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The Central Arbitration Committee

Decision

Case Number: EWC/7/2012

22 April 2013

CENTRAL ARBITRATION COMMITTEE

TRANSNATIONAL INFORMATION AND CONSULTATION OF EMPLOYEES REGULATIONS 1999 AS AMENDED BY THE 2010 REGULATIONS

DECISION ON COMPLAINT UNDER REGULATION 21(1A)

The Parties:

Mr Haines

and

The British Council

1. On 7 August 2012, on behalf of the The British Council's European Works Council (the EWC), Mr Haines in his capacity as the EWC Co Chairman, submitted a complaint to the Central Arbitration Committee (CAC) under Regulation 21(1A)(b)[1] of the Transnational Information and Consultation of Employees Regulations 1999, as amended by the 2010 Regulations (the Regulations or TICER). He claimed that the British Council (the Employer) had failed to comply with Regulation 18A(3), (5) and (7). That is to say: it failed to provide information in a timely manner; failed to provide sufficiently detailed information; and failed to provide sufficient information and consultation on pay related transnational issues.

2. In accordance with section 263 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act), the CAC Chairman established a Panel to consider the case. The Panel consisted of Professor Roy Lewis as Chairman and Dr Christopher Ball and Mr Roger Roberts as Members. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

Provisions and evidence relevant to the complaint

3. In reaching its decision, the Panel is required to consider and apply the legislation as set out at Appendix 1. The full list of supporting documents/evidence provided by the parties is listed at Appendix 2. For the purposes of this decision, supporting documents provided by Mr Haines are referred to as the EWC's bundle and the Employer's as the Employer's bundle.

Background to the British Council and the EWC

4. The Employer was an executive non-departmental public body, a public corporation and a registered charity. The Employer received a grant in aid but did not carry out functions on behalf of the Crown. More than two thirds of the Employer's income was generated from teaching English, administering exams overseas and from partnerships and contracts. According to the Employer its mission was "promoting abroad a wider appreciation of British culture and civilisation [by] encouraging cultural, educational and other interchanges between the United Kingdom and elsewhere". It operated world-wide, including in many countries outside of the EU and outside Europe. It had around 2800 employees based in the EU and EEA countries. Within this group 900 were in the UK, who together with a number of the other employees based in the EU and EEA, had pay and conditions that were subject to collective negotiations with the PCS Union. Other employees in these countries were on local terms and conditions, which were generally established in line with collective agreements.

5. In June 2003 European staff requested a European Works Council. A Special Negotiating Body (SNB) was established, but since no agreement was reached during a 3 year period, in July 2006 the "Subsidiary Requirements" in the Schedule to the Regulations applied and continue to apply. The parties' agreement on the establishment of the European Works Council was referred to in the complaint as the "EWC Agreement" (Annex A of the EWC's bundle). The EWC Agreement set out a customised version of some of the provisions contained in the Regulations and the Schedule. In addition to the EWC Agreement the parties voluntarily developed "the EWC Code of Practice", which was sometimes referred to as the "the Lisbon Agreement" or "Lisbon Treaty" by Mr Haines in his complaint (Annex H of the EWC's bundle & attachment B of the Employer's bundle). The EWC Code of Practice document set out arrangements under the following headings "Good Relations", "Consultation", "Funding" and "Meetings". It also included a timetable for consultation and a "Communication Cycle" diagram. Two meetings per year with the full EWC, involving 29 representatives from 26 different countries was provided for, and 2 meetings (at least) per year with the Steering Committee, which corresponded to the Committee referred to in the

Regulations as the "Select Committee".

The history of the submissions for the Panel

6. The complaint was submitted to the CAC on 7 August 2012 to which the Employer responded on 29 August 2012 with its "initial response". By e-mail on 20 September 2012 Mr Haines provided his comments on the Employer's initial response. The Employer submitted a "full response" on 9 October 2012. At the Panel's request, Mr Haines then submitted a further statement by e-mail dated 4 November 2012, clarifying for the Panel, the alleged points of failure by the Employer and how they had prevented the EWC from participating in the information and consultation process. The submissions made thus far established that the complaint specifically related to the timing and content of the information received by the EWC from the Employer in respect of the meeting of the full EWC held on 28 March 2012 in Paris and the subsequent events surrounding the issue of the Employer's Performance Related Pay (PRP) pilot. Mr Haines confirmed that where in his submissions he had referred to events/meetings occurring prior to March 2012 it was provided for context and to demonstrate to the Panel the history of its relationship with the Employer. Specifically, submissions regarding events preceding the six month time limit specified in Regulation 21(1B) were provided to demonstrate that there was a continuous lack of information from the Employer.

7. To assist with its decision, by a letter from the CAC dated 26 November 2012, the Panel asked the parties to provide their answers to two questions: whether the Employer's PRP pilot was or was not a transnational issue falling within the Regulations with reference to Regulations 18A(7), 19E, 2(4A) and (4B)(b) and (c) and whether or not the complaint had been submitted to the CAC prematurely with reference to Regulation 18A(5). In addition the Employer was asked to furnish the Panel with the factual background to its PRP pilot scheme. Both parties responded and made their final submissions to the CAC on 13 December 2012.

8. Very helpfully, to assist the Panel, both parties provided copies of the relevant supporting documentation to their cases including reports exchanged, minutes of meetings, various e-mails and teleconferences that occurred between them. Where Mr Haines referenced extracts and provided complete copies of minutes of meetings, he indicated to the Panel that they were minutes prepared by EWC members as a record of what was said and discussed, and that the accuracy of the minutes was confirmed by the EWC representatives who had attended the meetings. According to Mr Haines, the Employer had refused to approve them as a matter of policy. The Employer in its response to the complaint stated that it appreciated that Mr Haines informed the Panel that these were not official minutes and explained that given the value to which it attached to informality, it was unwilling to agree to verbatim minutes as it believed this hampered free and open discussion. In his comments dated 20 September 2012, Mr Haines stated that until November 2011 minutes were 'official' and agreed by management. The Panel also notes that the Employer had not disputed the content of the minutes of meetings provided to the Panel.

Summary of Mr Haines's complaint on behalf of the EWC

9. The complaint under Regulation 21(1A)(b) was that the Employer had breached Regulation 18A (3), (5) and (7) by not complying with the EWC Agreement and the EWC Code of Practice. By virtue of this non-compliance, the EWC was prevented from participating in the information and consultation process and was denied the opportunity to fulfil its legitimate tasks and responsibilities.

10. The EWC Agreement stated:

"...**2 Competence of the European Works Council**

The European Works Council shall be limited to information and consultation on the matters which concern the British Council as awhole or at least two of its establishments situated in different Member States.

3 Information and Consultation Meetings

...

3.1 The European Works Council shall have the right to meet with central management of the British Council once a year in aninformation and consultation meeting, to be informed and consulted, on the basis of a report drawn up by the central management,on the progress and prospects of the British Council...

...

3.3 The information and consultation meeting shall relate in particular (but not solely) to the structure, economic and financial situation, the probable development of the British Council, the situation and probable trend of employment, and substantial changes concerning organisation, introduction of new working methods, transfers of activities, cut-backs or closures of establishments or important parts thereof, and collective redundancies.

..."

The EWC Code of Practice stated:

"...**Consultation**

· ...Accordingly it is understood that before the introduction of any new policy or change trans-nationally that affects EWC countries, the EWC must be consulted and play a full part in the discussions which could lead to development of this policy and/or change but without prejudice to the responsibilities of management.

· The timetable for consultation will be as follows:

- Information on proposed measures needs to be provided before consultation starts between the EWC and central management, so that there is reasonable and adequate period of time in relation to the scale and scope of the issues to undertake an in-depth assessment of possible impact and to prepare for such consultation.

- The EWC will give any opinion it might express within a reasonable period of time in relation to the scale and scope of the issues

following a consultation meeting provided we have the necessary information from management

- Central management will give a response and the reasons for that response also within a reasonable period of time, given the scale and scope of the issues, of receiving the EWC's opinion.

Accordingly, policy and changes need to be brought to the attention of the EWC as soon as possible - consultation means giving an opinion that can be taken into account in the decision making process and not being informed after the fact.

..."

11**.** There were 3 heads of complaint:

Complaint 1

12.The Employer breached Regulation 18A(3) and (5) by not sending the information or "Management Brief" on the Employer's orgnisataional strategy (Annex E of the EWC's bundle) for the meeting of the full EWC which was held on 28 March 2012 in Paris in a timely manner. The information should have been sent to the EWC with sufficient time before the meeting. The information was sent only 2 days before the meeting on 26 April 2012. This provided an unreasonable and inadequate period of time for the EWC to undertake an in-depth assessment of possible impact of the matters raised in the Management Brief and prepare for consultation. In this regard the Employer had not met the requirements set out in the EWC Agreement reached under the Subsidiary Requirements of the Regulations or of the EWC Code of Practice.

13. The EWC had consistently complained to the Employer about the lateness of the reports supplied for full EWC meetings. March 2012 was not the first time that information was provided to the EWC late. For the meeting of the full EWC held in Berlin on 11 November 2011, the EWC received the management report 4 days before on 7 November 2011. The EWC officially complained in its responding statement to the Employer in respect of the meeting in Berlin 2011(Annex D of the EWC's bundle), and in its statement to the Employer in respect of the meeting in Paris 2012 (Annex C of the EWC bundle). These complaints were not addressed by the Employer. At the Paris 2012 meeting the regional Director Rosemary Hilhorst, refused to give the EWC any additional information. The EWC still requested that it was provided with the information by the deadline of 13 April 2012 which was subsequently extended to 27 April 2012. The Employer did not meet the deadline and did not provide reasons for the lack of information. In order for the EWC to have a reasonable and adequate period of time to undertake an in-depth assessment of the possible impacts of the matters in the management reports/briefs and to prepare for consultation, the Employer needed to provide that information to the EWC beforeconsultation started. The Employer's continued failure to provide information in a timely manner meant the EWC was unable to perform adequately its statutory duties and responsibilities. Accordingly, the EWC asked the Panel to order the Employer to deliver future and outstanding information in accordance with the Regulations and the parties' EWC Code of Practice.

Complaint 2

14. The Employer was in breach of Regulation 18A(3) by providing insufficiently detailed Management Briefs in respect of the same two meetings, the full EWC meeting in Berlin 2011 and in Paris 2012. Both Management Briefs (Annex E and F of the EWC bundle) were incomplete in a material particular and left the EWC inadequately equipped to study and discuss the material and prepare for consultation on the matters involved. The Management Brief for the Paris 2012 meeting particularly demonstrated the inadequate level and quality of information that the EWC was being provided with. The language was vacuous and limited, outlining general corporate aspirations and nothing of real substance. This was not useful as the EWC was unable to provide any reasonable assessment of the impact of decisions on its constituents. The EWC was prohibited from providing an informed opinion and having a constructive dialogue with the Employer. An extract of the Management Brief for the Paris 2012 meeting read:

"Executive Board/Management Board Commitments

We will develop the British Council as an organisation which will:

Earn not spend money

Act not plan

Grow not shrink

Give permission to take decisions and not hold it back

Be demand focused not supply driven

Focus on competitors and consumers not its internal priorities"

15. An extract from the EWC's minutes of the Paris 2012 meeting read:

"EWC: Information given is too vague, no substance for discussion

Rosemary Hilhorst (RH)[2]: There is no blueprint; we are discussing the future options. EU is leading esp. on T3 model (no physical presence). To maintain international network of 110 countries there will be more such models around the world.

EWC: We have concerns about the lack of timely, adequate information given to EWC to consider.

RH: Ongoing process, not certain of success, still working out ideas, often not at the stage to give out information.

EWC advisor : EWC needs to be included in the process, with more information to enable a useful exchange. The group needs to be able to prepare itself - it is very hard to study impact on the basis of the management report."

The EWC re-stated that the management report is inadequate, which is disappointing and contains very little information about the

future.

RH said that they know the direction for the future, but not what exactly is going to happen and Rod Pryde[3] invited EWC to get more info during the meeting.

EWC refused to discuss the management brief on the day of the meeting and requested more information in writing".

16. The Employer was not complying with its legal obligation to provide specific detail and information about issues that affected the EWC's constituents on a transnational basis in accordance with the Regulations and the EWC Code of Practice. The EWC was put in a position where it had to repeatedly ask for sufficient information and having those requests ignored. Accordingly the EWC asked the CAC Panel to order the delivery of future detailed information as well as outstanding information by the Employer in accordance with the Regulations.

Complaint 3

17. The Employer had breached Regulation 18A(5) and (7) by a continued lack of information and consultation regarding pay related transnational issues which, in the past, related to issues of a pay freeze and currently in respect of the Employer's plans for a PRP scheme. The Employer had substantially changed policies on pay without adequate consultation with the EWC or notifying the EWC. The EWC had a history of consistently making complaints about this. Issues to do with a pay freeze were discussed at the full meeting in Berlin June 2010, the Steering Committee (SC) meeting in Berlin September 2010, the SC meeting in Madrid September 2011 and plans to introduce a PRP scheme was discussed at the SC meeting in Madrid September 2011 and the full meeting in Berlin November 2011 (Annex G of the EWC's bundle).

18. Without consultation having taken place, at the full EWC meeting in Paris 2012 changes to pay policy were discussed. An extract from the EWC's minutes of that meeting read:

"...

EWC asked if the pay policy for teachers in the EU included PRP as it had been shown not to work.

*Rod Pryde said that Pippa Greenslade**[4]** had made it very clear at the EWC meeting in Berlin in November 2011 that the direction of travel was towards PRP globally for all staff.*

EWC pointed out that Pippa had also said different models of PRP were and could be looked at, especially in relation to the social enterprise model.

EWC also said that even if that were the case, there was a need for consultation and the EWC had not been provided with information so that it can produce an informed opinion. They stated that a pilot of PRP for teachers had taken place in Ukraine.

*Simon Hunt**[5]** said that there had been a voluntary pilot in Ukraine and SP pointed out that Ukraine was not an EU country.*

EWC pointed out that the pilot in the Ukraine could potentially influence workers in the EU.

*The EWC legal advisor (Sjef)**[6]** stated that the EWC had to be consulted on all transnational issues which affected more than one EU country.*

*SP**[7]** said that management had a different interpretation.*

EWC referred to a presentation given to staff in Greece in April 2011 which said that PRP was corporate policy for all countries.

EWC asked why management were so keen to have feedback on the staff survey but were so reluctant to consult on pay policy which is a much more important issue.

SP said that there was only a need to consult when there was a change in policy - "We'll consult them when we change it"

EWC referred to the legislation on when EWCs had to be consulted and suggested that this was one such case.

SP said he would look at the legislation and respond to the EWC.

EWC asked that other members of management look at the same legislation.

..."

19. The EWC was subsequently informed by the Regional Director, Rosemary Hilhorst by e-mail on 20 April 2012 (Annex I of the EWC's bundle) that:

"Action point 10: *Pay and conditions policy: Management does not regard the points raised as a transnational issue. Head Reward & Employment Relations will, for information, provide further detail on global policy questions and will, with Director Spain, confirm the position on travel policy as agreed at the Steering Committee in Berlin."*

The EWC responded as follows:

"We have been advised that the mentioned elements of the BC's Pay and Conditions policy are clearly transnational policies and you talk here about 'global pay policy questions

'

Again, in view of the way that pay policy changes have been handled - and there is plenty of evidence to show this - we are proposing

taking our complaint to the CAC which will include PRP.

We also have serious concerns about the travel policy and once we have received the position of the Head Reward & Employment Relations will take advice on the next course of action".

20. TheEWC was not given sufficient time and information by the Employer to provide its views on the PRP pilot which was to start in September 2012 (following trials in the Ukraine in September 2011). The Employer requested feedback on the pilot from the EWC on 1 August 2012. The EWC was asked to respond by the end of that August. The EWC could assume on reasonable grounds therefore that the pilot had already been planned at the time of the SC meeting held in Brussels on 11 July 2012. The EWC was asked to report back within an unrealistic timeframe and as such was prevented from giving an opinion on the matter and therefore was denied the right to be consulted over issues relating to pay policy.

21. The "Teaching Reward Project Briefing Paper" (Annex 1 of the EWC's bundle) made clear that the PRP pay policy would impact on employees in different EU Member States and would lead to substantial changes in work organisation or contractual relations and was therefore of a transnational nature. The contents of the Briefing Paper showed that the Employer's decision to start pilots for the scheme should be seen as a policy decision. The framework for decisions to follow was narrow. The options for the types of PRP schemes laid out in the briefing were limited to a range of well defined schemes with a clear timeline. It was clear that no space or time had been left for the EWC to deliver its opinion in a way that it would have any effect. The time frame of 1 month was too short for any meaningful consultation to take place and was confirmation that the Employer would not consult the EWC on the development of the pilots for and implementation of a new transnational PRP policy. The Employer's position was that it would not formally inform and consult the EWC as the general principles of the PRP scheme had already been established 2 years ago, and that the new initiative was global, the first pilot for which was in Ukraine which was outside the EU. However from the EWC's point of view, that the policy was global was of no relevance to the matter of the PRP scheme as being a transnational matter as per the Regulations which the Employer was obliged to follow.

22. The PRP scheme was a pay policy on which the Employer was obliged to inform and consult with the EWC. It was not stated anywhere in the Regulations, the parties' EWC Code of Practice or in the EWC Directive 2009/38/EC that pay or performance related pay policy was excluded from the EWC's remit as long as it was of a transnational nature. Any changes of a transnational nature in the European Union (EU) were subject to consultation with the EWC.

23. Policy for the PRP scheme was in contrast to individual pay settlements or pay levels in any particular country. Paragraph 7(4) of the Schedule to the Regulations stated:

"(4) The information and consultation meeting shall relate in particular to the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods..."

24. The Employer's general (transnational) principles for PRP policy were not discussed at any national level. However in line with the recitals of the EWC Directive 2009/38/EC, the EWC should have been consulted:

"(12) Appropriate provisions must be adopted to ensure that the employees of Community-scale undertakings or Community-scale groups of undertakings are properly informed and consulted when decisions which affect them are taken in a Member State other than that in which they are employed."

25. Informing and consulting with the EWC on this matter did not conflict with any established arrangements at national level since no national employee representation body had been or would be consulted about the basicsof the development of the new PRP policy as was reflected in the design of the pilots. Only proposals to implement this transnational policy by changes to the pay system at national/local level would be the subject of consultation with local/national staff representatives, through staff associations and recognised unions. The Employer was developing a transnational pay policy, not individual pay. It would not be the subject of any other national or local information and consultation process therefore the Employer was breaching the Regulations.

26. The use of the concept 'shall relate in particular' in paragraph 7(3) of the Schedule was an indication that the list that followed was not "limitative".

27. Though there were some local differences usually based on local law or staff agreements, pay policy for the Employer was a global matter and in the case of the plans for the PRP scheme was a transnational matter under the Regulations. By virtue of the Employer's continuous lack of information and consultation regarding pay and related transnational issues, that is, its breach of Regulation 18A(7), specifically in respect of its plans for a PRP scheme falling under the matters mentioned in paragraph 7(4) of the Schedule, had caused the EWC to be unable to adequately perform its statutory duties and responsibilities. The CAC Panel was asked to order that such consultation always took place in accordance with the Regulations.

Summary of the Employer's response to the complaint

The Employer's fundamental approach to the EWC

28. Following a request by its European staff for a EWC an SNB was established. As no agreement on how the EWC should operate was reached within the 3 year period allowed by the Regulations, in 2006, the Subsidiary Requirements in the Schedule under the Regulations applied. The "EWC Agreement" referred to by Mr Haines was merely intended to reflect the Subsidiary Requirements.

29. The Employer developed with the EWC the 'EWC Code of Practice' at the end of 2009 to address their conflicting expectations about how the EWC should work. The EWC Code of Practice was not a Treaty as described by Mr Haines. It was a voluntary code of practice setting out guidelines and the joint commitments of both parties. It was not a legally enforceable document under the Regulations and it was never intended to be legally binding. Therefore the CAC could consider the complaint in so far as whether the Employer had fulfilled its obligations in respect of the Regulations, but it could not decide on whether the Employer had complied with the obligations set out in the EWC Code of Practice.

30. 'Pay', the issue to which the complaint specifically related, was not part of the enforceable procedures under the Regulations. The Employer's "teacher reward scheme" was not a transnational issue. The definitions of "information" and "consultation" as it evolved in

the legislation demonstrated this. The revised 2009 Directive and the Regulations, as amended, confirmed that there was no intention to extend the EWC agenda to cover pay issues. The original 1994 Directive did not contain any definition of "transnational" in the body of the Directive itself. However, Article 1(a) of the Subsidiary Requirements to the 1994 Directives read:

"The competence of the European Works Council shall be limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States".

31. This was transposed into the UK Regulations as paragraph 6(1) of the Schedule:

"Competence of the European Works Council

6.-(1) The competence of the European Works Council shall be limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States..."

32. The revised Directive (2009/38/EC) was adopted in June 2009 and was transposed into UK law by the 2010 amendments to the Regulations.

33. The recast Directive contained a definition of "information", an expanded definition of "consultation" and a definition of what was to be regarded as "transnational".

These definitions read as follows:

"Article 1 (4) Matters shall be considered to be transnational where they concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States.

Article 2 (f) 'information' means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings.

Article 2 (g) 'consultation' means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings."

34. The definitions of "information" and "consultation" transposed into UK law by regulation 18A of the Regulations left the answers to the following questions unclear: at what point in the decision-making process should information be given to the EWC; what type of information should be provided; what constituted an "in-depth assessment; what was a "reasonable time" within which an EWC should give an opinion?

35. The complaint was misconceived and submitted to the CAC prematurely as information and consultation on the issue of the PRP scheme pilots was still ongoing. In any event pay was not an issue on which the Employer was obliged to inform and consult as under the Regulations it could not be considered to be a 'transnational' matter. All three aspects of the complaint were unfounded. The Employer had not breached Regulations 18A(3),(5) and (7). On the contrary, it had constructively involved the EWC from the outset. Believing in voice and accountability, it recognised the potential value of such discussions to the organisation and to its employees in the UK and Europe. It approached its relationship with the EWC by maintaining informality in order to promote free and open exchanges of information and opinions to deliver more meaningful consultation. In this way it tried to observe the requirements of the Regulations and in doing so it had gone beyond what was actually required by the Regulations by developing the EWC Code of Practice.

36. Its informal and non-restrictive approach may have confused the EWC as to what information and consultation it was entitled to. As recorded in the EWC's own minutes, there were several occasions when the EWC had complained about the extent of discussion on urgent matters falling within the Subsidiary Requirements. These were appropriate for discussion outside the regular calendar of meetings, and which had already been discussed in the Steering Committee meetings. The EWC did not appreciate that under the Regulations, the presumption was that discussion of most matters of this kind would be held in the Steering Committee (possibly augmented) and not lead on to further, detailed sessions in the subsequent full EWC meetings. There were two categories of information and consultation. The requisite information was shared in meetings with both the full EWC and the Steering Committee. The Employer had tended to allow further discussion of matters within the EWC, even when it believed that the consultation requirements had already been fulfilled in discussions with the Steering Committee.

Timing of information provided

37. It was not accepted that the Employer had provided information to the EWC in an untimely manner, or that it had provided information that was insufficiently detailed, so as to prevent the EWC from forming its views and carry out its duties. The Regulations provided limited guidance on important questions such as the amount of information that should be supplied, the details of such information, and how far in advance of meetings it should be provided. The Employer had addressed these practical issues by applying an informal approach through the EWC Code of Practice and the Regulations where it could. For instance, by meeting with the full EWC and the Steering Committee more often than the Regulations required. Meaningful dialogue with the EWC had happened not just through these meetings (of which 16 had been held since February 2011[8]), but also through e-mail exchanges and teleconferences.

38. The Employer was in line with and in some areas offered more to its EWC than other organisations that were subject to the same Regulations. The purpose of regular meetings was for the Employer to provide the EWC with a broad overview of on-going developments. Most other organisations usually did this through a series of management presentations at the meetings, rather than

circulating information beforehand. However, the Employer decided to circulate written documents before the meetings which were supplemented with presentations at the meetings. The Regulations did not stipulate that the report for the EWC had to be circulated beforehand. Paragraph 7(1) of the Schedule stated:

"7.-(1) Subject to paragraph 8, the European Works Council shall have the right to meet with the central management once a year in an information and consultation meeting, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects."

39. In accordance with paragraph 8 of the Schedule, the Employer also appreciated that in "exceptional circumstances", that is in respect of circumstances which may have affected "the employees' interests to a considerable extent", information had to be provided in such a way as to enable the employees' representatives to undertake an "in-depth assessment" and prepare for consultations. Again the legislation did not require this information to be circulated prior to meetings. When contemplating decisions which may have adverse consequences for employees, the Employer felt that it was generally better to have the opportunity to present the information personally to the EWC and put it in context. The EWC could then undertake an "in-depth assessment" and prepare for consultations.The time at which information was presented to the EWC by the Employer in these circumstances was compliant with the Regulations.

40. The Regulations made a distinction between what should be provided in advance and what needed to be provided and discussed at the meeting itself. The Employer met the mandatory requirements in respect of the agreed agenda for meetings. In addition there was an intranet on which the Employer posted a significant amount of information, including head counts and business activities/planning, all of which was available to the EWC. Information was then also provided at the meeting itself, as anticipated in subparagraph 7(4) of the Subsidiary Requirements which stated:

"(4) The information and consultation meeting shall relate in particular to the situation and probable trend of employment, investments, and substantial changes concerning organization, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts of such undertakings or establishments, and collective redundancies."

41. Regulation 18A(5) stated:

"(5) The content of the consultation, the time when, and manner in which it takes place, must be such as to enable a European Works Council or information and consultation representatives to express an opinion on the basis of the information provided to them."

42. The Employer did not have to wait indefinitely for the EWC's opinions before it could progress management decisions in a timely way. Recital 37 of the 'Recast' Directive (2009/38/EC) sated that:

"Opinions expressed by the European Works Council should be without prejudice to the competence of central management to carry out the necessary consultations in accordance with the schedules provided for in national legislation and/or practice..."

Recital 42 of the Directive appearing to relate to circumstances where the Subsidiary Requirements were to apply stated that"The European Works Council must be able to deliver an opinion at the end of the meeting."

43. The Employer was not withholding relevant information, as was implied in the complaint. The Regulations required that the content of the information, the time when, and manner in which it was given, had to be such as to enable the representatives to acquaint themselves with and examine its subject matter; undertake a detailed assessment of its possible impact and, where appropriate, prepare for consultation with the competent organ of the Community-scale undertaking or Community-scale group of undertakings. The Employer had at all times provided the information in line with this requirement.Most multinational enterprises opened consultations with their EWCs, but more often than not did not have a fully formed plan. The EWC was involved in decisions when matters were still fluid. Relevant information was shared with the EWC as it became available. What was considered to be appropriate "detailed information" varied from case to case. The Regulations did not offer an "information template" for the parties to follow. At times, confidentiality issues could also restrict information provided.

Sequence of events leading to the complaint

44. The complaint mainly surrounded the issue of the report which was provided for the meeting of the full EWC in Paris on 28 March 2012 (Annex E of the EWC bundle). The relevant Management Brief was a 'high level' report headed 'Organisational Strategy Updates'. Mr Haines had not brought to the attention of the Panel the substantial amount of other documentation that was provided by the Employer to the EWC. The EWC's own minutes of that meeting recorded that senior management provided at that meeting a further Management Report headed "EWC 28 March 2012 Paris Management Report Rosemary and Colm McGivern" (attachment C of the Employer's bundle). That report made reference to further documents previously circulated about "the Regional Framework" and on "the Social Enterprise approach". These written reports together with oral reports were all in the context of 'restructuring', which was a recurring item on the agenda for discussions dating back to the meeting held with the SC on 16 February 2011. It was the lead item on the agenda for the SC meeting on 27 September 2011, with another report being given to the full EWC on 11 November 2011. A further update was given in a teleconference with the full EWC on 19 January 2012; and to the SC on 22 February 2012. Agendas for the full EWC meetings were always agreed at the SC meetings in advance.At the full EWC Paris March 2012 meeting, the EWC proposed that the Employer should discuss the future shape and content of management reports as an urgent action point. Repeated efforts were subsequently made by the Employer to arrange a discussion starting with an e-mail from Rosemary Hilhorst, the Regional Director EU to the EWC on 12 April 2012. A series of subsequent e-mails and phone calls offered dates for a meeting to take place in May and June 2012.

45.Whilst waiting for the EWC's response, the Employer circulated an updated version of an internal document which was headed "Regional Planning Framework 2015, European Union ("Regional Framework")", which was clearly watermarked "DRAFT", and on which the EWC provided a number of comments. This was a wide-ranging and sensitive document, including information and plans on the structure, economic and financial situation, and the probable development of central management's business and activities across Europe. These plans were still in development and had not been finalised. Disclosing this plan to the EWC clearly exemplified the Employer's commitment to providing the EWC with the information it needed to engage in meaningful consultation and in accordance with paragraph 7(3) of the Subsidiary Requirements:

"(3) The information provided to the European Works Council shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales of the Community-scale undertaking or Community-scale group of undertakings."

46. When the EWC finally responded to approaches by the Employer, the meeting (originally offered in April 2012) with the SC took place on 11 July 2012 in Brussels. The meeting went a considerable way towards resolving the issues to the extent that an action plan was agreed between the Employer and the SC (attachment D of the Employer's bundle).

47. Then on 1 August 2012 the Employer informed the EWC of a "teacher reward project" due to take place in Romania as one of the 'pilot countries'. Of these pilot countries Romania was the only one in the EEA. The briefing paper emphasised that the PRP pilot was to form the basis for development work on reward undertaken in teaching centres in individual countries. The idea was to use the pilot to review current practice to explore ways to support a more relevant and flexible approach based on four global reward principles: to support organisational strategy, recognise good performance, cover all work experience not just pay and ensure the Employer was competitive in the market. It was intended that pay systems, particularly bonus schemes, would have similar features across the global network but be tailored to each region and country. The idea was to have an agreed set of principles and standards which would apply across the network so that there was consistency in how jobs were placed. The Employer was clear in its communications that it was unlikely, given the diverse practices, labour laws and legal jurisdictions, that one model of teacher reward or PRP would be possible. The Employer made a commitment that any policy would be looked at on a country by country basis. Despite the progress made at the July 2012 meeting in Brussels, Mr Haines, rather than dealing with the matter through the various channels of communication available to the EWC, submitted the complaint to the CAC on 7 August 2012, even though the EWC was provided with information on pay issues including the teacher reward project. At this point the pilot was only being discussed in one EU country - Romania, and was not therefore a transnational issue on which the Employer was obliged to inform and consult with the EWC. The Employer was not necessarily set to take it forward into other EU countries.The time in which the EWC was able to respond to the proposed teacher reward project continued through to October 2012. The Employer intended to discuss the issue at the full EWC meeting on 14 November 2012. Furthermore the EWC had the ability to seek additional information and the topic was discussed at the meeting held on 3 October 2012. Notwithstanding that in the Employer's view the complaint was misconceived as it focused on issues of pay, the complaint was also made prematurely because consultation was still ongoing.

Pay was not a transnational matter and not within the competence of the EWC

48. The Employer had discussed pay matters with the SC and the full EWC as it was requested by the EWC and not because of any obligations the Employer was required to meet under the Regulations. 'Pay' was specifically excluded from EWC Directives under the terms of the EU Treaties. Though broad developments regarding pay strategy had been discussed with the EWC, pay and working conditions were not issues the EWC had to be informed and consulted on by right. Such matters properly fell to be dealt with at national level with employee representation bodies which had a negotiating mandate. Article 153 of the European Treaties set out the European Union's (EU) competencies in the field of social policy. Clause 5 specifically excluded pay from the competency of the EU reading:

"The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs."

The only exception to this was set out in Article 157 which dealt with the principle of equal pay for male and female workers for the same job or for jobs of equal value.

49. If the EU had no legal competence to legislate on pay, save for equal pay, it followed that bodies established as a result of EU legislation had no such competence. The Subsidiary Requirements in the Schedule, in setting out the issues on which the Employer had to inform and consult with the EWC, did not mention pay or pay-related issues, nor were they mentioned in the Directive.

50. Article 1(a) the 2009 Directive stated:

"The information of the European Works Council shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings. The information and consultation of the European Works Council shall relate in particular to the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies."

51. Paragraph 7 of the Subsidiary Requirements in the Schedule read:

"(3) The information to be provided to the European Works Council shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales of the Community-scale undertaking or Community-scale group of undertakings.

(4) The information and consultation meeting shall relate in particular to the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts of such undertakings or establishments, and collective redundancies."

52. The Employer also argued that paragraph 6(b) of Regulation 12 of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 provided a further indication that pay was not a subject which fell within the competence of the EWC.

"(6) "Pre-existing agreement"-

(a)means an agreement between an employer and his employees or their representatives which satisfies the conditions set out in regulation 8(1)(a) to (d) of the Information and Consultation of Employees Regulations 2004 and which has not been superseded, but

(b)does not include an agreement concluded in accordance with regulations 17 or 42 to 45 of the Transnational Information and Consultation of Employees Regulations 1999(**3**) or a negotiated agreement".

53. In addition, the European Union ("EU") Commissions also demonstrated this in "Transnational company agreements: realizing the potential of social dialogue" Commission Staff Working Document SWD (2012) 264 final, Brussels, 10.9.2012 stated that:

"In several Member States, none of the categories of actors on the employee side has the full legitimacy or the legal capacity needed to conclude transnational agreements with an effect equivalent to that of company agreements under national rules and/or practice."

"The sphere of competence of European Works Councils under Directive 2009/38/EC covers information and consultation, not negotiation. Their membership is tailored to that end... Furthermore, their involvement in negotiations is at odds with national systems that make a clear distinction between the consultative role of elected bodies (works councils) and the negotiating mandates entrusted to trade unions..."

The EU had chosen not to extend the powers of an EWC to the negotiating of agreements binding on the parties: each national jurisdiction had separate laws dealing with collective bargaining agreements and their enforceability.

54. The EU Commission in the same paper considered that formal discussions at the EU level could conflict with established arrangements at national level. British trade unions, for example, would not welcome an EWC assuming to itself a role on pay and benefits that would potentially cut across their own collective bargaining rights. The Employer recognised the PCS unionfor collective bargaining purposes in the UK and was covered by other collective bargaining agreements in various EU jurisdictions. The Employer had previously advised the EWC that these were matters for agreement at national level. When discussion took place it was made clear by the Employer that pay issues were determined locally country by country, usually through established collective bargaining arrangements with relevant trade unions.

55. The EWC was mistaken in thinking that consultations with the EWC had to be concluded before consultations at local level. The correct position was set out in Article 12 of the 2009 Directive and Regulation 19E. The 2009 Directive required the establishment of a link between European-level and national-level information and consultation. The relevant clauses in Article 12 of the Directive stated:

"1. Information and consultation of the European Works Council shall be linked to those of the national employee representation bodies, with due regard to the competences and areas of action of each and to the principles set out in Article 1(3).

2. The arrangements for the links between the information and consultation of the European Works Council and national employee representation bodies shall be established by the agreement referred to in Article 6. That agreement shall be without prejudice to the provisions of national law and/or practice on the information and consultation of employees.

3. Where no such arrangements have been defined by agreement, the Member States shall ensure that the processes of informing and consulting are conducted in the European Works Council as well as in the national employee representation bodies in cases where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged."

56. Regulation 19E stated:

"19E - (1) Paragraph (2) applies where -

-
    1. No arrangements to link information and consultation of a European Works Council with information and consultation of national employee representation bodies have been made under regulation 17(4)(c), and
    2. There are circumstances likely to lead to substantial changes in work organisation or contractual relations.

(2) Subject to regulation 2(4B), the -

-
    1. management of every undertaking belonging to the Community-scale group of undertakings;
    2. Central management; or
    3. ...

as the case may be, shall ensure that the procedures for informing and consulting the European Works Council and the national employee representation bodies in relation to the substantial changes in work organisation or contractual relation's referred to in paragraph (b) of paragraph (1) are linked so as to begin within a reasonable time of each other.

(3) The national employee representation bodies referred to in paragraph (2) are those bodies which are entitled, whether by law, agreement or custom and practice, to be informed and consulted on the substantial changes in work organisation or contractual relation's referred to in sub-paragraph (b) of paragraph (1)."

57. In accordance with Article 12 of the 2009 Directive and Regulation 19E, the Employer was entitled to open consultations at national level at the same time as it informed and consulted the EWC at European Level. The EWC could not have a veto on the opening of discussions on any issue at national level. There was no requirement that the conclusion of consultations at one level were dependent on the conclusion of consultations at the other level. Article 12(3) did not state that "all" cases where substantial changes in work organisation or contractual relations were envisaged would necessitate consultation with the EWC in particular if the substantial changes did not amount to a transnational matter.

58. Nowhere in either TICER or the Information and Consultation of Employees Regulations 2004 ("ICER") were there references to any obligation on employers to consult with either EWC members or national information and consultation representatives about the details of contracts of employment such as pay, hours of work, holidays or other forms of leave, pensions and so on.

59. Moreover, the Employer's understanding was that contractual relations in the context of Article 12(3) of the Recast Directive to be read in line with Article 153 of the Lisbon Treaty which specifically excluded pay from the competence of EU legislation. It followed that "substantial changes in contractual relations" must have meant substantial changes to the contract of employment other than those relating to pay. The term "contractual relations" in TICER could not therefore be understood to refer to such issues.

60. It was telling that when the national legislators amended TICER to ensure that the Recast Directive was transposed into national

law, they did not attempt to implement Article 12(3) in any way that would mean that substantial changes always led to information and consultation obligations with the EWC, regardless of whether they were transnational. Had the legislator intended for the EWC to be consulted on substantial changes as a matter of course, then they would have simply mirrored the wording from Regulation 20(1)(c) of ICER into TICER, adjusting it to apply to the EWC. The fact that national legislators incorporated this wording into ICER but not TICER was highly persuasive that the issue was considered by the legislators and that their decision not to extend the scope of the EWC was deliberate. It followed then that a matter would not be a "transnational matter" if it concerned only one undertaking or establishment in only one Member State, which was the case for the PRP pilot. Also the undertakings or establishments in question were not situated in a Member State. Whether a matter was a "transnational matter" depended on the facts of the case, and in this case the fact was that there were no current proposals for PRP for teachers in the EEA.

61. The PRP pilot was due to take place in only one Member State, Romania, and was not necessarily set to be taken any further than this. Regulation 18A(7) limited information and consultation to "transnational matters", which was defined in Regulation 2(4A) as those which concerned either:

"(a) the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the Community-scale undertaking or

(b) Community-scale group of undertakings situated in two different Member States"

This was consistent with the provisions in Regulation 18A(7), and paragraph 6(1) of the Schedule.

62. Recital 15 of the Recast Directive" (2009/38/EC) made clear that:

"the competence and scope of action of a European Works Council must be distinct from that of national representative bodies and must be limited to transnational matters."

Recital 37 envisaged that there would sometimes need to be linkage between the Directives and the levels of informing and consulting employees established by Community and national law and/or practice. This was provided for in Article 12(3) of the Recast Directive, which stated that:

"Where no such arrangements have been defined by agreement, the Member States shall ensure that the processes of informing and consulting are conducted in the European Works Council as well as in the national employee representation bodies in cases where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged."

63. The Employer understood "contractual relations" in this context to mean the actual existence of the contract of employment and "substantial changes in...contractual relations" to mean threats to the continuation of the contract through proposed collective redundancies. This would be in line with the wording of Article 3 of the Subsidiary Requirements covering "exceptional circumstances":

"Where there are exceptional circumstances or decisions affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies..."

64. Exceptional circumstances did not apply to the "teacher reward scheme" pilot. In the first place these plans were to do with working towards forming a global standard to PRP schemes that would be negotiated and implemented at national level. It was clear that the pay issue in question here was not a transnational matter under the Regulations, and therefore was not a matter on which the Employer was obliged to inform and consult the EWC. It could not therefore be found that the Employer was in breach of Regulation 18A(7). The complaint also alleged that the Employer had not properly followed the provisions set out in Regulations 18A(3) and (5). There were no grounds to this complaint as the Employer was not obliged to discuss matters of pay and the PRP pilot with the EWC. There was no legal obligation for all the information to be provided beforeconsultation started, and in accordance with best employee relations practice, it was usual for initial information to be provided face-to-face and to commence the consultation process thereafter, allowing the EWC to provide an opinion if it chose to do so, after the face-to-face announcement. Regulations 7(3), (4) and (5) only required management to inform and/or consult, not to negotiate. In this respect, the Employer had gone over and above its legal obligations to accommodate the EWC on these matters.

65. The Employer could not be in breach of the EWC Code of Practice as it was a voluntary document that was not legally binding. Mr Haines had already conceded that complaints to do with events occurring before February 2012 were not made within the time permitted by the Regulations[9]. However, the complaint was premature for all the reasons already indicated. In addition, as stated in the UK government's Guidance[10] on the Regulations where there was a dispute about the operation of a European Works Council, *"the EWC should look to agree a solution with the central management."* The Employer and the EWC were engaged in this process until the PRP pilot issue prompted the complaint.

66. In short, despite the fact that the Employer was not required to give information or consult the EWC in relation to the PRP pilot, it had done so, and the EWC had in fact expressed its reasoned opinion in relation to PRP, in a response dated 14 November 2012. The Employer was currently preparing its response to this opinion. In the meantime, no action on the matter would be taken. Thus, the internal processes between the parties in fact allowed the EWC the opportunity to express an opinion on this matter, in conformity with Regulation 18A(5).

Mr Haines's comments on the Employer's case

Issues preceding the complaint

67. Contrary to the case made by the Employer, the history of the relationship of the EWC since the inception of the SNB wasmarked by periods of difficulty and of good relations. The EWC Code of Practice assisted with greater dialogue and involvement in discussions about policy andissues, but there had been a change in the Employer's attitude to working with the EWC. This prompted the SC's special meeting with regional management in Brussels in July 2012 to discuss ways forward. The Employer agreed at that meeting to take steps to ensure that the EWC was given information as soon as it became available so that it was consulted in a timely manner. However, immediately after this meeting relations broke down again when the EWC received the information about the PRP pilot scheme in August and was asked to respond by the end of that month.

68. It was not the case that the EWC was confused as to what was to be discussed at the SC meetings and what was to be discussed at the meeting of the full EWC, as was asserted by the Employer. Any consultation process had to be done by the entire EWC, unless it was explicitly agreed otherwise. This followed from the definition of consultation and information in Regulation 18A(3),(5) and (6):

"(3) The content of the information, the time when, and manner in which it is given, must be such as to enable *the recipients* to-

(a) acquaint themselves with and examine its subject matter;

(b) undertake a detailed assessment of its possible impact; and

(c) where appropriate, prepare for consultation.

...

(5) The content of the consultation, the time when, and manner in which it takes place, must be such as to enable a European Works Council or information and consultation representatives to express an opinion on the basis of the information provided to them.

(6) The opinion referred to in paragraph (5) shall be provided in a reasonable time after the information is provided to the European Works Council or the information and consultation representatives and, having regard to the responsibilities of management to take decisions effectively, may be taken into account by central management or any more appropriate level of management."

69. The EWC Code of Practice stated that:

"...before the introduction of any new policy or change trans-nationally that affects EWC countries, the EWC must be consulted and play a full part in the discussions which could lead to development of this policy and/or..."

The Regulations and the Schedule provided the framework for the articles in the EWC Code of Practice. Mr Haines quoted the Code of Practice and indicated for the Panel where the similarities were:

"• The timetable for consultation will be as follows:

- Information on proposed measures needs to be provided before consultation starts between the EWC and central management, so that there is reasonable and adequate period of time in relation to the scale and scope of the issues to undertake an in-depth assessment of possible impact and to prepare for such consultation" (similar to Regulation 18(3))

"- The EWC will give any opinion it might express within a reasonable period of time in relation to the scale and scope of the issues following a consultation meeting provided we have the necessary information from management" (similar to Regulation 18A(5)&(6))

"- Central management will give a response and the reasons for the response also within a reasonable period of time, given the scale and scope of the issues, of receiving the EWC's opinion" (similar to paragraph 9(7)(b) of the Schedule)

"Accordingly, policy and changes need to be brought to the attention of the EWC as soon as possible - consultation means giving an opinion that can be taken into account in the decision making process and not being informed after the fact" (similar to Regulation 18A(6))

• The British Council management will ensure that all managers (especially Country Directors and local management) who are responsible for implementing any EEA transnational change will be made aware of the British Council's obligations to the EWC and their representatives before any change is undertaken."

Timing for information and consultation

70. The Employer stated that the legislation in defining information and consultation left relevant questions unanswered. A clarification may have been needed, but it was clear that the information and consultation should start at such a time to give the EWC reasonable time to give an opinion before a final decision was taken and implemented.

71. It was agreed with the Employer that: consultations with the EWC need not be concluded before consultations at local level began; that the EWC did not have a veto on the opening of discussions on any issue at national level; that in accordance with Regulation 19E, the Employer was entitled to inform and consult at national level at the same time as it informed and consulted at European-level; and that there was no requirement that the conclusion of consultations at one level was dependent on the conclusion of consultations at the other level. However, the EWC objected to any transnational measures being implemented before the EWC had the chance to voice an opinion on them and the Employer had a chance to respond to that opinion.

72.The earlier information was received, the more chance the EWC had to comply with its responsibilities and represent its constituents. As pointed out by the Employer, Regulation 18(A) stated:

"(3) The content of the information, the time when, and the manner in which it is given, must be such as to enable the recipients to -

(a) acquaint themselves with and examine its subject matter;

(b) undertake a detailed assessment of its possible impact; and

(c) where appropriate, prepare for consultations."

73. There were 29 EWC Representatives present at each full meeting representing 26 countries at any one time. Being provided with only hours (as was the case in Paris) or a few days (as was the case in Berlin) to understand, to consider and to prepare a response, caused many problems for the EWC:

a) it would not be in a position to consult its constituents;

b) it would not have time to understand all the ramifications of the information (most were not proficient English speakers so any reading took time to comprehend);

c) the SC may not have had the opportunity to study the information and therefore be unable to help with any problems they had in understanding the issues;

d) taking into account the views of so many reps when forming an opinion took time;

e) inadequate time to discuss and debate would leave information reps feeling that they were unable to represent the views of their constituents;

f) drafting and preparing an opinion was too challenging in one sitting and required extensive email or other contact which was not achievable at a meeting;

g) time was needed to understand and appreciate the complexity of some of the issues and the potential implications of any policy on constituents and their terms and conditions and working practices.

74. Logical interpretation indicated that the EWC should receive a report beforethe meeting in order to follow the provisions of Regulation 18(A).The use of the concept of consultation implied full compliance with the general definition of consultation in Regulation 18A(3). This meant that in the Employer's practice, after each full EWC meeting in which the EWC members were informed, sufficient time was made available to acquaint themselves with and examine the subject matter; undertake a detailed assessment of possible impact; and where appropriate prepare for consultation; or the information was received in advance in such a way that the EWC could acquaint itself with and examine the subject matter; undertake a detailed assessment of possible impact and where appropriate prepare for consultation. In reality, a written report containing relevant details should have been received at least 7 -14 working days before the meeting. This approach was incorporated in the communication cycle diagram provided in the parties' EWC Code of Practice.

Inadequate information and consultation

75. For the last two meetings the documents provided were lacking in any hard information and merely consisted of a series of statements which were written in aspirational language suitable for 'all staff' publications, rather than in the detail the EWC required. Consequently it was hard to form any opinion and discuss the contents of these documents in sufficient detail. Mr Haines referred the Panel again to the Management Brief (Annex E of the EWC's bundle) for the Paris March 2012 meeting and asked the Panel to assess if this could be considered information with the appropriate level of detail required to make an in-depth assessment.

76. It was not accepted that pay and working conditions were not issues on which the EWC had to be informed and consulted about as of right. It was not agreed that such matters properly fell to be dealt with at national level. The EWC's dispute with the Employer was about introducing a new pay policy notabout individual pay settlements in any particular country, not even about the pay levels per country. Therefore the issue came under paragraph 7 of the Schedule, that is, information and consultation at the meeting with the EWC relating in particular to the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods. PRP was not anywhere explicitly excluded from the Directive, the Regulations or the EWC Code of Practice as long as it was of a transnational nature. The use of the concept "shall relate in particular" in paragraph 7 of the Schedule indicated that the list that followed was not limitative. It was not agreed, as asserted by the Employer, that Clause 5 of Article 153 of the European Treaties specifically excluded introduction of PRP models from the competency of the EU.

77. The general (transnational) principles of the PRP policy were not discussed at any national level, and therefore the EWC ought to have been consulted, in line with recital 13 of the directive 2009/38/EC:

"Appropriate provisions must be adopted to ensure that the employees of Community-scale undertakings or Community-scale groups of undertakings are properly informed and consulted when decisions which affect them are taken in a Member State other than that in which they are employed."

Since the EWC believed that it had to be consulted about the issue, it maintained its objection to the timeframes applied by the Employer in informing and consulting the EWC about the PRP pilot in August after the meeting held in Brussels in July 2012.

78. The Employer had argued during the meeting in Paris (Annex 2 of the EWC's bundle)that they would not involve the EWC by way of a formal information and consultation process because: the general principles behind the PRP policy were already established 2 years earlier, the new PRP initiative was a global one, and the first pilot was in Ukraine which was outside the EU. However, the Employer then informed the EWC that a PRP pilot was to take place in Romania. The EWC believed that no formal consultation had taken place concerning the likely impact on teachers employed in different EU Member States. PRP was likely to lead to substantial changes in work organisation or contractual relations. It was an introduction of new working methods as envisaged by paragraph 7(4) of the Schedule. That the Employer contended that it was a new globalpolicy that also applied beyond the EU was of no importance to the question of whether the matter was transnational as per the Regulations. It was not relevant either that the pilot was to take place in one EU country (Romania) as the policy options on a PRP scheme for the whole of the EU were still left open. PRP was thus a transnational matter.

79. The EWC also disagreed with the Employer that information and consultation with the EWC on this matter conflicted with any established arrangements at national level since no national employee representation body had been or would be consulted about the basicsof the development of a new PRP policy. Only proposals to implementthis transnational policy by changes to the pay system at national/local level would be subject of consultation with local/national staff representatives, through staff associations and recognised unions. As the development of this transnational policy was not the subject of any other national or local information and consultation process, the EWC maintained that the Employer was in breach of Regulation 18A(7).

80. The complaint was not filed prematurely. The Employer planned to start implementing the new PRP policy from December 2013 onwards. Submitting the complaint in August may have been too late. In respect of the complaint that there was a failure to provide timelyand detailedinformation, this was part of an ongoing dispute over a long period of time and the Employer had been given repeated chances to resolve the matter. The EWC looked forward to developing and strengthening its relationship with the Employer and hoped the CAC Panel's decision would help with this.

Considerations

81.Both parties provided the Panel with very detailed written submissions in support of their cases. These included extensive supporting documentation that provided evidence in relation to disputed issues. In reaching its decision the Panel has taken full account of the parties' evidence and submissions.

82. The Panel will first resolve a preliminary question. Mr Haines asked the CAC to consider his complaints not only in the context of the Employer's statutory duties under the Regulations but also in the light of the expectations described in the EWC Code of Practice ("the Code"), which was an agreement developed by the parties. The Employer objected to such weight being given to the Code as it was not intended to be legally binding, and was not the source of the statutory duties found in Regulation 18A and the Schedule's Subsidiary Requirements, over which the CAC had jurisdiction. The Panel accepts that the Code was negotiated by the parties in good faith in order to clarify how they thought the Subsidiary Requirements could operate in the particular circumstances of their EWC. Seen in that light, the Code is clearly a useful document and reference point for the parties. However, in terms of the law, the Panel accepts the Employer's position in relation to the Code not being legally enforceable. A breach of the Code as such cannot in itself found a complaint under the Regulations. The Employer's legally enforceable statutory duties to inform and consult are those set out in the Regulations and not those in the parties' Code.

83. As already noted, in this case the EWC was established by operation of Regulation 18(1)(c), which applied the Subsidiary Requirements contained in the Schedule. The complaint submitted to the CAC by Mr Haines on behalf of the EWC was that the Employer had not properly provided information to and consulted with the EWC. Consultation is defined by Regulation 2(1) as "the exchange of views and the establishment of dialogue" between members of the EWC and the appropriate level of management. Mr Haines's complaint alleged that the Employer had failed to comply with its obligations under the following provisions in Regulation 18A, namely:

" (3) The content of the information, the time when, and manner in which it is given, must be such as to enable the recipients to - (a) acquaint themselves with and examine its subject matter; (b) undertake a detailed assessment of its possible impact; and (c) where appropriate, prepare for consultation...

(5) The content of the consultation, the time when, and manner in which it takes place, must be such as to enable a European Works Council or information and consultation representatives to express an opinion on the basis of the information provided to them.

...

(7) The information provided to the members of a European Works Council or information and consultation representatives, and the consultation of the members of a European Works Council or information and consultation representatives shall be limited to transnational matters."

84. The complaint was made under Regulation 21(1A), which is applicable where an applicant considers that there has been a failure to comply with Regulation 18A, or the information which has been provided by the management under regulation 18A is false or incomplete in a material particular. By vitue of Regulation 18A(1B) a complaint must be brought within a period of six months beginning with the date of the alleged failure or non-compliance. Under Regulation 21(4), where the CAC finds the complaint well-founded, it shall make a decision to that effect and may make an order requiring the defaulter to take such steps as are necessary to comply with the terms of the provisions of the Schedule.

85. Thus, if the CAC finds that the complaint is well-founded it may make an order setting out the steps that the defaulter has to take to comply with the Schedule. In the context of the present case, if this Panel finds that the complaint is well founded it is empowered to make an order requiring the Employer to take the necessary steps to comply with the provisions of the Schedule. For that purpose, the critical provision in the Schedule would be paragraph 7, which gives the EWC a right to an annual information and consultation meeting, the scope of the information and information and consultation meeting being defined respectively by paragraph 7(3) and (4).

86. It is to be noted that in making his arguments Mr Haines relies upon paragraphs 6-8 of the Schedule in a rather different way. He sees the operation of these paragraphs as something that is relevant to whether the Employer could be said to be in breach of Regulation 18A(3), (5) and (7). The Panel accepts that approach to a degree, that is, how those paragraphs are applied in practice may be regarded as relevant to the consideration of whether or not the Employer acted in conformity with Regulation 18A. However, as far as the Panel is concerned, the fundamental issue remains whether, on the ascertainable facts of the case, the Employer contravened the specific wording of the obligations contained in Regulation 18A.

87. The complaint contained 3 elements, although the elements or heads of complaint overlapped. The first element was that the Employer allegedly failed to provide information in a timely manner, which was said to be contrary to Regulation 18A(3) and (5). According to Mr Haines, the Employer had failed to give the EWC sufficient time to digest information and reports with a view to being able to produce an informed opinion and engage in meaningful consultation. The report to which Mr Haines's complaint primarily related was presented at the Paris meeting on 28 March 2012. It dealt with matters around the issue of restructuring. The Panel accepts that Mr Haines on behalf of the EWC felt that more time was needed for the purposes of producing an opinion and engaging in consultation. On the other hand, the Employer adduced evidence that this issue was in effect the subject of a continual process of discussion before and during the Paris meeting and was an on-going discussion after it.

88. The second element of the complaint was that the Employer allegedly failed to provide sufficiently detailed information, which was said to be contrary to the same provisions. Once again the Employer adduced evidence that its consultative process involved on-going communications with the Steering Committee as well as the EWC, and that further consultation took place between the scheduled meetings of both the full EWC and the Steering Committee. The Employer showed a willingness to communicate and meet with both bodies, and to do so more frequently than required by the letter of the Regulations. Further, as an important part of this process, the EWC was able to ask for additional information by way of clarification, and if such information was available at the time, the Employer was normally willing to provide it.

89. In respect of the first two complaints the Panel is satisfied that the Employer has not sought to withhold information, but rather it saw evidence that there was a regular flow of information and adequate consultation. The Panel concludes that overall the content of the information, and the time when and the manner in which it was provided enabled the recipients to acquaint themselves with and

examine the subject matter, undertake a detailed assessment of impact, and to prepare for consultation. The Panel also concludes that the content of the consultation, and the time when and the manner in which it took place, was such as to enable the EWC to express an opinion. The Employer thus complied with Regulation 18A(3) and (5).

90. The third and more complex element of the complaint is the Employer's alleged lack of information and consultation regarding its policy and pilot in connection with PRP. The Panel gained the clear impression that, although the members of the EWC were not entirely happy with the way the Employer provided information and consulted, the reference to the CAC was prompted not by a generally problematical relationship but by one specific issue. This was the possible ramifications for employees at large of the PRP pilot. Until it received the report for the PRP pilot in Romania, the EWC had been generally willing to seek to resolve issues through discussion rather than by complaining to the CAC.

91. The Employer is obliged to provide information to and consult with the EWC on this subject only if it can be demonstrated that it is a transnational matter. That is so because Regulation 18A(7) expressly limits the required information and consultation to "transnational matters". The Employer did in fact inform the EWC and consult with it in respect of the introduction of PRP. However, the CAC has jurisdiction to consider the adequacy of such information and consultation only in so far as it is a transnational matter within the meaning of the Regulations. So the first task of the Panel is to consider and reach a conclusion on whether the PRP issue is a transnational matter. If it is not a transnational matter, the third complaint must be rejected. But if the Panel concludes that it is a transnational matter, then the next and final question to consider is whether the way in which the Employer informed and consulted the EWC over the PRP issue contravened the duties in Regulation 18A(3) and (5). The parties clarified for the Panel their views on the relevant legal issues and on the extent of consultation in their final submissions to the Panel in December 2012. In reaching its decision the Panel has reviewed both the law and the relevant evidence.

92. The notion of a transnational matter is defined as follows.

(1) Information and consultation under the Regulations are "limited to transnational matters": Regulation 18A(7).

(2) Matters are transnational "where they concern- (a) the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the Community-scale undertaking or Community-scale group of undertakings situated in two different Member States: Regulation 2 (4A).

(3) A Community-scale undertaking is "an undertaking with at least 1000 employees within the Member States and at least 150 employees in each of at least two Member States": Regulation 2(1).

(4) Under the Subsidiary Requirements, "the competence" of an EWC is "limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group of undertakings situated in different Member States": paragraph 6(1) of the Schedule.

93. These statutory provisions pose a basic challenge to Mr Haines's claim that the issue of the PRP pilot is a transnational matter. The only EU Member State where a pilot was planned to be introduced was Romania, that is, a single Member State. But the statutory provisions require a minimum of two Member States. Mr Haines sought to get round this point by arguing in effect that the policy issue of PRP had implications for employees across the board, including in many Member States and was thus - with reference to certain other statutory provisions - broadly within the notion of a transnational matter. He relied in particular on the following provisions.

(1) Under paragraph 7(4) of the Schedule, the coverage of the information and consultation meeting was to include "substantial changes concerning organisation" and "the introduction of new working methods".

(2) Under Regulation 19E, in circumstances likely to lead to "substantial changes in work organisation or contractual relations", management had to ensure a linkage between information and consultation of an EWC with information and consultation of a national employee representation bodies so that the processes were linked "to begin within a reasonable time of each other".

94. While Mr Haines's arguments in this regard are ingenious, the Panel is not persuaded by them for a variety of reasons. First, it is not self-evident and Mr Haines does not explain why the possible introduction of PRP should equate with either a substantial change concerning organisation or the introduction of new working methods, as referred to in paragraph 7(4) of the Schedule. For example, Mr Haines did not explain how performance- related reward policies might have implications for such matters as training or the working environment. That at least might have provided a bridge to the kinds of things referred to in paragraph 7(4). Instead, Mr Haines merely asserts that the introduction of a PRP approach across Europe by the Employer could have had implications upon which it would have been appropriate to demand EWC consultation.

95. Second, Mr Haines is not in the Panel's view entitled to place the reliance that he does on the notion of substantial changes in contractual relations referred to in Regulation 19E. This provision deals with ensuring that procedures for informing and consulting an EWC are linked with informing and consulting a national employee representation body, which is defined in Regulation 2(1) as in effect a collective bargaining body that receives information in connection with terms and conditions of employment. Under Regulation 2(4B)(b) and (c), it is explicitly clear that the arrangements on linkage must confine the scope of information/consultation of an EWC to transnational matters, and "shall not affect the main purpose for which a national employee representation body was established", that is, collective bargaining. Compared with such a body in Romania, or the UK, the Panel agrees with the Employer that the EWC does not have any prior right to be consulted on an issue like PRP.

96. Third, there is a good reason why the Regulations, including the Schedule, avoid any express reference to pay or pay-related issues. Pay, with the exception of equal pay, is specifically excluded from matters on which the EU may legislate in the field of social policy: Article 153, clause 5, of the European Treaties. It follows that bodies such as EWCs that are established as a result of EU legislation have no competence to deal with pay, or with matters that directly fall into the category of pay-related issues.

97. The Panel thus concludes that the PRP issue is not a transnational matter, and on that primary ground the third complaint is not upheld.

98. Finally, even if the PRP issue was a transnational matter, would the Employer on the ascertainable facts be in breach of Regulation 18(3) and (5)? The information supplied by the parties establishes that the consultation process on the PRP pilot has not been dissimilar

to that on the restructuring issue. It began in March 2012 before the offending document was distributed in August; it continued on the Steering Committee on 3 October; the EWC produced a written opinion on 14 November, which was to evince a reply from the Employer, and so on and so forth. In short, the consultation is a fairly continuous and open ended process. In the light of this way of conducting business with the EWC, the Panel is not prepared to conclude that the Employer has contravened its statutory duties to inform and consult the EWC in relation to the PRP issue.

Panel's Decision

99. For the reasons provided above, the Panel finds that the complaint submitted to the CAC by Mr Haines is not well-founded.

The Panel

Professor Roy Lewis - Chairman of the Panel

Dr Christopher Ball

Mr Roger Roberts

22 April 2013

Appendix 1 - Provisions considered by the Panel

1. Paragraph 21 and 21(1A) of the Regulations state:

"Disputes about operation of European Works Council or information and consultation procedure

21.-(1) Where-

...

(b) a European Works Council has been established by virtue of regulation 18,

a complaint may be presented to the CAC by a relevant applicant where paragraph (1A) applies.

(1A) This paragraph applies where a relevant applicant considers that, because of the failure of a defaulter-

...

(b) regulation 18A has not been complied with, or the information which has been provided by the management under regulation 18A is false or incomplete in a material particular.

(1B) A complaint brought under paragraph (1) must be brought within a period of six months beginning with the date of the alleged failure or non-compliance.

(2) In this regulation, "failure" means an act or omission and a failure by the local management shall be treated as a failure by the central management.

...

(4) Where the CAC finds the complaint well-founded it shall make a decision to that effect and may make an order requiring the defaulter to take such steps as are necessary to comply with the terms of the agreement under regulation 17 or, as the case may be, the provisions of the Schedule.

(5) An order made under paragraph (4) shall specify-

(a) the steps which the defaulter is required to take;

(b) the date of the failure; and

(c) the period within which the order must be complied with.

2.Paragraph 18 and 18A of the Regulations state[11]:

"Subsidiary requirements

18.-(1) The provisions of the Schedule shall apply if-

...

(c) after the expiry of a period of three years beginning on the date on which a valid request referred to in regulation 9 was made, the parties have failed to conclude an agreement under regulation 17 and the special negotiating body has not taken the decision under regulation 16(3).

Information and consultation

18A.-(1) This regulation applies where-

...

(b) a European Works Council has been established by virtue of regulation 18.

(2) The central management, or any more appropriate level of management, shall give information to-

(a) members of a European Works Council; or

(b) information and consultation representatives,

as the case may be, in accordance with paragraph (3).

(3) The content of the information, the time when, and manner in which it is given, must be such as to enable the recipients to-

(a) acquaint themselves with and examine its subject matter;

(b) undertake a detailed assessment of its possible impact; and

(c) where appropriate, prepare for consultation.

(4) The central management, or any more appropriate level of management, shall consult with-

(a) members of a European Works Council; or

(b) information and consultation representatives,

as the case may be, in accordance with paragraph (5).

(5) The content of the consultation, the time when, and manner in which it takes place, must be such as to enable a European Works Council or information and consultation representatives to express an opinion on the basis of the information provided to them.

(6) The opinion referred to in paragraph (5) shall be provided within a reasonable time after the information is provided to the European Works Council or the information and consultation representatives and, having regard to the responsibilities of management to take decisions effectively, may be taken into account by the central management or any more appropriate level of management.

(7) The information provided to the members of a European Works Council or information and consultation representatives, and the consultation of the members of a European Works Council or information and consultation representatives shall be limited to transnational matters.

....

3. Paragraph 19E of the Subsidiary requirements of the Regulations state:

"Links between information and consultation of European Works Council and national employee representation bodies

19E.**-(**1) Paragraph (2) applies where-

(a) no arrangements to link information and consultation of a European Works Council with information and consultation of national employee representation bodies have been made under regulation 17(4)(c), and

(b) there are circumstances likely to lead to substantial changes in work organisation or contractual relations.

(2) Subject to regulation 2(4B), the-

(a) management of every undertaking belonging to the Community-scale group of undertakings;

(b) central management; or

(c) representative agent or the management treated as the central management of the Community-scale undertaking or Community-scale group of undertakings within the meaning of regulation 5(2),

as the case may be, shall ensure that the procedures for informing and consulting the European Works Council and the national employee representation bodies in relation to the substantial changes in work organisation or contractual relations referred to in sub-paragraph (b) of paragraph (1) are linked so as to begin within a reasonable time of each other.

(3) The national employee representation bodies referred to in paragraph (2) are those bodies which are entitled, whether by law, agreement or custom and practice, to be informed and consulted on the substantial changes in work organisation or contractual relations referred to in sub-paragraph (b) of paragraph (1)."

4. Paragraphs 1(4A) and (4B) of Regulation 2 state:

"(4A) In paragraph (1) in the definition of "national employee representation body" and in regulation 18A, matters are transnational where they concern-

(a) the Community-scale undertaking or Community-scale group of undertakings as a whole, or

(b) at least two undertakings or establishments of the Community-scale undertaking or Community-scale group of undertakings situated in two different Member States.

(4B) The arrangements to link information and consultation of a European Works Council with information and consultation of the national employee representation bodies-

(a) in regulation 17(4)(c) may relate to any matters including, as the case may be-

(i) the content of the information, the time when, or manner in which it is given, or

(ii) the content of the consultation, the time when, or manner in which it takes place;

(b) in regulations 17(4)(c) and 19E are subject to the limitation in regulation 18A(7); and

(c) in regulations 17(4)(c) and 19E shall not affect the main purpose for which a national employee representation body was established."

5. Pargraphs 6 , 7 and 8 of the Schedule (Subsidiary Requirements) to the Regulations state:

"Competence of the European Works Council

6.-(1) The competence of the European Works Council shall be limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States.

(2) In the case of a Community-scale undertaking or Community-scale group of undertakings falling within regulation 5(l)(b) or 5(1)(c), the competence of the European Works Council shall be limited to those matters concerning all of its establishments or group undertakings situated within the Member States or concerning at least two of its establishments or group undertakings situated in different Member States.

(3) Information and consultation of employees shall take place between members of a European Works Council and the most appropriate level of management according to the matters under discussion.

Information and consultation meetings

7.-(1) Subject to paragraph 8, the European Works Council shall have the right to meet with the central management once a year in an information and consultation meeting, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects.

(2) The central management shall inform the local managements accordingly.

(3) The information provided to the European Works Council shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales of the Community-scale undertaking or Community-scale group of undertakings.

(4) The information and consultation meeting shall relate in particular to the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts of such undertakings or establishments, and collective redundancies.

Exceptional information and consultation meetings

8.-(1) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed. It shall have the right to meet in an exceptional information and consultation meeting, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted.

(2) Those members of the European Works Council who have been elected or appointed by the establishments or undertakings which are directly concerned by the circumstances in question shall also have the right to participate in an exceptional information and consultation meeting referred to in sub-paragraph (1) of this paragraph organised with the select committee elected under sub-paragraph (6) of paragraph 2.

(3) The exceptional information and consultation meeting referred to in sub-paragraph (1) of this paragraph shall take place as soon as possible on the basis of a report drawn up by the central management or any other appropriate level of management of the Community-scale undertaking or Community-scale group of undertakings, on which an opinion may be delivered at the end of the meeting or within a reasonable time.

(4) The exceptional information and consultation meeting referred to in sub-paragraph (1) of this paragraph shall not affect the prerogatives of the central management."

Appendix 2 - List of supporting documents provided to the Panel

Supporting evidence submitted by Mr Haines:

1. **Annex A -** The Agreement on the establishment of a European Works Council (EWC)"

2. **Annex B -** Evidence of discussions - information/timely provision - extracts from Minutes 2010- 2011"

3. **Annex C -** EWC Paris Statement: 28th March, 20102

4. **Annex D -** EWC Berlin statement: 11th November, 2011"

5. **Annex E -** EUROPEAN UNION REGION: MANAGEMENT BRIEF for EWC - PARIS, March 2012

6. **Annex F -** EUROPEAN UNION REGION: MANAGEMENT BRIEF for EWC- BERLIN, November 2011

7. **Annex G -** Evidence of discussions - pay - extracts from Minutes 2010- 2011

8. **Annex H -** the Lisbon Treaty

9. **Annex I -** Email response dated 20th April to Rosemary Hilhorst

10. **Minutes of Full EWC meeting:** Paris 28 March 2012

11**. Minutes of EWCSC meeting:** Berlin 22 February 2012

12**. Minutes of Full EWC meeting:** Berlin 11 November 2011

13. **Minutes of EWCSC meeting:** Madrid 27 September 2011

14. **Minutes of Full EWC meeting**: Berlin 4 June 2010

15. **Annex 1 -** Teaching Reward project Briefing Paper

16. **Annex 2 -** Extract of Minutes of Full EWC meeting: Paris 28 March 2012

Supporting evidence submitted by the Employer:

1. **Attachment A** - Full list of EWC dates (Since Rosemary Hilhorst in post as Regional Director EU)

2. **Attachment B.1 -** Will Todd e-mail 11 February 2011 18:33 to EWC Steering Committee et al, plus attachments Subject: management response on responsible restructuring

3. **Attachment B.2** EWC Code of practice

4. **Attachment C** EWC 28th March 2012, Paris, Management Report, Rosemary and Colm McGivern

5. **Attachment D** Nigel Haines e-mail 20 July 2012 12:46 (13:51) to Rosemary Hilhorst Subject: Follow up to our meeting in Brussels - 11 July

6. Notes of EU/UK Management and European Works Council Steering Committee Meeting held on 3 October 2012.

-END-

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[1] Mr Haines originally stated the complaint was made under Regulation 19D but he later on 20 September 2012 informed the CAC that it was correctly made under Regulation 21(1A). Mr Haines submitted a revised version of the complaint but the date of the complaint was not changed and remained as 7 August 2012.

[2] Rosemary Hilhorst - Regional Director EU

[3] Rod Pryde - Director Spain & Co-Chair

[4] Pippa Greenslade - Director Global HR

[5] Simon Hunt - Business Development Manager Teaching - Europe

[6] Sjef Stoop - FNV Format, EWC Legal adviser

[7] Sanjay Patel - Head, Employment & Reward

[8] The Employer provided a full list of the EWC meeting dates at attachment 'a' of its bundle. See the appendix 2.

[9] Regulation 21(1B) of TICER 2010.

[10] Guidance: The Transnational Information and Consultation of Employees (Amendment) Regulations 2010, BIS, April 2010

[11] The Schedule to the Regulations sets out the Subsidiary Requirements envisaged by Regulation 18.