsitaliane.it/">http://www.fsitaliane.it/</a>

Company Name	HQ	Countries active in EU/EEA	Assessment	Useful Documents - Links
Logwin	LU	AT, BE, BG, HR, CY, CZ, DK, EE, DI, FR, DE, UK, EL, HU, IE, IT, LV, LT, LU, MT, NO, RO, SK, SI, ES, SE	4,300 employees	<a href="http://www.logwin-logistics.com/index.html">http://www.logwin-logistics.com/index.html</a>
Emons	DE	BG, CZ, DE, PL, IT, RO, LT,	1,700 employees	<a href="http://www.emons.com/">http://www.emons.com/</a>
Jost Group	LU	BE, LU, DE, PL, RO, FR, IT	1.600 employees	<a href="http://www.jostgroup.com/home-nl/">http://www.jostgroup.com/home-nl/</a>
Kerry Logistics	China	BE; FR, DE, CH, NO, AT, CY, CZ, DK, FI, HE, HU, IE, IT, NL, , PT, ES, SE, UK	20,000 employees (worldwide)	<a href="http://www.kerrylogistics.com/eng/OUR_COMPANY/">http://www.kerrylogistics.com/eng/OUR_COMPANY/</a>
FM Logistic	FR	FR, ES, CZ, HU, IT, PL, SK, RO	18,000 employees	<a href="http://www.fmlogistic.pl/fmlogistic/index.php">http://www.fmlogistic.pl/fmlogistic/index.php</a>
General Logistics Systems B.V. (GLS)	NL	At, BE, HR, CZ, DK, FI, FR, DE, HU, IE, IT, NL, PL, PT, RO, SK SI, ES	14,000 employees	<a href="https://gls-group.eu/EU/en/facts-figures">https://gls-group.eu/EU/en/facts-figures</a>
Heppner	FR	N/A	3,100 employees	<a href="http://www.heppner.fr/en/">http://www.heppner.fr/en/</a>
Geis (Global Logistics)	DE	LU, DE, CZ, PL, SK, AT	6,022 employees	<a href="http://www.geis-group.com/en/">http://www.geis-group.com/en/</a>
Royal Vopak	NL	ES, BE, NL, UK, EE, FI	6,092 employees	<a href="https://www.vopak.com/system/files/vopak_ar2014_ipdf_0.pdf">https://www.vopak.com/system/files/vopak_ar2014_ipdf_0.pdf</a>
Rethmann	DE	N/A	63,000 employees	<a href="http://www.rethmann.de/">www.rethmann.de/</a>
Otto Krahn (ALBIS)	DE	FR, UK, NL, AT, PL, RO, SE, ES, CZ, HU	1,024 employees	<a href="http://www.albis.com/en/company/facts/">http://www.albis.com/en/company/facts/</a>
Toll Group	AU	DK, DE, NL, FI, IE, NO, UK; FR; IT, SE	40,000 employees	<a href="http://www.tollgroup.com/offshore-onshore-logistics">http://www.tollgroup.com/offshore-onshore-logistics</a>
NYK Group	JP	N/A	N/A	<a href="http://www.nykeurope.com/">http://www.nykeurope.com/</a>
Louis Simoes	PT	PT, ES	1,500 employees	<a href="http://www.luis-simoes.pt/page/indicadores-ls">http://www.luis-simoes.pt/page/indicadores-ls</a>
KWE World Express	JP	BE, SE, FR, DE, IE, IT, UK, CH. CZ	10,453 employees worldwide (around 1,700)	<a href="http://www.kwe.com/corporate/profile.html">http://www.kwe.com/corporate/profile.html</a>

Company Name	HQ	Countries active in EU/EEA	Assessment	Useful Documents - Links
			in Japan)	
Horst Mosolf GmbH	DE	DE, BE, CZ, PL, FR, ES	2,000 employees	<a href="http://www.mosolf.de/unternehmen/portraet.html">http://www.mosolf.de/unternehmen/portraet.html</a>
Ewals Cargo Care	NL	BE, DE, RO, UK, CZ, SK, IT, FI, ES, PL, SE	1,600 employees	<a href="http://www.ewals.com/#aboutewalscargoare4">http://www.ewals.com/#aboutewalscargoare4</a>
Hoedlmayr International	AT	DE, CZ, HU, NL, ES, RO, BG	1,600 employees	<a href="http://www.hoedlmayr.com/EN/logistikzentrum/53.html">http://www.hoedlmayr.com/EN/logistikzentrum/53.html</a>
De Rijke Group	NL	BE, FR, HU, IT, ES, NL, UK	2,000 employees	<a href="http://www.derijke.com/en/de-rijke-group/">http://www.derijke.com/en/de-rijke-group/</a>
APL Logistics (APL Group)	US	EU 28	5,600 employees (logistics only)	<a href="http://www.apllogistics.com">www.apllogistics.com</a>
Panalpina	CH	BE, FR, DE, AT, BG, CZ, DK, FI, HU, IE, IT, LU	16,000+ employees	<a href="http://www.panalpina.com/www/global/en/home.html">http://www.panalpina.com/www/global/en/home.html</a>
SDV Bollore Group	FR	EU 28	54,000+ employees for the group; 35,000 employees in logistics worldwide, UK 430 employees second largest workforce after FR in Europe	<a href="http://www.bollor.com/en-us/activities/transportation-and-logistics/bollor-logistics">http://www.bollor.com/en-us/activities/transportation-and-logistics/bollor-logistics</a>
Hellmann Logistics	DE	EU 28	12,000 employees worldwide (around 4,200 in EU)	<a href="http://www.hellmann.net/en/belgium/company">http://www.hellmann.net/en/belgium/company</a>
Hoyer Group	DE	N/A	5,000 employees worldwide (2000 in EU)	<a href="http://www.hoyer-group.com/hoyer-gruppe/">http://www.hoyer-group.com/hoyer-gruppe/</a>
Marquard& Bahls	DE	DE,FR, UK, BE,NL, LU, IT,AT, CH,DK, FI, EE, BG,SK	8,000 employees worldwide (3,700) EEA	<a href="http://www.marquard-bahls.com/marquard-bahls/de/ueber_uns/daten_fakten/">http://www.marquard-bahls.com/marquard-bahls/de/ueber_uns/daten_fakten/</a>

Company Name	HQ	Countries active in EU/EEA	Assessment	Useful Documents - Links
Wallenius Wilhelmsen Logistics	SE	SE, BE, NL, NO	6,000 employees worldwide	<a href="http://www.2wglobal.com/about-us/">http://www.2wglobal.com/about-us/</a>
Delton AG	DE	N/A	3,500 Logwin Logistics	<a href="http://www.logwin-logistics.com/index.html">http://www.logwin-logistics.com/index.html</a>
Wim Bosman	N/A	NL, BE, FR, PL, RO, DE	1,800 employees (worldwide)	<a href="http://www.wimbosman.be/over_wim_bosman.aspx">http://www.wimbosman.be/over_wim_bosman.aspx</a>
Rhenus Logistics	DE	All EU countries	25,000 employees (worldwide)	<a href="http://www.rhenus.com/about-us/company/about-ourselves.html">http://www.rhenus.com/about-us/company/about-ourselves.html</a>
Nobina Group	SE	SE, NO, DK, FI	7,603 – total - Nobina Sweden, 5,277  Nobina Denmark, 356  Nobina Norway, 820  Nobina Finland, 838	<a href="http://www.nobina.com/globalassets/dokument/arsredovisningar/annual-report-2014_2015.pdf">http://www.nobina.com/globalassets/dokument/arsredovisningar/annual-report-2014_2015.pdf</a>
<b>Maritime transport/ports</b>				
A.P Møller-Maersk Group	DK	PL; LV; HU; EE; CZ; CH; NO; UK; SE; ES; PT; NL; IT; IE; DE; FR; FI; DK; BE;	89,000 employees worldwide	<a href="http://www.maersk.com/en/the-maersk-group/about-us/year-in-review#">http://www.maersk.com/en/the-maersk-group/about-us/year-in-review#</a>
Compagnie Maritime Belge	BE	not available	6,155	ships are managed and staffed by the Anglo Eastern Group - employing more than 20,000 seafarers - but has its hub in Hongkong- with only small offices in DE and BE
DFDS Logistics	DK	UK, DE, NL, FR, BE, DK, NO, SE, PL, LT, EE, CZ, LV, SK, RO, IT	6,300 employees worldwide	<a href="http://www.dfdsgroup.com/">http://www.dfdsgroup.com/</a>
Viking Line	FI	N/A	3,104 (2,407 on shipboard and 697 land-base)	<a href="http://www.vikingline.com/en/">http://www.vikingline.com/en/</a>



Company Name	HQ	Countries active in EU/EEA	Assessment	Useful Documents - Links
C. Steinweg	NL	BE, NL, SE, PL	4,000 employees (worldwide)	<a href="http://www.steinweg.com/en/history/">http://www.steinweg.com/en/history/</a>
Grimaldi Group (Finnlines)	IT	DE, SE, PL, DK, ES, UK, IT, ES, CY, HE, HR	10,000 (overall) (Finnlines 1,635 employees (2014))	<a href="http://www.grimaldi.napoli.it/en/careers.html">http://www.grimaldi.napoli.it/en/careers.html</a> <a href="http://www.finnlines.com/company/about_finnlines/business_environment">http://www.finnlines.com/company/about_finnlines/business_environment</a>
Mediterranean Shipping Company	CH	EU 28	24,000 employees worldwide	<a href="https://www.msc.com/">https://www.msc.com/</a>
CMA CGM	FR	EU 28	20,000 employees worldwide (4,000+ in FR)	<a href="https://www.cma-cgm.com/the-group/about-us/presentation">https://www.cma-cgm.com/the-group/about-us/presentation</a>
Evergreen Line	Taiwan	important representation in DE, IT, UK, ES, NL	10,000 worldwide	<a href="http://www.evergreen-line.com/static/jsp/whats.jsp">http://www.evergreen-line.com/static/jsp/whats.jsp</a>
CoscoEurope (Coscon Group)	China	EU 28	80,000 employees worldwide	<a href="http://www.cosco.de/europe/pages/proscenium/index.jsp">http://www.cosco.de/europe/pages/proscenium/index.jsp</a>
Hutchinson	Hong Kong	BE, DE, NL, ES, IT, PL, SE, UK	30,000 employees worldwide	<a href="https://www.hph.com/en/webpg-87.html">https://www.hph.com/en/webpg-87.html</a>
PSA International Ltd	Singapore	BE, IT, PT	30,000 employees worldwide	<a href="https://www.globalpsa.com/our-people/">https://www.globalpsa.com/our-people/</a>
Vopak	NL	UK, DK, FR, ES, FI	3,800 worldwide	<a href="https://www.vopak.com/system/files/vopak_ar2014_ipdf_0.pdf">https://www.vopak.com/system/files/vopak_ar2014_ipdf_0.pdf</a>
Jan de Nul	LU	BE, NL, FR, IT, UK	6,100 employees worldwide (2012)	<a href="http://www.jandenul.com/nl">http://www.jandenul.com/nl</a>
Wilhelmsen Group	NO	All EEA area	6,000 employees (worldwide, land based)	<a href="http://www.wilhelmssen.com/about/companyinfo/Pages/CompanyInformation.aspx">http://www.wilhelmssen.com/about/companyinfo/Pages/CompanyInformation.aspx</a>
<b>Aviation</b>				
Fraport	DE	DE, BG, SI	19,790 employees	<a href="http://www.fraport.com/en.html">http://www.fraport.com/en.html</a>

Company Name	HQ	Countries active in EU/EEA	Assessment	Useful Documents - Links
Brussels Airlines	BE	80% employed in BE and Europe	3,400 employees	<a href="http://www.brusselsairlines.com/fr-be/corporate/emploi/ba-en-chiffres.aspx">http://www.brusselsairlines.com/fr-be/corporate/emploi/ba-en-chiffres.aspx</a>
SAS Group	SE	N/A	14,969 employees	<a href="http://www.sasgroup.net/en/">http://www.sasgroup.net/en/</a>
Ryanair	IE	N/A	9,501 employees	<a href="http://www.ryanair.com/fr-be/a-propos/">http://www.ryanair.com/fr-be/a-propos/</a>
LOT Polish Airlines	PL	N/A	1,700 employees	<a href="http://www.lot.com/fr/fr/">http://www.lot.com/fr/fr/</a>
Aeroflot	RU	DE; DK; IT; MT; NO; PL; SE; UK;	30,328 employees worldwide and 18.000 in Russia	<a href="http://www.aeroflot.com/cms/fr">http://www.aeroflot.com/cms/fr</a>
Cargolux	LU	IT	1,600 employees	<a href="http://www.cargolux.com/Company/?mid=3&amp;module=5">http://www.cargolux.com/Company/?mid=3&amp;module=5</a>
Swissport	CH	19 countries in Europe	58,000 employees	<a href="http://www.swissport.com/corporate/facts-figures/">http://www.swissport.com/corporate/facts-figures/</a>
Gategroup	CH	UK, DE, DK, SE, FR, ES	26,000 employees	
Aviator	SE	SE, FI, DK, NO, UK	3,000 employees (600 UK, 300 FI)	<a href="http://www.aviator.eu/press-release-from-aviator-group-now-entering-the-uk-market-as-part-of-its-strategic-development/">http://www.aviator.eu/press-release-from-aviator-group-now-entering-the-uk-market-as-part-of-its-strategic-development/</a>
Groupe Europe Handling	FR	N/A	3,000 employees	
Avia Solutions Group	LT	PL, IT, UK	1,800 employees	<a href="http://www.aviasg.com/en/about-us/facts-stats.html">http://www.aviasg.com/en/about-us/facts-stats.html</a>
TAP Portugal	PT	N/A	6,800 employees	
Ferrovial	ES	UK, (other countries for construction, toll services)	69,000 employees worldwide - manages several airports in the UK	<a href="http://www.ferrovial.com/en/company/about-us/">http://www.ferrovial.com/en/company/about-us/</a>

<b>Company Name</b>	<b>HQ</b>	<b>Countries active in EU/EEA</b>	<b>Assessment</b>	<b>Useful Documents - Links</b>
Air Berlin	DE	N/A	8,400 employees worldwide	<a href="http://ir.airberlin.com/en/ir/facts-about-the-group/The-airberlin-group">http://ir.airberlin.com/en/ir/facts-about-the-group/The-airberlin-group</a>
John Menzies	UK	UK, ES, NL, PT, RO, SE	24,500 employees worldwide	<a href="http://www.johnmenziessplc.com/about-us.aspx">http://www.johnmenziessplc.com/about-us.aspx</a>
WIZZ	HU	N/A	2,200 employees	<a href="https://wizzair.com/en-GB/about_us/company_information">https://wizzair.com/en-GB/about_us/company_information</a>
Celebi Handling	TUR	DE, HU, AT	1,500 employees (majority in Turkey)	<a href="http://www.celebihandling.com.tr/en/corporate/milestones">http://www.celebihandling.com.tr/en/corporate/milestones</a>
DNATA	Dubai	BG, CZ, IE, IT, RO, NL, UK	27,000 employees (worldwide)	
<b>Tourism and services</b>				
Carnival Corporation	UK and US	DE,ES,IT,UK	91,000 employees in 2014 (global)	<a href="http://phx.corporate-ir.net/phoenix.zhtml?c=200767&amp;p=irol-factsheet">http://phx.corporate-ir.net/phoenix.zhtml?c=200767&amp;p=irol-factsheet</a>
Aer Rianta	IE	IE, CY	3,500 employees worldwide	<a href="http://www.ari.ie/who-we-are">http://www.ari.ie/who-we-are</a>

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