Corporate ownership and industrial relations in the EU: national trends and European policy developments (119)

1. Introduction

Across Europe, companies and their employees are facing constant pressures to adapt to change and to restructure their operations. These pressures stem from the intensification of international competition, the liberalisation of markets, currency fluctuations, technological progress, reduced government support, and the shift from an industrial to a knowledge and information-based economy. Adaptation to change and restructuring are often essential to the survival of firms. Restructuring at company level can take a number of forms: mergers and acquisitions (M&As); rationalisations and closures of sites and divisions in large companies; moves into new lines of business; an increase in sub-contracting of non-core operations; and internal changes, such as the move towards devolved business units.

As mentioned in Chapters 2 and 3, as part of the so-called Lisbon strategy the EU has set itself the objective of becoming 'the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion' by the year 2010. Economic and social renewal is fundamental to this strategy and strengthening competitiveness and cohesion are its dual guiding principles. The Commission therefore advocates a positive approach to change. Corporate restructuring is a driving force for change. However the Commission's view is that change needs to be anticipated and managed. Properly taking into account and addressing the social impact of restructuring greatly contributes to its acceptance, thereby enhancing its positive potential as well as lowering its human and societal costs. Fostering and facilitating structural change, notably by easing its social consequences, is now explicitly recognised by EU industrial policy as one of its key objectives (120).

The form restructuring takes is diverse and is influenced by national institutional frameworks among which there remains a high degree of distinctiveness even in an era in which the globalisation of economic activity has increased. Across the Union there are marked differences in the way that firms are financed and owned and also in the way that managements are required to inform and consult their workforces and deal with other aspects of the industrial relations system. In relation to corporate ownership patterns, companies based in systems in which relations between owners and managers are generally distant and where financial performance is used as the primary indicator of the health of the firm are those most likely to undertake rapid and radical restructuring. In contrast, companies, where owner-management relations are stable and close, are more likely to restructure incrementally. In terms of industrial relations systems, firms in countries that have deregulated labour markets and where employees have relatively little scope to exercise their 'voice', tend to restructure their operations quickly and dramatically. This contrasts with the more consensual and gradual approach required of firms with a strong tradition of 'social dialogue'.

Although rooted in diverse institutional frameworks, companies in the EU are facing similar pressures to adapt to change. As a consequence, some common trends can be identified across countries in the extent and forms of restructuring at firm level. However, in spite of these convergent pressures, a high degree of diversity persists with national industrial relations institutions proving to be resilient. The process of change is in fact rather uneven and occurring at differing paces across countries. In addition, there is a high degree of diversity within countries between international and domestic firms, and between large and small firms.

This suggests that the ways in which company restructuring occurs reflects a complex interaction of factors at different levels and that national level systems are not, therefore, the sole shapers of the way that firms respond to pressures to restructure their operations. Firstly, they are supplemented by rules agreed at European level through, for example, European works councils and transnational information and consultation procedures, as well as cooperation at sub-national level, for example, with local and regional authorities. Other European influences are felt through common rules on competition, mergers and acquisitions. Secondly, it is not only rules — whether national or European — which matter in deter-

(119) The first part of this chapter on the interaction between corporate ownership and industrial relations is based on a contribution by Dr Tony Edwards of King's College, University of London.

(120) Communication from the Commission, 'Fostering structural change: an industrial policy for an enlarged Europe', COM(2004) 274 final, 20 April 2004.

mining how firms respond; the role of individuals — among both management in influencing shareholder attitudes and trade unions/employee representatives in mediating between employees and management — is also important.

This chapter has two main purposes. Firstly, it examines the interaction between corporate ownership patterns and industrial relations and trends in company-level industrial relations in the EU. In view of the relatively recent transformation of the economic systems of the new Member States, this section focuses mainly on EU-15. Secondly, the chapter seeks to provide an overview of EU policy developments and describes the main initiatives taken by the European institutions and the European social partners relating to company level industrial relations and corporate social responsibility, with a view to promoting the anticipation and responsible management of change. The chapter concludes by exploring some of the implications of these policies for company-level industrial relations in the new Member States.

2. The interaction between corporate ownership patterns and industrial relations

Within any national business system, there is a degree of interdependence between institutions in various spheres of the economy, with the nature of the institutions in one sphere influencing the nature of those in others.

Corporate governance is usually understood as the system by which companies are directed and controlled. In the light of the recent corporate scandals, it is now a major global issue and poor corporate governance performance by some companies has greatly undermined confidence in capital markets. Within the EU, Member States have different systems of corporate governance, which, to some extent, reflect their different cultures. Furthermore, views differ in Member States with regard to the roles of corporations and the way in which industry should be financed. In recent years, corporate governance has been a growing subject of debate.

In relation to restructuring and change, of particular importance is how corporate ownership patterns inter-relate with industrial relations and employee and union representation in particular. With regard to corporate ownership patterns, one distinction that is often made is between 'insider' systems in which there are close and stable relations between owners and senior managers, and 'outsider' systems in which shareholders have fluid and distant relations with managers. The first group contains a number of variants: the German system where banks are key players in owning and controlling firms; the Swedish system where investment foundations play a similar role; and France where the State has often played a key role in the strategies of large firms, as again became clear in the recent rescue plan for Alstom. As argued above, in these systems, responses to the pressures of globalisation and intensified competition tend to be incremental and evolve over time. Moreover, restructuring is carried out in such a way that allows a range of 'voices' to be heard, particularly those of employees through statutory rights to be represented on company boards or through meaningful involvement in decision-making by employees' representatives entitled to be informed and consulted on major changes, for example. Thus insider arrangements tend to be compatible with industrial relations systems that afford scope for employee consultation and involvement.

In outsider systems, on the other hand, of which the UK and Ireland are examples, company level restructuring tends to be more radical and is carried out more quickly. Moreover, the way that outsider systems are structured gives shareholders greater influence over management decisions than other groups are able to exercise and, consequently, restructuring is often geared towards maximising 'shareholder value' without consideration for other stakeholders' value. As a consequence, outsider systems have tended to coincide with industrial relations systems that afford employees fewer and weaker 'voice' mechanisms within companies than has been the case in insider systems.

The corporate ownership patterns in Europe loosely grouped under the insider category are evolving in different directions and at varying paces. There are a number of forces for change: greater foreign ownership, particularly in the form of financial institutions from other countries; the internationalisation of domestic firms, including the raising of finance in other countries; privatisation, which has increased the exposure of formerly State-controlled firms to financial institutions; and reforms to the rules of corporate governance, which may be introduced through changes to merger and takeover codes. These changes, however uneven, present a challenge to national systems of industrial relations that have rested on stable and close relations between owners and managers, as changes in corporate ownership patterns appear to have some knock-on effects on the nature of industrial relations practices. The nature of corporate ownership patterns and industrial relations systems in the EU, and the extent to which these are changing are considered in the next section.

3. The diversity of national corporate ownership patterns and industrial relations frameworks

Considerable diversity is evident in the nature of the national business systems within the EU. In the following section, the distinction between insider and outsider systems of corporate ownership mentioned above is used. With regard to industrial relations, a distinction is made between those systems that are characterised by a strong degree of social partnership, those systems in which employee influence is exerted through unions that engage in adversarial relations with employers, and those systems that allow for relatively little employee voice. Countries are categorised according to these distinctions and also by the degree to which they are changing.

It should, however, be pointed out that reality is more complex. This means that countries characterised as possessing a tradition of social partnership also have some degree of adversarial bargaining, while examples of companies with strong social partnership can be found in countries considered to have weaker traditions of employee involvement. Although this distinction simplifies some of the complexities of national industrial relations systems, it does nevertheless serve to highlight important differences.

3.1. Stable insider systems with strong social partnership

Three countries can clearly be characterised as combining an insider system of corporate ownership with a tradition of social partnership that shows little signs of change. **Austria** is one of these. Ownership is highly concentrated in Austria, with the government and families featuring as key shareholders in many firms. As Table 5.1 shows, 86 % of publicly quoted companies have an owner who controls at least a quarter of the shares, the threshold that tends to make it difficult for another firm to launch a takeover, while 68 % of firms have an owner controlling more than half of the shares (Table 5.3). In **Luxembourg**, too, there is a system of stable and concentrated ownership, with 'collective investment funds' and the State being the key owners of firms. **Denmark** is another illustration; the high proportion of family owned corporations (see Table 5.4) is a key aspect of the system of 'personal stakeholder capitalism'. Among those Danish companies that are not family-owned, the distinction between different types of shares — those with special voting rights and those without (A and B shares) — reinforces the concentration of control amongst insiders. Takeovers, particularly hostile ones, are rare in all three countries, meaning that there is no large 'market for corporate control', nor are there many signs of significant change towards the outsider system.

All three countries combine the insider system of corporate ownership with a well-entrenched system of social partnership. Rights for a range of stakeholders, as opposed to simply shareholders, mean that restructuring is influenced to some extent by the concerns of employees. For example, when a firm in Austria wants to engage in restructuring that adversely affects employees, they must first institute a 'social plan' that is arrived at through a process of consultation with employee representatives and sets out how the company intends to deal with issues such as redundancies and redeployment. In all three countries (Austria, Luxembourg and Denmark) there are formal provisions allowing employee representatives to sit on the board of companies and to therefore exert influence over strategic decisions. The importance of the stakeholder tradition shows little sign of being eroded in any of the three countries, and the systems are all characterised by a good degree of stability. Hence, these three countries can be characterised as stable insider systems with strong traditions of social partnership. Accordingly, the way that restructuring occurs is primarily through gradual and incremental changes arrived at largely through consensus.

TABLE 5.1: LISTED COMPANIES WITH A BLOCKING MINORITY OF AT LEAST 25 %

	Share (in %) of all listed companies
Belgium	93.6
Austria	86.0
Germany	82.5
Netherlands	80.4
Spain	67.1
Italy	65.8
Sweden	64.2
UK	15.9
United States – NYSE	7.6
United States – Nasdaq	5.4

Source: M. Becht (2004), 'Reciprocity in takeovers', in G. Ferrarini, K. Hopt, J. Winter and E. Wymeersch (eds.), *Modern company and takeover law in Europe*, Oxford, Oxford University Press.

3.2. Evolving insider systems with strong social partnership

A further five countries share many of the same characteristics as those discussed in the previous section but differ in that they are experiencing more significant changes in the nature of the corporate ownership patterns and industrial relations frameworks and more radical patterns of restructuring. One example is **Sweden**, a country that is characterised by a high degree of concentration. Table 5.1 shows that very nearly two thirds of companies have one shareholder controlling at least a quarter of the shares, with family-based foundations and the State being key owners of firms (see Table 5.4). The links between owners and management in Swedish firms have tended to be close and stable. The distinction between A and B shares noted in the case of Denmark is also very important in Sweden. There are pressures for change, particularly through the internationalisation of large Swedish companies, many of which are listed on foreign stock markets and have located key strategic functions abroad. Perhaps more significantly, many Swedish companies have made sweeping cuts in response to changes in product market conditions. But even in these cases, the way that these processes are handled within Sweden is still strongly influenced by the Swedish system of social partnership and collective bargaining, which includes worker representation in the boards of companies and strong consultation rights.

Finland is another example of an evolving insider system with a strong tradition of social partnership. Traditionally, families and the State have had a key role in many industrial groups within Finland (see Table 5.4), forming close and stable linkages

TABLE 5.2: MEDIAN SIZE OF THE LARGEST ULTIMATE OUTSIDE VOTING BLOCK FOR LISTED INDUSTRIAL COMPANIES

	Median size in % of total votes
Italy	54.5
Germany	52.1
Austria	52.0
Belgium	50.6
Netherlands	43.5
Spain	34.2
France (CAC40)	20.0
UK	9.9

NB: The United States (both NYSE and Nasdaq) were below the 5 % disclosure threshold)

Source: M. Becht & A. Roell (1999), 'Blockholdings in Europe: an international comparison', *European Economic Review*, Vol. 43.

TABLE 5.3: VOTING POWER CONCENTRATION: % OF COMPANIES FOR WHICH THE LARGEST VOTING POWER STAKE IS IN GIVEN RANGE

	0–25	26–50	51–75	76–100
Austria	14.0	18.0	54.0	14.0
Germany	17.5	18.3	25.5	38.7
Netherlands	35.8	24.8	19.7	19.7
United States – NYSE	94.8	3.5	1.5	0.2
United States – Nasdaq	92.4	3.5	1.5	0.6

Source: Becht and Roell (1999), *op. cit.*

TABLE 5.4: OWNERSHIP OF THE HUNDRED LARGEST COMPANIES IN ELEVEN EUROPEAN MEMBER STATES

	Dispersed ownership	Dominant ownership	Family-owned	Foreign-owned	Cooperative	Government-owned
Austria	0	7	25	38	10	20
Belgium	4	20	6	61	3	6
Denmark	10	9	30	23	17	11
Finland	12	25	23	11	10	19
France	16	28	15	16	3	22
Germany	9	30	26	22	3	10
Italy	0	22	20	29	0	29
Netherlands	23	16	7	34	13	7
Spain	6	22	8	45	5	14
Sweden	4	31	18	14	12	21
UK	61	11	6	18	1	3

Source: T. Pedersen and S. Thomsen (1997), 'European patterns of corporate ownership: A 12-country study', *Journal of International Business Studies*, Vol. 28.

with management in the firms that they owned. This has been complemented by the system of co-determination, which has acted as a brake on the speed of change and requires workers to be consulted meaningfully. Also in Finland, employees are represented in the boards of companies employing more than 150 employees. However, the changes in Finland appear to have been more marked than in Sweden, driven primarily by the sharp increase in the shareholding in Finnish companies by American pension funds but also by foreign direct investment. In some foreign-owned firms there are instances of restructuring being carried out with only minimal compliance with the system of co-determination.

A similar picture of an evolving insider system is evident in **Belgium**. Traditionally, one of the key characteristics of corporate ownership is what is known as the 'shareholding cascades', at the centre of which are holding companies and family-based foundations, and to a lesser extent industrial companies. Within the cascades, 'stakes are concentrated into powerful control blocks through business group structures and voting pacts' [121]. One consequence of this ownership structure is the limited 'market for corporate control' since it is difficult for an outsider to buy into the 'cascades' unless she has the agreement of firms within these arrangements. In addition, a number of features of Belgian law restrict the ability of companies to launch hostile takeover attempts for other companies, and many leading shareholders acquire legal instruments that enable them to avoid undesired takeovers. In the industrial relations sphere, there is still a strong basis for social partnership. One source of this is that works councils have to be consulted before any change affecting the enterprise is taken. Recently, there have been a number of instances of very severe restructuring in Belgium, some of which has occurred within foreign-owned firms, particularly the notorious Renault-Vilvoorde case. The extremely high proportion of foreign ownership (see Table 5.4) has made this an emerging trend. Moreover, among Belgian firms there is some evidence that share values are more important drivers of restructuring than general economic conditions. While this has caused important changes in the Belgian business system, there is a continuing tradition of social concertation. In sum, restructuring is evident in Belgium, but the increased attention to shareholder value has not removed the key characteristics of the Belgian system of corporate ownership and social concertation continues to shape the way in which restructuring takes place.

Many observers see **Germany** as the classic case of the insider model. The role of the banks in owning and controlling firms is one distinctive element. Traditionally, the big national banks held a significant stake in many large German firms, but this has diminished in recent years. For instance, between 1992 and 1999, the share of chairpersons of supervisory boards of 40 large German companies who were bank representatives fell from 44 to 23 % [122]. In addition, under corporate governance guidelines adopted in 2002, executives are encouraged to hold no more than five supervisory board seats. For the development of small and medium-sized firms — the *Mittelstand* — the regional banks have remained important. In general, the role of the banks is not confined to their role as shareholders or lenders, however, since many small shareholders sign over their voting rights to the banks who exercise them by proxy. In addition, there is a high degree of ownership by founding families and agencies of the State (see Table 5.4). Cross-shareholdings between companies are also a key element of the German system.

While the 'productionist, long-term, consensus orientation' [123] remains a feature of the German system, there are some signs of change. One of these is the beginning of a move towards hostile takeovers. The takeover of Mannesmann by Vodafone in February 2000 was a dramatic change, as it was the first successful hostile takeover by a foreign firm and demonstrated that there was no political defence against such attempts. Other signs of change include the emergence of investor relations departments along Anglo-Saxon lines in many large companies; the gradual weakening of the structures of cross-shareholdings and interlocking directorates; and the rhetoric of shareholder value and the adoption of international (or American) accounting standards in large, internationalised firms. However, these changes are quite limited as there is a very narrow base for a shareholder value economy in Germany because of the limited role of the equity market for company financing and the central pillars of German corporate ownership — the dominating role of banks, the system of co-determination (with board representation for workers in companies with more than 500 employees and a strong bargaining position for works councils on some of the main issues related to restructuring) and the company-centred management system — are not crumbling. Recent studies among Germany's 100 largest firms have shown that the process of internationalisation has drawn the

(121) *EIRO (2002) 'Industrial restructuring: the impact of variations in forms of corporate governance — Belgium', www.eiro.eurofound.eu.int/2002/09/word/be0207304s.doc, 2002.*
(122) *M. Höppner (2003),* Wer beherrscht die Unternehmen?, *Frankfort a/M, Campus Verlag — Reihe Max Planck Institut, 138.*
(123) *U. Jurgens, K. Naumann and J. Rupp (2000), 'Shareholder value in an adverse environment: the German case',* Economy and Society, *Vol. 29.*

works councils deeper in a process of social dialogue and negotiation with management and that most works councils have been ready to accept the need for adjustment [124].

While corporate ownership in the **Netherlands** is generally quite concentrated as is characteristic of insider systems (see Table 5.2), the form and nature of the ownership of Dutch companies varies greatly according to their size. Among large firms, there has been a very significant rise in the shareholdings of foreign investors; recent estimates suggest that over half of the shares in quoted Dutch firms lie in foreign hands. However, among small and medium-sized firms research shows that the majority remains family-owned. Even when we exclude small and medium-sized firms from the analysis, this holds true: among firms with more than 100 employees, 50 % are family-owned [125]. Thus the changes in ownership have mainly occurred in large firms. As is the case in Germany, takeovers have not been a common feature of the Dutch economy. The first hostile takeover attempt took place as recently as 1988, and almost all stock market listed companies are protected against hostile takeovers through statutory measures such as issuing shares with no voting rights attached, issuing priority shares to entrusted officials, and issuing preferred shares to a friendly third party, usually a foundation. A contrast with the British outsider system shows through in the case of Shell; the 40 % of the company owned by the British group Shell Transport and Trading is traded widely and there is no distinction between shares, whereas the 60 % accounted for by Royal Dutch Petroleum has priority shares that make up only a very small proportion of the capital but have special voting rights [126]. However, in the past 10 years the positive attitude towards these protective measures has changed and some investors like pension funds have started to press listed companies to lower their barriers to hostile takeovers and have had some success. As in Germany, the network ties between banks and industry, based on 'interlocking positions' of a small elite on the supervisory boards of Dutch firms, have loosened and the position of the commercial banks have become less central [127]. In 2003, a voluntary code was adopted in order to limit the number of boardroom positions any one person can occupy. One other notable sign of change is the trend towards managers of large companies being rewarded with large packages of share options and other profit-related bonuses. In some Dutch companies, active on foreign markets, this has become the primary way in which managerial pay is constituted and created considerable tension in the overall policy of wage moderation.

One check on the influence of shareholder value in the Netherlands has been the legal basis for employee representation. Works councils have the right to discuss and give advice on all major decisions, including investments and restructuring. In some cases, this means in fact a temporary veto power for a period during which the company and workers' representatives should seek an agreement. If the company does not follow this advice, the works council can challenge the decision in court. According to law, the works council is entitled to recommend or oppose the designation of all the members of the supervisory board in large companies, a power which it exercises on an equal footing with shareholders. A new merger code (giving unions the right to be informed and consulted) was introduced in 2001. While this did not fundamentally change the rights of employees, it provided greater clarification on employees' rights in this respect. To summarise, there has been a shift in the balance of power within corporations in the Netherlands that has increased the pressure on management to carry out restructuring in order to deliver greater shareholder value, though this does not constitute radical change. The continuing tradition of social partnership provides employees with significant rights to influence the nature of corporate restructuring.

3.3. Evolving insider systems with adversarial management-union relations

The third group of countries are similar to the second insofar as they possess insider systems of corporate ownership that are evolving, but differ from them in that there is not such a well-embedded system of social partnership. Rather, employee influence over restructuring tends to be mainly exercised through trade unions in collective bargaining. **Portugal** and **Greece** are both examples of this group. In Greece, the State, families and private foundations are key owners of firms and takeovers are rare. In Portugal, the State is also a key player and there is hardly a market for corporate control. In the industrial relations arena, both countries have mechanisms designed to promote consultation, but employee influence stems primarily from the strength of unions to exert pressure on employers through collective bargaining and through exercising pressure on the government. These are key influences on restructuring patterns, which have

(124) *W. Streeck et al. (2003), 'Germany Ltd. is passé',* Max Planck Research, *2/2003.*
(125) *EIRO (2002) Industrial restructuring….', op . cit.*
(126) *M. Becht (2004) 'Reciprocity in takeovers', in G. Ferrarini, K. Hopt, J. Winter and E. Wymeersch (eds.), Modern company and takeover law in Europe, Oxford, Oxford University Press.*
(127) *E. M. Heemskerk, R. J. Mokken and M. Fennema (2003),* From stakeholders to shareholders: Corporate governance networks in the Netherlands 1976–96, *University of Amsterdam, research paper, ttp://ssrn.com/abstract=411580.*

TABLE 5.5: PATTERNS OF CORPORATE OWNERSHIP IN EU-15

Country	Key features of the system
Austria	The *Hausbanken System* of investment banking has been a stable source of funds for firms, many of which are privately owned. Consequently, the stock market is not well developed; the ratio of market capitalisation of publicly quoted firms to GDP is only 15 %. There is not a well-developed market for corporate control and owners tend to have close and stable relations with senior managers.
Luxembourg	'Collective investment funds' and the State are the two main players in the ownership of firms. Senior managerial positions tend to be very secure and, while there are few formal barriers to hostile takeovers, they are unknown in Luxembourg.
Denmark	The system has been characterised as 'personal stakeholder capitalism' with a high degree of family ownership. This is particularly the case amongst the SMEs that dominate the industrial structure. Takeovers have increased slightly but hostile ones are very rare.
Sweden	A distinctive feature of corporate ownership in Sweden has been the role of 'investment foundations'. While there is a reasonably high incidence of M&As, particularly cross-border ones, there remain significant barriers to hostile takeovers. Independent shareholder associations have continued to become more active over the last three decades or so.
Finland	There has been a significant erosion of the role of the State and major banking and finance groups in owning and controlling Finnish firms. In their place have come pension funds and other financial institutions, particularly foreign ones. Related to this has been a growth in M&As (often cross-border in nature), though hostile ones are still quite rare. An emerging shareholder value orientation is evident.
Belgium	The main forms of corporate ownership are through holding companies and families, with shareholdings being concentrated and coordinated though networks and pacts. This 'pyramid' or 'cascade' structure of ownership creates a strong barrier to hostile takeovers, and there is no real market for corporate control.
Germany	One distinct feature of the corporate governance system is the way it incorporates rights for a range of stakeholders. This is reliant upon highly concentrated ownership patterns, particularly among banks, while networks of cross-shareholdings and interlocking directorships are common. There are some modest signs of change, however, in the direction of the outsider system.
Netherlands	The system is notable for the vast differences between SMEs, which are often controlled by families, and large firms, which are characterised by very high ownership by foreign institutions and individuals. Among the latter, there are some moves towards a shareholder value orientation. However, this is normally exercised by 'voice' rather than 'exit'.
Portugal	Among large firms the State is a key player, owning 23 % of shares, and foreign parties now control 13 %. Small firms are commonly sole proprietorships. There are also numerous small, individual shareholders. A market for corporate control is not well developed and hostile takeovers are particularly rare.
Greece	The State remains an important owner of Greek firms, as do families. In addition, there are a small number of private foundations that control some Greek firms. Takeovers are rare and relations between shareholders and management are close and stable. There is little to indicate significant change in these respects.
Italy	Family-owned groups are one of the distinguishing features of corporate ownership in Italy while, despite privatisation, the State retains an important stake in many firms. The result is a very high degree of concentration of ownership: six out of 10 stock market-quoted companies have one shareholder with more than 60 % of the shares. This concentration acts as a barrier to hostile takeovers.
Spain	Recent developments, such as privatisation and increasing investment by financial institutions (particularly foreign ones), have eroded the influence of the State and holding companies. Now, shareholdings are much more dispersed. Greater importance appears to be accorded to these shareholders by management, and the latter's pay is increasingly taking the form of stock options.
France	The role of the State in owning and controlling large French firms has been greatly reduced by privatisation. Managers are increasingly influenced by the demands of institutional investors, paying out a rising proportion of profits in dividends and having their own pay tied explicitly to share prices. There has also been a growth in M&As, though in the 1990s only two a year on average were hostile in nature.
Ireland	Industrial groups and families, along with the State, are key features of corporate ownership in Ireland. Foreign ownership is also very high, largely through foreign direct investment. Relations between managers and shareholders in publicly limited companies are fluid and arms-length, with a growing incidence of M&As. Senior managerial pay is often linked explicitly to share prices.
UK	Shareholdings tend to be highly dispersed, with pension funds holding relatively small stakes in a range of firms. There is a well-developed market for corporate control, with very weak barriers to hostile takeovers. Shareholding tends to be fluid, exemplified by the rush out of firms undergoing restructuring. Managerial remuneration is very strongly tied to measures of shareholder value.

Source: Adapted from EIRO (2002), 'Corporate governance systems and the nature of industrial restructuring', Dublin, September 2002, http://www.eiro.eurofound.eu.int/2002/09/study/tn0209101s.html.

grown more prevalent in recent years. One source of change in both countries but particularly in Portugal has been the growth of foreign ownership, while another has been the increase in the volume of mergers and acquisitions.

In **Italy**, a very highly concentrated picture of corporate ownership is evident, with this organised through 'pyramidal groups'. Only a few years ago, the largest shareholder in publicly quoted companies held an average of 48 % of the total voting rights; the largest three shareholders together held 62 % of the voting rights [128]. The tradition of family ownership also shows through very strongly and relatively few companies are quoted on the stock market. The role of the State and public ownership has been significant, though the privatisation programme during the past decade has eroded this element. In the industrial relations arena, similarly to Greece and Portugal, employees can use the information and consultation provisions laid down in law in cases of restructuring, but any significant influence they exert is generally through the trade unions.

Interlocking directorates are a key feature of the **Spanish** variant of the insider system. These tend to take place across industrial sectors, but especially within capital-intensive firms, and the system is facilitated by the controlling influence of holding companies and by the role of 'bank-led economic development and high State intervention' [129]. This system of ownership was quite compatible with employees having the right to be informed of changes of ownership on the same terms as shareholders and to issue a report setting out their views on proposed restructuring plans. However, recently, both the systems of corporate ownership and industrial relations have changed significantly: in relation to the former, a marked increase in foreign ownership of Spanish companies and a greater dispersal of shares is notable (Table 5.4); in relation to the latter, the government has sought to make it much easier for employers to make collective redundancies. In addition, some big Spanish companies have reformed their governance structures by dismantling control structures that impeded takeover attempts.

The last decade or so has witnessed some significant change in the **French** business system, particularly in the area of corporate ownership. A number of aspects of this changing picture are evident. One is the significant reduction in state ownership of large French companies; the government's privatisation programme in the mid-1990s eroded the central role of the State in the running of large French firms. A further key indicator of change relates to the ownership pattern; until recently, cross-shareholdings between firms dominated the pattern of ownership, with the shareholders of many big industrial firms being other big industrial firms, but this has declined from more than 30 % in 1990 to closer to 20 % by 2000. In the place of cross-shareholdings, foreign investors are now the key owners of large French firms quoted on the stock market, with American pension funds particularly influential. The ownership by foreigners of share capital on the French stock exchange has risen sharply during the last ten years or so to the point where more than one in every three shares in French companies is held by foreigners, a higher proportion than in most comparable countries [130]. A third aspect of the changes has been the growth in the number of M&As in France. Traditionally, M&As were extremely rare, but a number of foreign firms have acquired French ones, and there has also been a significant growth in takeover bids on the stock market (although it is difficult to speak of a genuine market for corporate control in France comparable to the prevailing situation in the American and British stock exchanges). The rights of employees to be consulted about restructuring are significant. Employee representatives must be informed if restructuring is to take place as a result of a merger or a takeover, and consultation with the *comité d'entreprise* must occur prior to shareholders and the public being informed. However, the opinion of the *comité d'entreprise* does not have to be taken on board by the company and any substantive influence on how firms actually restructure tends to come from unions. Thus in those few sectors and firms where unions are strong, employee representatives are able to shape the way restructuring takes place, but in the majority they are not able to do so.

Overall, these changes have meant that many French firms are undergoing significant change, with greater pressure to deliver shareholder value influencing managers. An example of the mantra of creating shareholder value being put into practice is the increase in the percentage of corporate gross income paid out to shareholders as dividends. According to figures from the national statistical bureau, INSEE, this ratio rose from 22.8 % in 1994 to 41 % in 2000 for non-financial companies, and increased in broadly equivalent terms, but from a higher base, for finance companies: 33.4 to 61 % [131]. Some of the pressures for change have come into conflict with the principle underlying company law that prioritises the

(128) *M. Bianco and P. Casavola (1999), 'Italian corporate governance: Effects on financial structure and firm performance'*, European Economic Review, *Vol. 43.*
(129) *R. Aguilera (1998), 'Directorship interlocks in comparative perspective: the case of Spain'*, European Sociological Review, *Vol. 14.*
(130) *F. Morin (2000), 'A transformation in the French model of shareholding and management'*, Economy & Society, *Vol. 29.*
(131) *EIRO (2002), Industrial restructuring …', op. cit.*

concept of the 'company interest', which is supposed to prevent shareholders' interests dominating. This gives managers some protection from the pressure of shareholders. However, the indications are that these changes have had a marked impact. France has witnessed a rapid change from a 'financial network economy' to a 'financial market economy' and the shareholding model of the largest French groups is today rapidly disintegrating [132].

3.4. Outsider systems with deregulated labour markets

The remaining two countries are quite different from the previous thirteen in two key respects; they are both outsider systems and labour markets are relatively deregulated with little formal scope for employee voice. In **Ireland,** the key elements of the outsider system are present, albeit one with a high degree of family ownership among small and medium-sized firms. It is distinguished by the very high degree of foreign ownership, from the UK, and particularly the United States. Formal channels through which employees can exercise influence are rare among the foreign-owned firms. Within the context of the social partnership approach followed in Ireland in recent decades (see Chapter 1), attempts have been made to extend the same cooperative approach to the level of the enterprise on a voluntary basis. In joint statements, the central organisations of employers and unions welcomed the development of 'employee involvement' in firms, including provisions for information and consultation, but this was not followed to a great extent in the private sector.

The key feature of corporate ownership in the **UK** is that shareholdings tend to be highly dispersed across a range of financial institutions and individuals, with it being quite rare for any one shareholder to own a controlling stake (see Tables 5.1, 5.2 and 5.4). Overall, 70 % of the holdings in UK listed companies are held by financial institutions, with each one tending to hold a very small proportion of the stock of a particular company [133]. Of all EU Member States, the UK has the most advanced market for corporate control. Ownership of shares tends to be fluid and there is a high incidence of mergers and acquisitions. In comparison with other European countries, the barriers to takeovers, particularly hostile ones, are weak. In general, the relationship between the senior management team and shareholders is often characterised as arm's length. In other words, the close relationships that exist in some other European countries, often involving key shareholders sitting on the board of the companies, are rare. In part, this is a consequence of the highly dispersed nature of shareholdings, since no one small shareholder has a strong incentive to closely monitor management. Thus the 'voice' of particular shareholders within the company tends to be weak. This is not to say that shareholders' demands are not influential over management; indeed, the weakness of employee rights in the British system means that shareholder concerns dominate managerial actions in general and the nature of restructuring in particular; the rights for employees to vote, and potentially block, restructuring that exist in some countries — for example through participation of workers in boards — are absent in the UK. The influence of shareholders is generally exercised through the threat of 'exit'; that is, shareholders can sell their stake to a potential hostile bidder, leading to the existing management team being replaced.

It can be argued that the fluidity of shareholdings in general and the threat of exit in particular has made it difficult for British firms to build partnership arrangements with their workforces. While some UK companies have been able to reconcile shareholder demands with a partnership approach, in other cases, shareholder pressure has undermined partnership relations of the kind which have endured under more concentrated forms of ownership.

Recently, employee influence in general, and in influencing the nature of restructuring in particular, appears to have grown modestly. The rights that employees have in cases of insolvency, stemming partly from European directives, allow for a 'voice by non-shareholder constituencies' [134], particularly employee representatives. Thus this has a particular impact on major corporate restructuring in relation to cases of potential or actual liquidation. The future impact of the 'information and consultation directive' in the UK, which will generalise involvement rights and extend worker representation remains to be seen. Moreover, the role of shareholders is not always as distant and arms-length as is often portrayed; some pension funds have a formal policy of investing 'in companies that are poorly performing but are fundamentally sound', with the aim of improving performance and delivering long-term shareholder value through better management and corporate governance. In this process, a team of specialist professionals liaise closely with fund managers to monitor company direction and performance. So there are moves, albeit limited, towards something of

(132) F. Morin (2000), op. cit.
(133) J. Armour, S. Deakin and S. Konzelmann (2003) 'Shareholder primacy and the trajectory of UK corporate governance', British Journal of Industrial Relations, *Vol. 41.*
(134) J. Armour et al. (2003), 'Shareholder primacy ...', op. cit.

TABLE 5.6: SYSTEMS OF EMPLOYEE REPRESENTATION IN RESTRUCTURING IN THE EU

Country	Key features of the system
Austria	Employee rights are quite strong, works councils have the right to be consulted prior to significant restructuring and in firms of 20+ employees there must be a 'social plan' designed to ease the impact on employees. Transfers of undertakings and collective redundancies must be agreed with the works council (establishments employing five employees). If there is no agreement, the issue is decided by a conciliation body. Consultation processes often lead to compromises over management's plans, while employee representatives on supervisory boards can also influence restructuring.
Luxembourg	In firms with 1 000+ employees or where the State has a larger than 25 % share, a third of the members of the board of directors must be elected by employees, who then have formal voting rights on investment and restructuring plans. In all firms with 15+ employees, there must be staff delegates appointed which have consultation powers. The combined effect of these industrial relations structures and the low level of unemployment have meant that restructuring tends to be resolved in a consensual manner.
Denmark	In companies with more than 35 employees, employees elect up to a third of members of the company board, which can vote on all aspects of restructuring. In addition, in enterprises of 35+ employees there must be a works council established through a 'cooperation agreement' and employers must inform the council about any changes that affect the organisation of work. While employee representatives only have the power to delay and not veto the changes, in practice employers often use these discussions to seek a compromise agreement.
Sweden	Employees are able to shape restructuring through the process of co-determination, through which consultation with employee representatives must take place on all 'important changes'. Unions often manage to secure concessions from management concerning its original plans, for example over the number of employees affected by restructuring. The very broad coverage of union membership and collective bargaining means that this influence is widespread across sectors and firms. There is also workers' representation (2-3 seats) on the board when the company or the group of companies has more than 25 employees. In the case of a group, the representation is made at that level.
Finland	'Personnel representatives', one quarter or up to four representatives may be nominated onto the 'administrative bodies' that govern the company with 150+ employees. Perhaps more importantly, the system of co-determination means that in 30+ firms, employers must consult over restructuring, and the strong position of union representatives means that in most cases management's proposals must also be subject to negotiation. This results in a 'cooperation plan' that sets out the form and consequences of any restructuring.
Belgium	Works councils must be consulted three months prior to any instance of restructuring and the consequences of restructuring must be discussed with employee representatives, often leading to a restructuring or social plan. One aspect of these plans is that they must set out 'a new approach to organising working time in such a way as to more effectively distribute work within the enterprise'. Following the closure of the Renault plant at Vilvoorde in 1997 these rights have been strengthened.
Germany	Employee rights stem partly from the system of plant-based works councils. Employers are obliged to inform works councils in advance of any restructuring plans that affect employees, and must negotiate an *Interessenausgleich* ('reconcilement of interests') that sets out the process of change and spells out the implications for employees. In the absence of an agreement, *inter alia*, on collective redundancies, the issue is decided by a conciliation body. Employee rights also stem from their representation on supervisory boards in large firms (usually one third of the seats but one half in mining and steel sector). However, the practical impact of these formal rights varies from firm to firm.
Netherlands	Works councils have the right to 'give advice' on all major decisions, and if management does not follow this advice, the council can take the case to a court. In addition, on issues related to restructuring (transfers, closures, investments, etc.), the works council has the right of suspensive veto (usually one month). Works councils also have a right of veto over the co-option of members of the supervisory board in companies with 100+ employees.
Portugal	A number of formal mechanisms exist for employees to exert influence over corporate restructuring (mainly through workers' commissions), stemming from a number of articles of the constitution and subsequent legislation. These commissions have the right to 'submit opinions' on management's plans. However, in practice these commissions cover only a small minority of workplaces and employee influence depends primarily on how well organised trade unions are at firm level.
Greece	Through the introduction of works councils in the 1980s, employers must consult with their workforces before undertaking any restructuring that leads to group dismissals. However, employee influence over the consequences stems largely from collective bargaining. Where unions are well organised, they are able to ameliorate the effects on employees of restructuring, often using political pressure as a key tactic in the bargaining process, but this influence varies across firms.
Italy	The principal way in which employees are able to influence restructuring is through collective bargaining, at both company and sectoral levels. In doing so they can use the information and consultation procedures laid down by law, such as those relating to collective dismissals. Complementing the role of collective bargaining are the company level information and consultation procedures.
Spain	Formally, employees have the right to receive the same information as the shareholders. Management must allow worker representatives to formally set out their views in writing if the changes affect employment, but this report is not binding on management. Only when restructuring leads to significant changes to the terms of statutory collective agreements is there an obligation on management to reach agreement with employee representatives before introducing them. Collective dismissals are strongly regulated in Spain, but recent reforms have made it easier for managers to make redundancies.

Country	Key features of the system
France	*Comité d'entreprises* have the right to be informed and consulted three months prior to any restructuring. Since 2001, they have the same prerogatives as other minority shareholders and a work's council delegation has access (a right of discussion) to the company boards. In public companies, employee representatives hold one third of the seats on the board. However, employee representatives appear to have only a limited effect on changing management's plans in practice. Some instances of unions appealing to politicians for support and works councils have had some success in the courts in arguing that the process of consultation was not followed fully.
Ireland	There is very little in the way of formal, institutional power to affect corporate restructuring, with a minimalist legal framework based on the EU directives on transfer of undertakings and collective redundancies. Where unions are well organised, they have the ability to exert some influence, and this is particularly the case in 'social partnership' deals. Such social partnership arrangements may be strengthened by the EU directive on information and consultation, but currently these arrangements lack strong institutional foundations. There is a stronger employee influence in the public sector, with a legal obligation for the employer to consult and inform, and a right to employee participation on the boards of certain State enterprises.
UK	There is a minimalist legal framework. Such rights as exist stem from EU directives on the transfer of undertakings, collective redundancies and the forthcoming implementation of the information and consultation directive. Therefore, the ability of employee representatives to influence restructuring stems from unions' strength at firm and plant level, meaning that there is considerable variation in this respect. Recently, the limited growth of 'partnership' deals at firm level has afforded employee representatives a modest increase in influence over restructuring.

Source: Adapted from EIRO (2002) 'Corporate governance systems and the nature of industrial restructuring', Dublin, September 2002, http://www.eiro.eurofound.eu.int/2002/09/study/tn0209101s.html.

an insider model. Overall, though, the UK system is similar in many respects to that in the United States: shareholdings are dispersed and fluid; there is an active market in corporate control; managerial remuneration is in large part tied to shares and profit-related bonuses; relationships between management and shareholders are arm's length; and employee rights are generally weak.

3.5. Summary

One common tendency is that in many countries which are considered to possess an insider system of corporate ownership, some of the characteristic features of outsider systems are becoming more evident. This is particularly true of France, but there also clear signs in Sweden, Finland, Germany and the Netherlands. This is the key pattern and constitutes a process of convergence along Anglo-Saxon lines. However, these developments are occurring in highly uneven ways with change being much more detectable in large, internationalised companies than in small and medium-sized ones, and with strong countervailing tendencies based on institutionalised mechanisms for union and employee representation and consultation within enterprises. Moreover, in many insider systems, for instance in Austria, Belgium or Denmark, little change is observed, and even in an outsider system such as the UK, there appear to be some limited moves in the direction of the insider voice. Overall, then, change is not occurring in a tidy, convergent way, and diversity both across and within EU Member States remains a key feature.

Generally, the predominant picture across the EU appears to be that changing external pressures do not radically alter the basic nature of industrial relations frameworks. Indeed, many firms in insider systems, and even some in outsider systems, are willing to use collective bargaining and other mechanisms that promote dialogue to facilitate change. Corporate ownership patterns and industrial relations frameworks therefore appear to be becoming hybridised as they evolve in response to both external challenges and also to the actions of actors and firms within the system.

This discussion has sought deliberately to provide an overview of the main trends and variations in the nature of corporate ownership patterns and industrial relations institutions in the EU Member States. Such an overview is of necessity simplified, leaving out many details. The overview showed significant diversity across the EU and demonstrated that there is considerable change with more emphasis being put on shareholder value, but with significant variation in the presence or even strengthening of mechanisms supporting the 'voice' of other stakeholders. Hence, the direction and pace of change is not the same everywhere. The true picture of the interrelationship between corporate ownership patterns and industrial relations is complex and there are other social and cultural factors that matter as well. For example, in a study of corporate governance and employment relations in seven UK firms, the findings of Deakin et al. [135] suggest that although the national institutional framework is an important influence on employment relations, corporate actors nevertheless have a 'strategic space' within which to develop solutions. Their research

(135) S. Deakin R. Hobbs, S. Konzelmann and F. Wilkinson (2001), 'Partnership, Ownership and Control: The Impact of Corporate Governance on Employment Relations', Working Paper No 200, Centre for Business Research, University of Cambridge.

indicates that the attitude of management, and the managing of shareholders' attitudes in particular, is important. Similarly, strong trade unions, with a good understanding of the industry and company as well as the ability to manage and mediate between both employees and managers, are crucial. This finding was also apparent in the study of the approach of German works councils to company restructuring and adaptation to international competition [136]. Finally, they also suggest that certain environmental factors, such as the firm's market and regulatory frameworks, may influence the terms and conditions for, and the durability of partnership.

3.6. The new Member States

What are the implications of this discussion for the new Member States? The change from traditional public sector management to outsider forms of corporate ownership is already in evidence in the new Member States both through the growing importance of foreign direct investment by multinational corporations (MNCs) and by portfolio investment by financial institutions in domestic companies. These pressures not only have direct effects, but also serve to inform the choices of policy-makers as to the desirability of these distinct models in the continued creation of institutional frameworks in the fields of corporate governance and industrial relations. One implication concerns the extent to which the new Member States are characterised by systems of social dialogue and partnership. Where this is the case, the evolution of the corporate ownership system towards outsider norms presents a challenge to the institutions promoting dialogue and partnership. In other new Member States where such institutions are absent or extremely weak, the moves towards outsider systems of corporate ownership would seem to create fewer tensions, but other countervailing tendencies, arising from politics or union pressure, more along the model found in southern Europe, may be found. Perhaps the most likely outcome of enlargement is that a further range of hybridised models will emerge, creating even more diversity across the EU.

3.7. Policy implications

Although further research into these issues continues to be necessary in order to fully understand the links between corporate ownership patterns and industrial relations as well as the interplay of other factors, the variations and trends which have been identified above have implications for policy.

Firstly, social partnership appears to be well-rooted. In most of EU-15, it has the status of a 'value' and is part of the industrial relations culture. In addition, by helping to generate trust, social partnership serves a functional purpose in helping to bring about more consensual adaptation to change. It is therefore something which needs to be encouraged, particularly in the new Member States, most of which have rather weak traditions of social dialogue (see Chapters 1, 3 and 6).

Secondly, the diversity and trends identified demonstrate the importance of institutional design, as the rules in place, particularly for employee information and consultation, clearly do influence the way in which restructuring occurs. For national and European policy matters it is extremely important to find the right mix, as there is probably no 'one-size-fits-all' policy or institution. With the purpose of creating an anticipative approach to managing change, a broader base for the acceptance of change and lowering social and personal costs, well-designed European rules on information and consultation can play a supporting role. In this context the general framework for informing and consulting employees in companies situated in the EU established by EU Directive 2002/14/EC, offers not only protection for employees, but also a business tool for anticipating and managing change. It provides for minimum standards of information and consultation of employees, while leaving considerable leeway for Member States and their individual businesses to apply the rules in a way best suited to them.

Thirdly, the fact that the responses to similar pressures are not uniform, in conjunction with the growing evidence of a modest growth in employee influence in the UK — a country with relatively weak employee rights — demonstrates that other, non-institutional factors also matter. This evidence indicates that the role and attitude of individuals is important, suggesting that education and awareness-raising with regard to the instrumental role and benefits of social dialogue and partnership are also important avenues for encouraging responsible corporate behaviour, including the responsible anticipation and management of change in cases of restructuring.

4. EU initiatives in the field of company-level industrial relations

The EU has adopted several important initiatives over the years in the field of company-level industrial relations, relating in particular to worker information and consultation. In recent years the EU has adopted a more anticipative approach. The most recent EU legislation promotes upstream worker involvement, notably on strategic issues and on the foreseeable evolution of employment within companies. It seeks to ensure

(136) W. Streeck et al. (2003), 'Germany Ltd ...', op.cit.

the timely development of the employability and adaptability of the European workforce to help it successfully face the challenges of change. A distinction is made between legislative and non-legislative developments.

4.1. Legislative developments

Collective redundancies directive of 1975 [137]: The directive provides that an employer who envisages collective redundancies must provide employee representatives with specified information concerning the proposed redundancies and must consult with the workers' representatives in good time with a view to reaching an agreement. These consultations should cover ways of avoiding or of reducing the redundancies and of mitigating their consequences by recourse to social accompanying measures aimed at, in particular, aid for redeployment and retraining of the redundant workers.

Transfers of undertakings directive of 1977 [138] The directive provides that both the transferor and transferee must provide specified information to the representatives of employees affected by the proposed transfer and, if either party envisages measures in relation to the employees, their representatives must be consulted with a view to reaching agreement.

The European works councils (EWCs) directive of 1994 [139]: The directive applies to undertakings or groups with at least 1 000 employees and at least 150 employees in each of two Member States. It allows for the establishment of a European works council — representing of employees in the Member States where the group has operations — which must be informed and consulted on the progress of the business and any significant changes envisaged. To date, European works councils have been established in some 650 transnational groups (see Table 5.7 and Box 5.1. and 5.2).

European company (SE) of 2001 [140]: The directive provides for rules on information, consultation and possibly participation in the European company (SE). When an SE is to be created, negotiations between management and employees' representatives must start as regards employees' involvement in the future SE. If the negotiations fail, standard rules will apply, according to which a representative body for the employees shall obtain information and be consulted on transnational matters. Board representation shall apply according to the standard rules if employees have previously had such a right in any of the participating companies.

Information and consultation directive of 2002 [141]: The directive seeks to strengthen dialogue within enterprises and ensure employee involvement upstream of decision-making with a view to better anticipation of problems and the prevention of crises. It applies to undertakings with at least 50 employees or establishments with at least 20, and provides that employee representatives be informed and consulted on developments relating to the economic situation of the undertaking, the development of employment and decisions likely to lead to changes in work organisation or contractual relations. The deadline for transposition of the directive by the Member States is March 2005.

European cooperative society (SCE) of 2003 [142]: Directive providing for rules on information, consultation and possibly participation in the European cooperative society (SCE). The directive contains a similar model regarding employees' involvement to that of the SE.

TABLE 5.7: NUMBER OF EUROPEAN WORKS' COUNCIL AGREEMENTS IN 2002, BY COUNTRY

Country	Number of EWC agreements
EU	
Germany	155
France	78
UK	70
Belgium	70
Netherlands	46
Sweden	35
Italy	31
Ireland	28
Finland	22
Austria	12
Denmark	10
Luxembourg	9
Spain	5
Greece	1
Non-EU	
Norway	11
Switzerland	6

Source: Opinion of the European Economic and Social Committee on the 'Practical application of the European Works Council Directive (94/45/EC) and on any aspects of the directive that might need to be revised' (exploratory opinion) of 24 September 2003, EESC (EC) No 1164/2003. Some of the EESC's figures are derived from the ETUC Infopoint database and the European Trade Union Institute, *European works councils – facts and figures*, Brussels, November 2002.

(137) Consolidated by Council Directive 98/59/EC of 20.07.1998, OJ L 225, 12.8.1998, p. 16.
(138) Consolidated by Council Directive 2001/23/EC of 12.3.2001, OJ L 82, 23.3.2001, p. 16.
(139) Council Directive 94/45/EC of 22.9.1994, OJ L 254, 30.9.1994, p. 64.
(140) OJ L 294, 10.11.2001, p. 22.
(141) Directive 2002/14/EC of the European Parliament and the Council of 11.3.2002, OJ L 80, 23.3.2002, p. 29.
(142) OJ L 207, 18.8.2003, p. 25.

Box 5.1: The evolution of European works councils (EWCs)

The European Economic and Social Committee (EESC), at the request of the Commission, prepared an exploratory opinion on the evolution of European works councils [143]. In its opinion, which was adopted in September 2003, the EESC notes that various studies analysing the operation of European works councils point to a dynamic process of development, and a growing recognition of the positive role played by them in promoting social dialogue within companies, including in cases of restructuring. This dynamism can be seen both in the manner in which EWC agreements appear to be developing as well as in their functioning in practice.

As regards EWC agreements, one of the practical problems regarding the application of the directive, mentioned in the Commission's report of April 2000, was the fact that some of the negotiated agreements seemed to provide for only a very low level of transnational information and consultation. What appears to be happening, however, is that as agreements expire, their content is being fleshed out more fully when they are renegotiated. In some cases, this reflects the incorporation of experience and best practice from outside the EWC in question, but in other cases it is a result of the development of greater trust among the parties as a result of the experience which has been gained and which has enabled reservations which may have existed at the outset being overcome. Such renegotiated agreements often result in the strengthening of the EWCs with regard to the frequency of meetings and the prerogatives and facilities granted to employee representatives.

The developing scope of EWC agreements is also evident from the extension of the range of issues they deal with. In many agreements the issues on which employees are to be informed and consulted has been extended far beyond the core topics referred to in the annex to the directive. Issues with a strong European dimension such as health and safety, equal opportunities, training and mobility, and environmental policy are now also the subject of employee/management consultation. The range of issues finding their way on to EWC agendas is also being extended in many cases through actual practice rather than though formal extension of the agreement.

This process of dynamic development within EWCs has, perhaps, reached its fullest expression to date with the emergence, in recent years, of a negotiating role within some EWCs. This has led to the conclusion of agreements between management and employee representatives on joint texts that go far beyond the basic information and consultation requirements of the directive. In addition to agreements in the areas mentioned above, the issues addressed in such joint texts include the consequences of restructuring, trade union rights and fundamental social rights. With regard to the issue of restructuring, what has been extremely interesting to observe is how, in some instances, the EWC has been used as a forum in which management and employees have reached agreement on how the restructuring of their European operations should be implemented.

Box 5.2: European works councils (EWCs) — some facts and figures [144]

- At the end of 2002, out of an estimated total of 1 865 companies or groups of companies employing 17 million people falling within the scope of the EWC directive, some 639, with 11 million employees, had an EWC.
- Some 1 200 companies and groups covered by the directive and employing roughly 6 million people, have yet to establish an EWC or a procedure for informing and consulting employees.
- More than half of the agreements were concluded in 1996 alone. Since then some 40 agreements have been concluded annually.
- 72 % (400) of these agreements were concluded under Article 13 prior to the entry into force of the directive, and 28 % under Article 6, after its entry into force.
- A quarter of the agreements fall under German law, 12–13 % fall under French, Belgian or UK law, 4 to 7 % under Dutch, Swedish, Italian, Irish or Finnish law.
- More than 10 000 employee representatives are now directly involved in the work of EWCs and in implementing intercultural exchanges and practices.
- In half of the agreements, restructuring issues are included in the remit of the EWC; 51 % of the agreements mention mergers; 47 % closures, and 53 % relocations.
- In 2002, 547 companies or groups having a subsidiary in one of the new Member States came under the scope of the directive. Of these, 323 had already set up an EWC, 30 % of which included members or observers from the new Member States.
- The incidence is highest in Poland (50), the Czech Republic (26), Hungary (23) and Slovakia (16) [145]. In March 2004, all acceding countries except Estonia and Lithuania had transposed Directive 94/45/EC into national legislation.

4.2. Non-legislative Commission initiatives

Corporate social responsibility (CSR): As a follow-up to the Green Paper on Corporate Social Responsibility [146], and the Commission communication on 'Corporate social responsibility: A business contribution to sustainable development' [147], the Commission promotes a concept of CSR which implies a continuous commitment by business to behave fairly and responsibly and contribute to economic development while improving the quality of life of the workforce as well as of society at large, including in times of restructuring and in the anticipation of change. In 2002 the Commission created the EU Multi-Stakeholder Forum on CSR, the aim of which is to promote innovation, transparency and convergence of CSR practices and instruments. The forum

(143) *Opinion of the European Economic and Social Committee on the 'Practical application of the European Works Councils Directive 94/45/EC and on any aspects of the directive that might need to be revised' (exploratory opinion) of 24 September 2003, EESC (EC) No 1164/2003.*
(144) *These figures are approximations.*
(145) *P. Kerkhoffs (2002),* European works councils: facts and figures*, Brussels, European Trade Union Institute.*
(146) *COM(2001) 366 final.*
(147) *COM(2002) 347 final.*

presented a report in summer 2004 and the Commission is now scheduled to adopt a communication assessing progress in the implementation of its CSR strategy and proposing the next steps to be taken [148].

Follow-up to the Commission's communication on the European social dialogue, a force for innovation and change [149]: In the communication, the Commission underlines that attainment of the strategic goals set in Lisbon — growth, full employment and social cohesion — depends to a considerable extent on the action taken by the social partners at all levels. The European social dialogue is therefore seen as a key tool for ensuring the positive management of change, in order to reconcile the flexibility essential to businesses with the security needed by employees, particularly in the event of major restructuring. The Commission is therefore encouraging and supporting financially and logistically the initiatives of the social partners on restructuring in the framework of their joint work programme for 2003–05. This includes a study on restructuring in the new Member States.

The European Monitoring Centre on Change (EMCC) [150]: The EMCC was established in October 2001 with the purpose of providing accessible, reliable data and opportunities to exchange views, ideas and practice in order to bring about better understanding, anticipation and management of change. The EMCC's objective is to provide the tools for key actors in European social policy to make more informed decisions about managing the processes of change. It seeks, through data collection, analysis, investigation and networking, to identify business strategies and institutional policies that support the process of change in socially acceptable ways, with the aim of providing users at different levels — regional, sector, national, company, EU and global levels — with a single access point to information on change. Some 1 500 case studies of restructuring have been recorded so far by the EMCC.

4.3. Other international initiatives

International framework agreements: Over the last decade, in response to pressure from the media, consumers, trade unions and civil society organisations, enterprises have initiated social responsibility initiatives which aim at improving their social and environmental performance. In addition to CSR schemes autonomously promoted by individual companies, multistakeholder initiatives are being promoted by multinational companies and global trade union federations as well as by EU level social partners [151].

Since 1995, the European sectoral social partners have concluded charters and codes of conduct dealing with CSR issues (see Chapter 3). These

TABLE 5.8: INTERNATIONAL FRAMEWORK AGREEMENTS ON CORPORATE SOCIAL RESPONSIBILITY (CSR)

Chemical, Mining (ICEM)	Statoil (Norway), 1998
	IKEA (Sweden), 1998
	Freudenberg (Germany), 2000
	Endesa (Spain), 2002
	Norske skog (Norway), 2002
	AngloGold (South Africa), 2002
	ENI (Italy), 2002
Building, Timber (ÏFBWW)	Faber-Castell (Germany), 2000
	Hochtief (Germany), 2000
	Skånska (Sweden), 2001
	Ballast-Nedam (Netherlands), 2002
Metal industry (IMF)	Merloni Elettodometici (Italy), 2001
	Volkswagen (Germany), 2002
	DaimlerChrysler (Germany), 2002
	Leoni (Germany), 2003
	GEA (Germany), 2003
	SKF (Sweden), 2003
	Rheinmetall (Germany), 2003
Food and Agriculture, Hotels and Tobacco (IUF)	ACCOR (France), 1995
	Danone (France), 1988
	Chiquita (United States), 2001
	Fonterra (New Zealand), 2002
	Club Méditerranée (France), 2003
Networks (UNI)	Telefonica (Spain), 2000
	Carrefour (France), 2001
	OTE (Greece), 2001
	H&M (Sweden), 2003
Transport (ITF)	IMEC (professional maritime organisation), 2000

Source: ICFTU website, *http://www.icftu.org/displaydocument.asp?Index=991216332&language=EN*

(148) For a more extensive discussion of CSR and related European social partner initiatives, see Chapter 3.
(149) European Commission, The European social dialogue, a force for innovation and change, *(COM(2002) 341 final).*
(150) www.eurofound.eu.int/emcc/emcc.htm
(151) ILO (2002), Guide to the tripartite declaration of principles concerning multinational enterprises and social policy, *ILO multinational enterprises programme, Geneva.*

texts represent a significant innovation insofar as they go beyond the traditional field of the European social dialogue, dealing in particular with the rights of persons living in third countries. Since 1988, several framework agreements have been signed between multinational enterprises (MNEs) and global trade union federations concerning the international activities of these companies. To date, framework agreements have been entered into between MNEs and global trade union federations in several major sectors of operation (see Table 5.8).

As part of these agreements, the company and global trade union recognise common minimum standards for the operations of the MNE around the world. Nearly all of these agreements incorporate the ILO fundamental principles and rights at work. Other issues such as vocational guidance and training, however, feature less often in the agreements. A further challenge for these agreements relates to handling employment issues, in the event of restructuring.

These agreements represent an innovative approach towards a new form of international social dialogue. They attempt to respond to one of the challenges of globalisation, namely the diversity of local situations and national legislative frameworks. They indirectly address the credibility challenge of CSR initiatives by involving stakeholders in partnerships with companies. As framework agreements involve globally active partners, the methods for implementation can be particularly effective, provided that such agreements have a system for dispute settlement and periodic review of the terms and implementation of the agreement based on criteria agreed by both sides.

5. Anticipating and managing change at company level: the social partner case studies

Since 2002 the cross-industry European social partners have wanted to pursue a more 'autonomous' social dialogue (see Chapter 3). The European social partners have therefore recently begun to address the issue of restructuring, and the topic was included in their joint work programme for 2003–05. The social partners' deliberations on restructuring were originally triggered by a Commission consultation under Article 138 of the EC Treaty on 'Anticipating and managing change: a dynamic approach to the social aspects of corporate restructuring' launched in January 2002. This consultation paper explains that the Lisbon strategy is based on a positive approach to change. Change is viewed as contributing to innovation, increasing productivity by modernising the organisation of work, and improving profitability. It should therefore be embraced, anticipated and managed responsibly.

In response to the Commission consultation, during 2002–03 the cross-industry social partners held three seminars examining case studies of restructuring and on 29 October 2003, they presented a joint text to the Commission entitled 'Orientations for reference in managing change and its social consequences'. The orientations stress the importance of the following elements:

- the need to explain and give the reasons for change in good time to workers and/or their representatives and the need for good information and consultation of workers throughout the process of change;
- the need to develop the employability of employees by maintaining and developing their competences and qualifications;
- the territorial dimension, namely the importance of partnership between employers, trade unions and local/regional public authorities, when economic and social changes have serious repercussions for an entire region. Such cooperation can play a useful role in fostering new job-creating economic activities, managing reassignments and improving the operation of the local labour market;
- the specific situation of SMEs, namely their role regarding job creation, their potential dependence on one large customer, and the particular challenges facing SMEs when they themselves restructure;
- the local management of restructuring, including the possibility of 'social plans' and the exploration of all possible alternatives to dismissals.

Ten case studies of restructuring are annexed to these orientations. Seven relate to fairly large companies, two to SMEs, and one to the reconversion of Asturias, a Spanish region dominated by traditional, State-owned industries. These case studies are based on the reflections of both a manager and a worker representative from each firm. Each case study highlights the range of motives that firms have in undertaking restructuring.

One motive that drove restructuring in organisations such as Norsk Hydro, Danone and Metso was the need to reduce costs in a context of overcapacity. Another driver was the desire to significantly reduce production costs by relocating some operations to lower costs countries, as was the case in Marzotto and Abeil. In yet

TABLE 5.9: TEN CASE STUDIES OF RESTRUCTURING

Company/area	Country	Division / product affected	Reasons for restructuring
Norsk Hydro	Norway	Fertilisers	Overcapacity
Danone	France	Biscuit production	Overcapacity
Marzotto	Italy	Textiles	Relocation to lower costs countries
Deutsche Telekom	Germany	Telecoms	Privatisation and adaptation to technological change
Barclays	UK	Financial services	Refocus on core business
Siemens	Germany	Micro-electronics and lighting	Refocus on core business
Asturias	Spain	Mining	Privatisation
Auwera	Germany	Industrial cleaning	Financial crisis
Abeil	France	Textiles	Relocation to lower costs countries
Metso	Finland	Board machines for the paper industry	Overcapacity

other cases restructuring was motivated by new pressures associated with privatisation or changing technologies, for instance Deutsche Telekom. In some firms, restructuring is brought about by a desire to focus activities more narrowly on certain core businesses, as was the case at Siemens or at Barclays, and in others, it is driven by financial crisis, as in the case of Auwera (see Table 5.9).

In some of these case studies, there were adverse consequences for employees, for example in those instances of restructuring which resulted in redundancies, as at Norsk Hydro, Marzotto, Danone and Metso. However, the consequences for employees are not always negative. In some of the case studies, such as Barclays, there was no detectable adverse impact on employment levels; and the restructuring at Siemens was followed by a rise in employment at the Infineon subsidiary.

Even where the consequences for employees are negative, the case studies suggest that social dialogue can help in minimising the adverse consequences for employees. The case studies provided some evidence of worker involvement in restructuring in the new Member States, such as the case of Danone in Hungary. Even in the case of Marzotto, where plans to relocate work to new Member States (the Czech Republic and Lithuania) were largely accepted by the unions, amendments to these plans were secured through negotiations leading to a minimisation of the amount of work to be relocated and agreement on assistance for job search for redundant workers.

Indeed, across the case studies, assistance to displaced workers in searching for new employment appeared to be a key mechanism for generating acceptance to change. One example of how social dialogue lessened the consequences for employees is through the provision of outplacement assistance, for example, at Norsk Hydro, Danone and Metso. Another illustration is Deutsche Telekom's use of an Internal Human Resources Services Agency to bring about internal redeployment.

A further dimension of the case studies was the institutionalisation of EWCs as part of regular processes of consultation. For example, the EWC was heavily involved in the 'turnaround project' at Norsk Hydro, complementing the negotiation of 'social plans' and involvement of outplacement services which were decided locally. Another illustration is in the case of Danone where the EWC build on a well-established tradition of management dealings with the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF/ UITA). Negotiations took place at the local level, but in the framework of a joint opinion agreed with the international trade union in the sector. Moreover, the two instances of restructuring at Siemens were subject to local negotiations but within procedures agreed by the EWC.

Cooperation with local and regional authorities was also helpful in some cases. For example, there was a territorial pact for employment in the mining municipality of Asturias, a regional institutional pact for employment concluded between trade unions and the regional government, as well as a plan for the mining sector and the reconversion of mining districts negotiated by the government and sectoral trade unions at national level. Being an objective 1 region, financial support from the Structural Funds played an important role. In Finland, the case study of restructuring in board machines production at the Valmet Corporation in Tampere, which is part of the Metso Corporation, demonstrates the effective re-employment efforts undertaken by the personnel management and union representatives, Tampere City, local industry and employment authorities, the chamber of commerce, and the trade unions.

6. The implications of EU policies on company-level industrial relations in the new Member States

EU membership will have numerous implications for company-level industrial relations in the new Member States. Firstly, the provisions of the EU labour law directives will have a direct impact at enterprise level, in particular though the procedures they provide for the involvement of employee representatives in restructuring.

In the first instance, the main concern with regard to the new Member States will be to ensure that these directives are correctly transposed into national law. This has obviously been a major preoccupation of the monitoring process to date and will be the subject of more rigorous and detailed verification and enforcement after accession.

However, an even greater challenge will be to ensure that the relevant implementing legislation in the new Member States is effectively applied in practice. In EU-15, failure to follow prescribed information and consultation procedures in some restructuring situations has been an issue. Indeed, it was such failures which provided at least part of the motivation for the adoption of the information and consultation directive and which also urged the trade unions to call for a revision of the directive on EWCs. The emphasis on the development of administrative and enforcement capacity which has been a key theme of the monitoring process will therefore have to be continued.

However, beyond the administrative capacity to enforce legislation, the ability of the actors themselves at enterprise level to discharge the role envisaged for them in the relevant legislation will be an issue. In seeking to establish effective information and consultation mechanisms at the enterprise level, the new Member States face some considerable challenges, as there is little tradition at company level of either strong trade union representation or elected employee representatives (see Chapter 1).

The Commission has actively sought to encourage and support the development of the relevant social dialogue structures at enterprise, sectoral and cross-industry levels. The social dialogue budget headings have sought to focus support on relevant capacity-building among social partners in the candidate countries (see Chapter 3). At the enterprise level more specifically, Budget Heading 04-03-03-03 (ex-B3-4003), which deals with information, consultation and participation at the enterprise level, has sought to prepare representatives from the candidate countries for the roles they will assume under the relevant Community legislation on employee involvement. This emphasis on the needs of the new and future Member States will be continued in the medium term.

The absence of relevant traditions and structures in the new Member States for enterprise-level employee involvement in restructuring decisions lends increased importance to the extension to them of the EWC directive. Since 1 May 2004, undertakings and groups falling within the scope of the directive will be obliged to include representatives from their operations in the new Member States within their EWC. This should assist and accelerate the development of appropriate employee involvement mechanisms in the new Member States through these representatives being exposed to and learning from their colleagues in EU-15. Happily, this process of including representatives from the acceding countries has already commenced in many EWCs in advance of the legal requirement. The importance of the issue is reflected by the fact that the European cross-industry social partners have included an examination of the implementation of the EWC directive after enlargement in their joint work programme for 2003–05.

While the effective implementation of the relevant employee involvement directives would represent a very significant positive factor in managing restructuring at the enterprise level, it is worth pointing out that the new Member States face additional challenges in terms of the wider industrial relations environment. In existing Member States, the employee involvement directives operate within national frameworks of industrial relations which often create a favourable environment for their effective implementation in terms of dealing with restructuring. In addition to employee involvement rules which often go further and take more diversified forms than those established at Community level, most Member States have developed their own responses to the economic and social challenges associated with restructuring. There are sets of rules, either statutory or agreement-based, with which businesses engaged in restructuring should comply as well as good practices that they can follow, addressing issues such as:

- anticipating and measuring the social consequences of restructuring, including taking into consideration the fact that delaying limited restructuring may lead to more drastic restructuring in the future;
- the principle whereby job losses and redundancies are only a last resort (*ultima ratio*), to be used in the absence of other, less drastic solutions;

- the effective search, by providing the necessary resources or by achieving certain expected results, for alternative solutions, such as redeployment, training or retraining of the workers concerned, the phasing of the planned measures over time, the reorganisation of work, including working time, as a precondition for the use of more radical measures, help with job-seeking, occupational guidance, supporting the development of self-employment or the creation of SMEs by the workers affected, support for workers taking over certain activities of the business, etc.;
- the search for someone to take over the interrupted activities;
- the rehabilitation and reallocation of abandoned industrial sites both as an environmental measure and to absorb a proportion of the jobs lost.

The new Member States will be confronted with difficult challenges in adopting and applying such rules and practices. In most cases, this will have to be done almost from scratch. A pro-active approach from the EU will therefore be helpful with a view to helping the new Member States to create the appropriate legal frameworks as well as developing the supporting industrial relations systems.