Case Number: EWC/13/2015

19 January 2016

CENTRAL ARBITRATION COMMITTEE

TRANSNATIONAL INFORMATION AND CONSULTATION OF EMPLOYEES REGULATIONS 1999 AS AMENDED

DECISION ON COMPLAINT UNDER REGULATIONS 17, 18A, 19A, 20 & 21(1A)[1]

The Parties:

Emerson Electric European Works Council and Others

and

Emerson Electric Europe

Introduction

1. On 27 October 2015, Mr David Buckle of Cubism Law submitted a complaint to the CAC on behalf of the Emerson Electric European Works Council (the EEEWC) and individual members of its Select Committee (collectively referred to as the Complainants) under Regulations 17, 18A, 19A and 21(1A) of the Transnational Information and Consultation of Employees Regulations 1999, as amended (TICER) in relation to the actions of the Central Management of Emerson Electric Europe (the Employer). The CAC gave both parties notice of receipt of the complaint on 28 October 2015. The Employer submitted a response to the CAC dated 10 November 2015 which was copied to the Complainants.

[1] See paragraph 16 below.

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 Gillian Morris as Panel Chair and Mr Len Aspell and Mr Malcolm Wing as Members. The Case Manager appointed to support the Panel was Linda Lehan.

Background

3. The background to the complaint, based on material supplied by the Complainants and the Employer, is as follows.[2] Emerson is a global company employing approximately 105,000 employees in 220 manufacturing locations worldwide with its headquarters in St, Louis, Missouri in the United States. Around 22,000 employees are located in Europe. Emerson is essentially a holding company with 25 major business units, each with its own president, board of directors and executive team. The businesses are grouped into five platforms. In some platforms there is a degree of central operations management and in others the business units operate autonomously with little to no interaction with each other. The products and services provided by the Emerson group of companies are diverse and include plumbing tools; heating and air condition equipment; control system software and hardware; shelving; and IT and cell phone infrastructure hardware and services. The five Emerson platforms are Process Management; Network Power; Climate Technologies; Commercial and Residential Solutions; and Industrial Automation

4. In 2011 Emerson received a request to establish a European Works Council (EWC). As Emerson is headquartered outside the European Union it appointed Emerson Electric UK Ltd to act as its representative agent for the purposes of negotiating an EWC agreement with a Special Negotiating Body (SNB) of employees' representatives drawn from the European Economic Area countries in which Emerson had a presence. The resulting EEEWC Agreement (the Agreement) was signed on 18 June 2014. A copy of that Agreement is set out in Appendix 3.

[2] The summary which follows is designed to provide the context for the complaints and does not constitute a full record of the extensive documentation, and correspondence between the Complainants and the Employer, supplied to the CAC. Relevant articles of the Emerson Electric Works Council Agreement are set out later in this decision (see also Appendix 3 for the full text of the Agreement).

5. On 30 June 2015, the Chairman and Chief Executive Officer of Emerson, Mr. David Farr, announced to all Emerson employees and to the public via press releases "a plan to streamline, optimize and focus our portfolio and enhance growth and investment opportunities to increase value for our employees, customers and shareholders".[3] The plan included a statement that, as part of this repositioning, Emerson planned to spin off its Network Power business as a new independent publicly-traded company. The announcement also stated that Emerson would "explore a range of strategic alternatives for our motor and drives, power generation and remaining storage businesses". The alternatives that would be evaluated ranged from potential operating partnerships, joint ventures, or the possible sale of those businesses. The announcement said that it was expected that the various transactions would be substantially completed by September 30 2016. The press releases stated that Emerson would host a conference call for investors that day at 9am and Mr Farr said, in his letter to employees, that he would hold an all-employee webcast at 10am and make a list of FAQs available on the Emerson intranet to keep employees informed of the actions taking place. All the businesses mentioned in the announcement are global businesses; in 2014 the revenue of Network Power stood at $4.9 billion.[4] The Complainants stated that the Chairperson of the EEEWC was informed by Mr. Buckley, Vice President Human Resources Europe Corporate, of the announcement one hour after it became public and this was not disputed by the Employer.

6. On 3 July 2015 the Chairperson of the EEEWC, Mr Johan Ingberg, wrote to Mr Buckley expressing disappointment that the Employer had announced its intention to spin off Network Power and explore strategic alternatives for the other specified businesses without first informing and consulting with the EWC or the Select Committee. He initiated a request under Article 8 of the EEEWC Agreement for a full extraordinary meeting of the EWC. On 9 and 10 July 2015 the Select Committee met Mr Buckley pursuant to a pre-existing arrangement but the Employer maintained that this was not an "exceptional circumstances" consultation meeting under Article 8 and on that and subsequent occasions declined further requests for an extraordinary meeting. In an e-mail to the Select Committee dated July 14

[3] The words quoted are taken from Mr Farr's letter to Emerson employees.
[4] Slide presentation by Mr Farr, 30 June 2015.

2015 the Employer set out its view that strategic decisions as to whether to acquire or divest businesses or parts of businesses were purely management decisions which were not subject to prior consultation with the EWC. The Employer stated that, in the case of Network Power, no additional information was available beyond that which had been shared with all employees at the time of the announcement. The Employer acknowledged that the decision to spin off Network Power would certainly affect the interests of at least 300 employees in at least two different EU Member States but said that the work necessary to plan for and effect the spin off was only just beginning and the decision would not be fully implemented for at least 15 months. The Employer said that it would brief the EEEWC on developments at the annual meeting scheduled for later in the year and would initiate the information and consultation procedures in the meantime if there were any proposed decisions that met the exceptional circumstances criteria set out in the Agreement. In relation to the other businesses covered by the announcement the Employer emphasised that management was currently only "exploring strategic alternatives" and that under the Agreement it would be obliged to inform and consult when "concrete proposals" had been formulated and were to be implemented. The Employer rejected the Select Committee's proposal that the question as to whether there were "exceptional circumstances" could be referred to independent arbitration by Acas on the basis that there was no provision for this in either the Agreement or in TICER. The Employer said that if the Select Committee wished to seek clarification of its claims that management was in breach of its obligations then the CAC was the most relevant and appropriate body to hear such a claim.

7. On 29 July 2015 Mr Ingberg informed Mr Buckley by e-mail that the EEEWC had voted overwhelmingly to pursue a legal complaint over the Employer's failure to convene an extraordinary meeting of the EEEWC and was using its right under Articles 10.1 and 12.1 to appoint a legal expert to pursue a complaint. On 7 August 2015 Mr Ingberg forwarded a copy of the terms of business of Cubism Law to Mr Buckley. On 12 August 2015 Mr Buckley asked Mr Ingberg for details of the expertise of the lawyer he proposed to retain in matters relating to EWCs in general and representing EWCs before the CAC in particular. Mr Buckley also asked Mr Ingberg to explain the proposed mandate of this expert and said that the EEEWC Agreement referred to assistance by "experts", which implied experience of working with EWCs, and not by "professionals" who had no specific experience in this area.

In a further e-mail to Mr Ingberg on 24 August 2015 Mr Buckley stated that the role of experts under the Agreement was to work with the EWC and Select Committee in their internal meetings and meetings with management but not to represent the EWC in dealings with third parties. The Employer expressed the view that the proposed expert needed to be able to demonstrate expertise in relation to the subject under review and said that the suggestion that the EEEWC could appoint anyone they wanted was "clearly wrong". The Employer disputed the contention that the term "means required" in the Agreement or in TICER obliged it to pay legal fees on behalf of the EEEWC in taking matters before the CAC. On 27 August 2015 the Select Committee instructed Cubism Law both as lawyers for the EEEWC to represent the EEEWC in a complaint to the CAC and as a second expert under the terms of the Agreement. Cubism Law's terms of business were forwarded to Mr Buckley and on 11 September 2015 Cubism Law wrote to Mr Buckley responding to the reasons given by the Employer for refusing to fund legal advice and representation on a CAC application.

8. Mr Jonathan Hayward of Unite the Union had assisted during the SNB stage of the formulation of the EEEWC Agreement; had attended meetings as an expert to advise the EEEWC; and had been paid for this work. The latest invoice for Mr Hayward's time and costs in relation to the EEEWC was dated 11 June 2015 and sent by Unite the Union to the Employer on 22 June 2015. On 3 September 2015 Lewis Silkin Solicitors wrote on behalf of a number of US-based companies to Mr Hayward's manager at Unite asking why Mr Hayward's work as an expert was being charged for given that Unite was a member of IndustriAll; they understood that IndustriAll did not charge for trade union officials engaged in assisting SNBs or EWCs; and that Mr Hayward was a trade union official. The letter stated that Lewis Silkin had advised its clients not to pay the invoices that they had received. On 6 October 2015 Mr Buckley informed Mr Ingberg by e-mail that the Employer did not believe that it was appropriate for it to pay the professional fees and disbursements of trade union officials in any capacity although it would pay their appropriate and reasonable travel and accommodation expenses to attend meetings with the Select Committee and full EEEWC. The Employer said that Mr Hayward had been acting on behalf of IndustriAll Europe in his dealings with the EEEWC and that the Employer had been informed by IndustriAll that it did not charge for its involvement in EWCs.

9. On 29 September 2015 the Employer met the Select Committee and discussed the potential agenda for the forthcoming EEEWC annual meeting. At that meeting the Employer informed the Select Committee that it would not provide any information prior to the annual meeting; that any documentation or information provided would be in English only; and that live translation services would be provided at the meeting. The annual meeting was held between 2 and 6 November 2015.

The complaint; the Employer's response to the complaint and the Complainants' comments on the Employer's response

10. The complaint dated 27 October 2015 submitted to the CAC alleged that the Employer had failed to comply with the terms of the EEEWC Agreement and with TICER in several respects in relation both to the EEEWC and the Select Committee. These complaints are listed in paragraphs 11 and 12 below. The substance of these complaints and the material provisions of the Agreement and TICER to which they relate are set out in great detail later in this decision. The specific regulations relevant to this complaint are also set out in Appendix 2 to this decision.

11. The EEEWC raised the following complaints under Regulations 17, 18A and 21(1A) of TICER that the Employer had failed to comply with the terms of the EEEWC Agreement and Regulation 18A of TICER:

1. Failing to inform and/or consult with the EEEWC prior to a decision being made in relation regarding (sic) the announcement made on 30 June 2015 in breach of Articles 2.1, 2.2, 2.4, 3.1, 3.2, 8.4 of the Agreement and Regulations 18A(3) and 18A(5) of TICER;
2. Refusal to hold an extraordinary meeting prior to or following the announcement made on 30 June 2015 in breach of Articles 2.1, 2.4, 3.1 and 8 of the Agreement;
3. Failure to provide information prior to the EEEWC annual meeting in breach of Articles 3.1 and 12.1 of the Agreement;

4. Failure to provide translations of information prior to the EEEWC annual meeting in breach of Articles 3.1, 6.5, 12.1 and 12.2 of the Agreement and Regulations 18A(3) and 18A(5) of TICER;
5. Refusal to allow the EEEWC an expert of their choice, namely Cubism Law, under Articles 10.4, 12.1 and 12.2 of the Agreement;
6. Refusal to allow any expert participation outside of meetings in breach of Article 10 of the Agreement;
7. Refusal to pay the costs for the use of an agreed expert, namely Jonathan Hayward in breach of Articles 7.4, 10.5, 12.1 and 12.2 of the Agreement;
8. Refusal to pay the expenses relating to the appointment of legal representation as an expert under the Agreement to pursue a complaint with the CAC under Articles 10.1, 12.2 and 12.2 of the Agreement.

12. The Select Committee raised the following complaints under Regulations 19A and 21A of TICER that the Employer had failed to provide the means required to fulfil their duty to represent collectively the interests of employees, namely the Employer's:

1. Refusal to provide any information prior to its annual meeting;
2. Refusal to provide translations of any information to be provided at the EEEWC annual meeting prior to that meeting;
3. Refusal to pay the costs for the use of an agreed and appointed expert, namely Jonathan Hayward;
4. Refusal to pay the expenses of or allow any expert assistance for the EEEWC outside of attendance at formal meetings;
5. Refusal to allow the EEEWC an expert of their choice.
6. Refusal to pay the expenses relating to the appointment of legal representation to pursue a complaint with the CAC.

13. In its response dated 10 November 2015 the Employer stated that it had at all times met its obligations under the EEEWC Agreement and addressed each of the complaints summarised in paragraphs 11 and 12 above. The Complainants were invited by the CAC to comment on the Employer's response and did so in a document dated 20 November 2015.

The hearing

14. Having considered the parties' written submissions the Panel decided to hold a hearing to assist it in making its decision. The hearing took place in London on 5 January 2016 and the names of those who attended are appended to this decision (Appendix 1). Both parties supplied the Panel with detailed written submissions in advance of the hearing together with supporting documentation. The Panel's decision on each of the complaints has been taken after full and careful consideration of the views of both parties as expressed in their written submissions and amplified at the hearing and of all the other material adduced in evidence.

Matters clarified at the start of the hearing

The structure of the hearing and of this decision

15. The Panel Chair said that the complaints and the submissions relating to them appeared to divide into three broad categories:

- The failure to inform and/or consult with the EEEWC prior to a decision being made in relation to the announcement on 30 June 2015 and the refusal to hold an extraordinary meeting prior to or following this announcement (Category 1 complaints);

- The failure to provide information prior to the EEEWC annual meeting or to provide translations of information, and complaints by the Select Committee regarding these matters (Category 2 complaints);

- Complaints about the role and costs of experts (Category 3 complaints).

The Panel Chair suggested that each of these categories should be dealt with in a self-contained manner at the hearing, so that the parties would be invited to make submissions and to sum up on each of the three categories individually. The parties agreed to this

procedure. This structure is replicated in this decision and the Panel's considerations and decisions on each group of complaints are recorded at the end of the category to which they belong.

Jurisdiction and remedies

16. In its written submission the Employer stated that the Complainants had restricted their complaints to the CAC to complaints under regulation 21A of TICER rather than also including complaints under regulation 21 (see paragraphs 11 and 12 above). Regulation 21A, so far as is material, states that:

> (1) A complaint may be presented to the CAC by a relevant applicant who considers that—
>
> (a) because of the failure of a defaulter, the members of the special negotiating body have been unable to meet in accordance with regulation 16(1A);
>
> (b) because of the failure of a defaulter, the members of the European Works Council have not been provided with the means required to fulfil their duty to represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings in accordance with regulation 19A;
>
> (c) because of the failure of a defaulter, a member of a special negotiating body or a member of the European Works Council has not been provided with the means required to undertake the training referred to in regulation 19B; or
>
> (d) regulation 19E(2) applies and that, because of the failure of a defaulter, the European Works Council and the national employee representation bodies have not been informed and consulted in accordance with that regulation.
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> (10) In this regulation—
>
> (a)"defaulter" means, as the case may be—
>
> (i) the management of any undertaking belonging to the Community-scale group of undertakings;
>
> (ii) the central management; or
>
> (iii) the 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);

(b) "failure" means an act or omission and a failure by the local management shall be treated as a failure by the central management;

(c) "relevant applicant" means—

(i) for a complaint in relation to regulation 16(1A), a member of the special negotiating body;

(ii) for a complaint in relation to regulation 19A, a member of the European Works Council;

(iii) for a complaint in relation to regulation 19B, a member of the special negotiating body or a member of the European Works Council;

(iv) for a complaint in relation to regulation 19E(2), a member of the European Works Council, a national employee representation body, an employee, or an employees' representative.

Regulation 21, so far as is material, states that:

(1) Where—

(a) a European Works Council or information and consultation procedure has been established under regulation 17; or

(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—

(a) the terms of the agreement under regulation 17 or, as the case may be, the provisions of the Schedule, have not been complied with; or

(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.

(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.

(3) In this regulation "relevant applicant" means—

(a) in the case of a failure concerning a European Works Council, either the central management or the European Works Council; or

(b) in the case of a failure concerning an information and consultation procedure, either the central management or any one or more of the information and consultation representatives,

and "defaulter" means the persons mentioned in sub-paragraph (a) or (b) against whom the complaint is presented.

The Employer stated that the failure to include complaints under regulation 21 raised difficulties for the Complainants as their complaint related mainly to alleged failures by management to implement the EEEWC Agreement and such complaints needed to be considered under regulation 21. However the Employer went on to state that, despite this, it still wished to deal with the substantive issues raised before the CAC as it was important for the Employer to have a positive relationship with the EEEWC. The Panel Chair asked the Complainants to comment on this point and the Complainants said that they considered that the complaints had been brought under regulation 21 as well as regulation 21A. The Panel Chair said that as both parties were in agreement that all the substantive issues should be considered at the hearing no further time should be taken on this point and that complaints would be considered by the Panel under regulation 21 or regulation 21A as appropriate.

17. The Complainants did not indicate in their written submissions whether they wished any orders to be made in the event that the CAC were to find a complaint well-founded. Regulation 21 states that

(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.

Regulation 21A states that

> (3) 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 regulation 16(1A), 19A, 19B or 19E(2), as the case may be.
>
> (4) An order made under paragraph (3) 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.

The Panel Chair asked the Complainants to make clear in their oral submissions whether they were seeking an order in relation to a specific complaint, and if so in what terms, in order that the Employer could be given an opportunity to respond.

The language of the hearing

18. The Panel Chair informed the parties that the Panel was unable to consider documentation which was in a language other than English and that the Panel had not, therefore, read documentation in French submitted by the Complainants.

The businesses and numbers of employees referred to in the announcement of 30 June 2015

19. The Panel asked the Employer to identify which of its businesses fell within the "motors and drives, power generation and remaining storage businesses" which were referred to in the June 30 2015 announcement. The Employer stated that Leroy-Somer and Control Techniques were potentially for sale.

20. The Panel asked the Employer to clarify the number of employees employed by Network Power and by Leroy-Somer and Control Techniques within individual EU countries.

The Employer stated that Network Power employed some 19,000 workers globally of whom 4,500-5,000 were in Europe. Figures for the individual EU Member States where the largest number of employees were employed were as follows:

Croatia	-	133
Czech Republic	-	345
France	-	445
Germany	-	501
Ireland	-	106
Italy	-	527
Netherlands	-	30
Poland	-	63
Romania	-	226
Slovakia	-	982
Spain	-	181
Sweden	-	58
UK	-	652

The Employer stated that Leroy-Somer and Control Techniques combined employed some 9,500 employees. Figures for the individual EU Member States where the largest number of employees were employed were as follows:

Belgium	-	59
Czech Republic	-	637
France	-	3,079
Germany	-	307
Hungary	-	756
Italy	-	135
Netherlands	-	48
Poland	-	89
Romania	-	256
Spain	-	88
UK	-	658

Category 1 Complaints.

21. The two complaints by the EEEWC falling into category 1 were:

> Failing to inform and/or consult with the EEEWC prior to a decision being made in relation regarding (sic) the announcement made on 30 June 2015 in breach of Articles

2.1, 2.2, 2.4, 3.1, 3.2, 8.4 of the EEEWC Agreement and Regulations 18A(3) and 18A(5) of TICER;

Refusal to hold an extraordinary meeting prior to or following the announcement made on 30 June 2015 in breach of Articles 2.1, 2.4, 3.1 and 8 of the Agreement;

Summary of the Complainants' submissions

22. The Complainants submitted that for all three categories of complaint the dispute began and ended with the EEEWC Agreement, which was not a commercial contract and should not be interpreted as such. The Complainants said that the Agreement did not exist in a vacuum and should be interpreted in an expansive manner to give effect to the underlying principles of the EU Directive as Recast in 2009 to tackle the problem of ineffectiveness. The Complainants referred the Panel to Article 27 of the EU Charter of Fundamental Rights which states that "[w]orkers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices". [5] The Complainants submitted that the position underlying management actions was that the Employer had only to consult about the implementation and implications of decisions once they had been made and submitted that this position was not supported by the Agreement or by EU law insofar as it was relevant to the interpretation of the Agreement.

23. The Complainants referred the Panel to Articles 2.2-2.4 of the EEEWC Agreement. These read as follows:

2.2 Emerson Electric Europe will provide the EWC with transnational information, as defined in this agreement, concerning employees in its operations in the European Union (EU) and Economic Area (EEA). Issues that affect only one country are not the responsibility of the EWC, unless any issue is of major importance to the European employees in terms of the scope of their potential effect. The Emerson Electric

[5] This text appears in Article 27 of the Charter, not in Article 9 as the Complainants stated in paragraph 45 of their written submissions.

Europe EWC will not engage with local or national issues subject to national legislation and/or collective agreements. The parties agree that this agreement complements and is without prejudice to existing or future mechanisms for information and consultation at local and national level.

2.3 The parties shall participate in the EWC in a spirit of co-operation, good faith and mutual trust, for the benefit of the company recognizing and confirming that the EWC shall not affect the prerogative of management who remain solely competent and responsible for all business decisions including but not limited to, financial, commercial and technological decisions at local, national and transnational levels.

2.4 The Company will however inform and consult with the EWC in a proactive and timely manner that enables the EWC to ask questions and form and give an opinion before transnational decisions falling within its scope as set out above are reached. The parties to this Agreement both recognise and confirm this.

The Complainants submitted that Article 2.4 qualified Article 2.3; although decision-making was a matter for management, the right to be informed and consulted rested with the EWC. The Complainants contended that there was nothing in Article 2.4 to suggest that strategic decisions as a whole, or strategic decisions as to whether to acquire or divest businesses or parts of businesses, were not the subject of information and consultation. The Complainants submitted that the announcement clearly fell within the definition of "transnational" which is defined in Article 3.3 of the Agreement as follows:

Transnational- issues shall be considered to be transnational where they affect, as defined in this agreement, Emerson Electric employees in Emerson Electric Europe as a whole, or at least two undertakings or establishments of Emerson Electric Europe situated in two different EU or EEA Member States.

The Complainants submitted that there was nothing to support the Employer's contention that global decisions were excluded from information and consultation; although Article 2.2 excluded issues affecting only one country it did not exclude issues that affected a non-EU

country in addition to EU countries and it would be astonishing if it did. The Complainants submitted that to limit the EEEWC to internal European decisions would mean that any decision which involved even one country outside the EU or EEA would not be subject to information and consultation even if that decision impacted on "transnational" matters as defined in the Agreement. The Complainants submitted that such an outcome would be contrary to the overall aim of the EEEWC and, given the Employer's US-based management structure and global reach, would mean that no decisions would be within its scope.

24. The Complainants submitted that, as far as timing was concerned, the obligations contained in Article 2.4 of the Agreement had been triggered prior to the June 30 2015 announcement. The Complainants emphasised the requirement in Article 2.4 to inform and consult with the EWC in a proactive and timely manner that enables the EWC to ask questions and form and give an opinion before transnational decisions falling within its scope are reached. The Complainants drew attention to documentation issued by the Employer which they contended showed that plans had been formulated before 30 June 2015 and should therefore have been subject to information and consultation. Mr Farr's letter of 30 June 2015 to all employees referred to a "new chapter in Emerson's history" by announcing a "plan" to streamline, optimize and focus its portfolio and to "execution of our repositioning plan". The letter also referred to the Employer having made a "thorough evaluation" before determining that Network Power would be better positioned as an independent company and to a "streamlined and optimized portfolio". The Complainants submitted that the latter phrase suggested that there would be downsizing exercises, a point reflected in the reference in the press release to a "smaller scale and sharper focus" for its corporate services and structure. The Complainants further pointed to the Employee FAQ of 30 June 2015 relating to the Motors and Drives, Power Generation and Remaining Storage Businesses which showed that the profitability of these businesses had been analysed. Question 6 of these FAQs referred expressly to the way employees would be affected in stating that those businesses "will establish their own compensation and benefits program if they complete a transaction as part of the strategic review process". The Complainants contended that the EEEWC should have been informed and consulted before the 30 June 2015 announcement and given the opportunity to contribute to the plans contained in that announcement before they had been decided upon. The Complainants submitted that the EEEWC might have been able to suggest

how the problems which had led to the formulation of these plans could have been addressed but that it was now too late to do this. The Complainants submitted that the failure to inform and consult the EEEWC in this way breached Article 2.4 of the Agreement. The Complainants emphasised that they considered that the EEEWC should have been both informed and consulted. They acknowledged that Article 3.1 of the Agreement[6] said that information should be given in such a way as to enable employee representatives *where appropriate* (our italics) to prepare for consultations but said that no cogent explanation had been provided as to why consultation would have been inappropriate in this case.

25. The Complainants submitted that, in addition to the failure to comply with Article 2.4, the Employer had also breached Article 8 in failing to comply with the Select Committee's request for an extraordinary meeting. Article 8(1), 8(2) and 8(4) of the EEEWC Agreement read as follows:

> 8.1 **Exceptional Circumstances or Decisions** - are defined as those in which a proposed transnational circumstance or decision by Central Management will affect the interests to a considerable extent of a majority of countries or employees, or at least 300 employees in at least two different EU Member States within a 120 day timeframe.
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> 8.2 In Exceptional Circumstances the company or the Select Committee at its request, may call an extraordinary meeting. The Company and the Select Committee will jointly decide whether the extraordinary meeting should be with the full EWC or the Select Committee and those EWC employee representatives from the countries directly affected by the issues to be discussed.
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> 8.4 **Information and Consultation Process** – If an issue is transnational, and falls within the scope of this agreement, then Central Management will trigger information and consultation simultaneously at local and at European levels. It is understood and accepted that these processes will continue concurrently and independently of each other, in such a way that the prerogatives of both the EWC

[6] See Appendix 3 and paragraph 42 below.

> and those of national employee representative bodies are respected. National information and consultation will follow the procedures and timetables set out in national law. European information and consultation will follow the procedures set out in this agreement.

The Complainants submitted that potentially all Emerson employees were affected by the 30 June 2015 announcement, which explained why Mr Farr had written to them all. They also submitted that all Emerson employees in Europe would be affected by Network Power being spun off because other Emerson companies were co-located with Network Power, although the Employer gave evidence that this was not the case in every situation and that further information-gathering was required to establish exactly where all the Emerson companies were located. The Complainants emphasised that Article 8.1 referred to a "proposed" transnational decision; there was no requirement for a decision to have been given effect. The Complainants submitted that the decision to spin off Network Power fell within the first limb of Article 8.1 in that it "will affect the interests to a considerable extent of a majority of countries or employees" and that it also fell within the second limb in potentially affecting at least 300 employees in at least two different EU Member States, as acknowledged in Mr Buckley' e-mail of 14 July 2015 (see paragraph 6 above). The Complainants also submitted that the possible sale of Leroy-Somer fell within Article 8 and disputed the Employer's contention that Article 8 would not be triggered unless and until a buyer had been found. In support of its contention that the criteria in Article 8.1 had been met the Complainants relied both on the documentation referred to in paragraph 24 above and a letter from Mr Farr to "Emerson Colleagues" dated 23 December 2015. In this letter Mr Farr stated that the "strategic portfolio repositioning" was "progressing as planned", words which the Complainants contended made clear that the plans contained in the 30 June 2015 announcement were being executed, a process which should also have been the subject of information and consultation.

26. In their complaint of 27 October 2015 and written submissions the Complainants submitted that, in addition to breaching the EEEWC Agreement, the Employer had failed to provide information under regulation 18A(3) of TICER. Regulation 18A(2) requires

management to give information to EWC members in accordance with regulation 18A(3) which provides that

> The contents 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.

The Complainants also alleged a breach of regulation 18A(5), which states that 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 to express an opinion on the basis of the information provided to them.

27. The Complainants submitted that, in the event that the CAC found its complaints to be well-founded, it should make an order requiring management to hold an extraordinary meeting of the full EWC within 28 days of the decision with a view to provision of full information about the plan and its implementation thus far with a view to full consultation thereafter.

Summary of the Employer's Submissions

28. The Employer submitted that TICER and the EU Directive made clear that the parties to an EWC Agreement were free to make any agreement that they chose and that the autonomy of the parties should be respected by the CAC. The Employer emphasised that the competence of the EEEWC was limited to matters within the European Union and European Economic Area and had no further geographical scope. The Employer referred to Articles 1.1 and 1.2 of the EEEWC Agreement, which read as follows:

> 1.1 This agreement is made between the central management of Emerson Electric Europe and the duly appointed or elected members of the Special Negotiating

Body representing Emerson Electric Europe employees in the European Union and European Economic Area

1.2 This agreement defines the scope, role, membership and operation of the Emerson Electric Europe, European Works Council (EWC) and fulfils Emerson Electric's obligations under EU Directive 2009/38/EC, and the Transnational Information and Consultation of Employees Regulations 1999 (as amended) ("TICE").

The Employer also referred to Article 2.2, set out in paragraph 23 above, which it contended further emphasised the limitation on the EEEWC's geographical scope. The Employer submitted that the Complainants were attempting to re-write into the EEEWC Agreement terms that had been rejected by the Employer at the negotiation stage. In this context the Employer referred in particular to the proposal by the SNB that matters to be the subject of information and consultation should include the "global and European structure and organisation" and "global and European economic and financial situation" of Emerson Electric. The Employer contended that the SNB's proposal clearly showed that it recognised that there was a difference between global and European matters; that the announcement of June 30 2015 was a global announcement; and that there was no obligation on management to commence information and consultation processes with the EEEWC prior to a global announcement. The Employer stated that it had at all times made it clear that when the potential European consequences of the global announcement were known it would inform the EEEWC of those potential consequences and would consult it about those consequences if necessary.

29. The Employer submitted that it was not obliged to consult prior to a decision to acquire or dispose of assets. The Employer submitted that it had never been a requirement in UK law to consult prior to the disposal of an asset, and referred to TUPE under which, according to the Employer, consultation was required only when "measures" in relation to employees were envisaged. The Employer submitted that the Agreement, even if it did not expressly exclude disposals and acquisitions, did not implicitly include them, and stated that it once again drew inspiration from TUPE for its argument that these matters lay within the prerogative of

management. The Employer emphasised that disputes over the meaning and/or operation of the Agreement were to be resolved in accordance with UK legislation, ie TICER. The Employer said that it would not refuse to consult on strategic decisions as such (for example, closures) but in the case of acquisitions and disposals three or more parties were involved; a sale or purchase may fall through; and it was impossible to consult about the unknown. The Employer contended that it had never refused to inform and consult the EEEWC around the spin-off of Network Power or in relation to Leroy-Somer. The Employer said that the June 30 2015 announcement referred to a "plan" only in very general terms; that the detailed work had begun following the announcement; and that Network Power would not be spun off until late 2016. The Employer said that it could not determine the impact of the Network Power spin off prior to taking an inventory of employees and that, in the case of Leroy-Somer, until it knew whether there would be a buyer there was no information to share.

30. In answer to a question from the Panel the Employer said that had the June 30 2015 announcement been exclusively European in scope it would have informed the EEEWC at the time of the announcement or possibly in advance but that its contents would not have been the subject of consultation. The Employer said that, in the case of this announcement, its European managers knew about the content only when the news was released to the market and that it had notified the EEEWC Chairperson shortly after that. The Employer acknowledged that there were cultural differences between US and European companies in relation to information and consultation, as there were in some cases between individual EU Member States, but emphasised that US companies would respect the spirit and the letter of the law.

31. In relation to Article 8, set out in paragraph 25 above, the Employer acknowledged that at least 300 employees in at least two different Member States would be impacted by the decision to spin off Network Power but said that it had not previously considered that Article 8 was satisfied because it had no information to share beyond that which had already been communicated to employees. The Employer said that the Select Committee had been calling for a meeting of the full EEEWC which would have been a costly and pointless exercise given that the Employer would have had nothing new to say. The Employer pointed out that the EEEWC annual meeting had been brought forward from December to early November

2015 in order to maintain dialogue with the EEEWC. The Employer said that it now had data to share with the Select Committee and that it planned to talk to the Select Committee the day after the hearing. The Employer said that this would be an extraordinary meeting for the purposes of Article 8.

32. The Panel asked the Employer to comment on the remedy sought by the Complainants set out in paragraph 27 above. The Employer said that, while it did not consider the complaints to be well-founded, it intended in any event to hold a meeting of the EEEWC in the immediate future subject to resources such as interpreters being available.

Considerations

33. The submissions made by the parties raise important questions relating to the jurisdiction of the EEEWC; the stage of decision-making at which information and consultation is required; and the scope of Article 8 of the EEEWC Agreement.

34. The Panel rejects the Employer's submission that issues which satisfy the definition of "transnational" under Article 3.3 of the EEEWC Agreement are outside the scope of Article 2.2 and other articles of the agreement because they concern employees in the Employer's operations outside the EU and the EEA as well as those within it. The Employer urged us to have regard in interpreting the Agreement to the SNB proposal that information and consultation obligations should apply both to "global and European" matters and submitted that the Employer's rejection of this proposal and its absence from the Agreement showed an intention to exclude matters that were global in their scope. The Panel appreciates that the exclusion of a reference to "global" matters means that there is no requirement to inform and consult in relation to matters affecting only employees outside the EU or EEA. However the Panel does not consider that the failure to include a reference to "global" matters in any way implies that matters which otherwise fall within the EEEWC's jurisdiction are excluded purely because they may affect, in addition, employees in countries beyond that jurisdiction. It follows that the Panel does not accept the submission that the matters contained in the announcement of June 30 2015 were outside the jurisdiction of the EEEWC because they were "global" in their scope. It is clear from the information provided

by the Employer set out in paragraph 20 above that the issues affect the Employer's employees in at least two undertakings or establishments of the Employer situated in two different EU or EEA Member States.

35. The Panel does not accept the Employer's submission that disposals and acquisitions are of themselves excluded from the EEEWC Agreement. There is nothing in the Agreement itself to support such an exclusion and the Panel does not accept that the scope of the obligations under TUPE can be implied into the Agreement. The Panel notes the concerns expressed by the Employer that consulting employees on disposals and acquisitions would impact upon the managerial prerogative but also notes that its prerogative in this and other areas of business decision-making is expressly preserved in Article 2.3 of the Agreement.

36. The Panel notes that Article 2.4 of the Agreement requires the Employer to inform and consult with the EWC in a proactive and timely manner that enables the EWC to ask questions and form and give an opinion before transnational decisions falling within its scope are reached. The Panel considers that that the EEEWC should have been informed and consulted prior to the June 30 2015 announcement and that the failure to do this breached Article 2.4 of the Agreement. The Panel notes that, although Article 11.2 of the Agreement sets out situations where information need not be released, the Employer made no reference to the announcement containing matters which might fall within the scope of that provision. The Panel also notes the provisions of Article 11.1 relating to the communication of information to employee representatives in confidence.[7] The Panel accepts the Employer's evidence that in this case the European management was not itself aware of the contents of the June 30 2015 announcement prior to its release to the public but this failure of communication at a higher corporate level does not constitute an excuse for non-compliance with the Agreement.

37. The Complainants submitted that the contents of the June 30 2015 announcement met the requirements of Article 8 and that the Employer should have granted the Select Committee's request for an extraordinary meeting. The Panel accepts this submission. The Panel considers that it was clear that the decision to spin off Network Power would affect the

[7] See Appendix 3 for the text of Article 11.

interests to a considerable extent of a majority of countries or employees and the Employer itself accepted that at least 300 employees in at least two different EU Member States within a 120-day timeframe would be affected, although it disagreed about the stage and matters about which information and consultation should occur. The Panel notes the Employer's submissions that it did not have any information to add to that already in the public domain and for that reason did not consider the criteria in Article 8 to have been met. However, even if this were the case, it would not have rendered otiose consultation on the information which was at that stage available. The Panel reminds the parties that it is not necessary for all the information pertinent to a proposed course of action to be available before the information and consultation process can begin and that additional information can be added at a later stage.

38. The Employer voiced concerns that holding a full EEEWC extraordinary meeting at the Select Committee's request would be costly and potentially time-wasting if little or no new information were available. The Panel notes, however, that Article 8.2 of the Agreement does not give the Select Committee the right to call a meeting of the full EEEWC on demand; rather, it provides for the Employer and the Select Committee jointly to decide whether the extraordinary meeting should be with the full EWC or the Select Committee and those EWC employee representatives from the countries directly affected by the issues to be discussed.

39. The Complainants submitted that Article 8 had been satisfied in relation to the possible sale of Leroy-Somer in addition to the Network Power spin off. However the Complainants did not specify which of the criteria in Article 8.1 they considered had been met in this regard. The Employer provided data on the workforce of Leroy-Somer and Control Techniques combined, as recorded in paragraph 20 above, but neither party provided data on the workforce of Leroy-Somer alone and the Panel has not, therefore, been in a position to make a finding on this issue.

40. In their original complaint and written submissions the Complainants alleged that, in addition to breaching the EEEWC Agreement, the Employer had failed to comply with regulations 18A(3) and 18A(5) of TICER. However at the hearing the Complainants said that, for all three categories of complaint that were the subject of the hearing, the dispute

between the parties began and ended with the EEEWC Agreement and both parties focussed their submissions on the interpretation of that Agreement. That being so, the Panel has not considered whether there was a breach of regulations 18A(3) and 18A(5) of TICER and has made no findings on this point.

Decisions

41. The Panel's decisions on the complaints contained in Category 1 are as follows:

The complaint that a failure to inform and consult with the EEEWC prior to the announcement made on 30 June 2015 is in breach of Articles 2.2 and 2.4 of the EEEWC Agreement is well-founded.

The complaint that the refusal to hold an extraordinary meeting at the request of the Select Committee, following the announcement on 30 June 2015 of the decision to spin off Network Power, is in breach of Article 8 of the EEEWC Agreement is well-founded.

The Panel notes the remedy sought by the Complainants, set out in paragraph 27 above. The Panel also notes the Employer's response, set out in paragraph 32 above, that it intended in any event to hold a meeting of the EEEWC in the immediate future subject to resources such as interpreters being available. In view of the Employer's response the Panel has decided not to make an order under regulation 21(4) of TICER.

Category 2 Complaints

42. There are two complaints by the EEEWC within category 2:

- Failure to provide information prior to the EEEWC annual meeting in breach of Articles 3.1 and 12.1 of the EEEWC Agreement

- Failure to provide translations of information prior to the EEEWC annual meeting in breach of Articles 3.1, 6.5, 12.1 and 12.2 of the EEEWC and Regulations 18A(3) and 18A(5) of TICER

There are two complaints by the Select Committee under Regulations 19A and 21A of TICER for the failure by the Employer to provide the means required to fulfil their duty to represent collectively the interests of employees, namely the Employer's:

- Refusal to provide any information prior to its annual meeting

- Refusal to provide translations of any information to be provided at the EEEWC annual meeting prior to that meeting.

Summary of the Complainants' Submissions

43. The Complainants said that it appeared to be common ground that the Employer had refused to provide any information prior to its annual meeting. The Complainants stated that the annual meeting of the EEEWC in November 2015 had taken the form of training sessions followed by a day-and-a half of presentations and power-point slides by senior managers in English with simultaneous translation of what the speakers were saying. The Complainants said that a total of 10 presentations had been given and that the EEEWC had been informed that questions could be raised only at the meeting itself. The Complainants referred to Article 3.1 of the EEEWC Agreement which reads as follows:

> **Information** - is defined as the transmission of written and/or verbal data by Emerson Electronic Europe to EWC employee representatives in order to enable them to acquaint themselves with the subject matter and to examine it; this information will be given at such time, in such fashion and with such content as are appropriate to enable employee representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations.

The Complainants also referred to Article 6.1 of the EEEWC Agreement which states that

> The annual general meeting is understood to be an opportunity for management to share and provide information to the employees' representatives as to the current, probable and future position and progress of the business and to receive feedback and an opinion from the employee representatives at the meeting on the basis of the information provided.

The Complainants submitted that Articles 3.1 and 6.1 should be read together. The Complainants submitted that the failure to provide any information in advance of the annual meeting meant that there was no opportunity for employee representatives to undertake the kind of in-depth assessment envisaged by Article 3.1 and to question speakers having had that opportunity. A Select Committee member of the EEEWC, Kathryn Alexander, gave evidence at the hearing that the volume of information and the speed with which it had been delivered at the annual meeting had been overwhelming and had made it impossible to form a judgment on what was being presented. The Complainants submitted that pre-circulated papers did not preclude presentations by management at the meeting and that the Agreement should be read in the light of the purpose of the Directive which was to facilitate participation by the EEEWC. The Complainants drew an analogy with a meeting of a board of directors, which would not make important decisions at a meeting without having had papers in advance. The Complainants submitted that Article 2.4 of the Agreement, set out in paragraph 23 above, gave no support to the distinction drawn by the Employer between information provided for the annual meeting of the EEEWC and for extraordinary meetings.

44. The Complainants took issue with the Employer's submissions relating to the pre-Agreement negotiations, during which the SNB had proposed that a report by the Employer on probable developments in a range of areas should be provided to the Select Committee six weeks prior to the annual meeting, a proposal which the Employer had rejected. In their written submissions the Complainants contested the Employer's view, expressed in its response of 10 November 2015 to the complaints presented to the CAC, that the SNB had ultimately accepted that information would not be circulated in advance of the meeting. The Complainants said that it had finally been agreed that the SNB should leave it up to the EEEWC and the Employer to determine what was an appropriate timeframe for the Employer

to provide information prior to an annual meeting, and that it would ultimately be a matter for the CAC to determine if no compromise could be reached. At the hearing, the Complainants submitted that the Panel should not have regard to what the parties were trying to achieve in pre-Agreement negotiations in interpreting the Agreement and the fact that the Employer may not have been willing to accept a particular term during negotiations did not mean that it was not part of the final Agreement properly interpreted.

45. The Complainants pointed to the limitations of simultaneous translation and said that this was an additional reason why information should be provided in advance. Ms Alexander gave evidence that sometimes speakers went too fast for the translators and that non-English speakers were unable to read the slides. She said that only three members of the EEEWC were native English speakers. The Complainants said that by failing to provide information translated and prior to the annual meeting the Employer did not provide the means required for the EEEWC to carry out their obligations under the Agreement under Article 12.1 of the Agreement and TICER.

46. The Complainants submitted that the annual meeting had not been properly conducted and should be re-run. It asked the Panel to find that the EEEWC Agreement had been breached and to make an order that the material in the slides should be translated and that the EEEWC should have the opportunity to be consulted about their content within a 28-day period.

Summary of the Employer's Submissions

47. The Employer said that there was no reference in the EEEWC Agreement to information being provided before the annual meeting. The Employer said that management had originally proposed that employee representatives should arrive and hold their pre-meeting on Day 1 of the annual meeting and should meet with management on Day 2 and that these arrangements reflected common practice. The Employer said that it had rejected the SNB's proposal that information should be provided in advance on the basis that it was more meaningful for information to be presented to the EEEWC as a body and put into context as it was presented. The Employer said that circulation of materials in advance without oral

explanations could lead to misunderstandings; in addition, it was hard to get every leader to compile the relevant information in a timely fashion and pre-circulated information could be out-of date by the time a meeting took place. In relation to Article 3.1 and the reference to in-depth assessment of the possible impact of information provided, the Employer drew a distinction between information provided at annual meetings, which was broad-brush, and information provided in the context of decisions.

48. The Employer said that, having rejected the SNB proposal for a report to be circulated in advance, it had agreed, as a counter-proposal, to extend the annual meeting to three days and to provide the EEEWC with a second expert if they so requested to assist them and that these provisions were in the Agreement. The Employer said that it had not envisaged that managers would provide information in a solid block at the annual meeting; rather it had thought that over the three day period there would be an opportunity, following an individual presentation, for the EEEWC to discuss that presentation and to come back to the Employer with their questions and comments. The Employer said that in the case of the November 2015 meeting the EEEWC had requested that it should spend the first morning on its own, then have the management presentations, and then meet again alone, and that this was why the annual meeting had taken such a form, although the Employer thought that the structure it had envisaged would be more effective. The Employer said that the EEEWC was a relatively new body which was finding its feet; referred to Article 15.4 of the Agreement which allows discussion on amendments to the Agreement at any time; and said that it would look at any constructive suggestions for changes to the Agreement that may be made.

49. The Employer submitted that it was not obliged to translate materials other than those specified in Article 6.5 of the EEEWC Agreement. This reads as follows:

> Meetings will be conducted in English, which is the official working language of Emerson Electric Europe. The agenda and summary minutes will be agreed between Central Management and the EWC and produced in English and translated into EU and EEA languages where Emerson Electric Europe has sites. To ensure as far as possible that there is meaningful dialogue and a full exchange of views at the meetings, simultaneous interpretation facilities will be made available in as many

> official EU and EEA languages as are required by the language skills of the employee representatives.

The Panel drew the Employer's attention to Article 12.7 of the Agreement which reads as follows:

> The official language of all meetings and communication in regard to the Emerson Electric Europe EWC, and all its meetings, Select Committee meetings, or any other forum or meeting associated with it, will be English. This document, the agenda and minutes of the annual meeting, and any other communication will be executed in English and then subsequently translated into all required languages.

The Panel asked the Employer what meaning it ascribed to the term "communication" in Article 12.7. The Employer said that it was designed to cover e-mails and not presentations at the annual meeting. The Employer acknowledged that the Select Committee had requested information prior to the annual meeting, and for that information to be translated, at a meeting with the Employer on 29 September 2015 and that the Employer had refused this request. However the Employer said that it had not received a request from the EEEWC to have materials provided at the annual meeting itself translated and that it would be prepared to discuss a request for the provision of necessary and appropriate translation of materials if it were made.

50. Commenting on the remedy sought by the Complainants, the Employer submitted that the annual meeting did not need to be re-run.

Considerations

51. The Panel has considered the EEEWC Agreement carefully and concluded that there is nothing in that Agreement which indicates that information is required to be supplied in advance of an annual meeting. The Panel notes the points made by the Complainants about the purpose of the annual meeting as set out in Article 6.1 and the definition of information in Article 3.1. However the Panel considers that a three-day annual meeting facilitates the

opportunity for effective dialogue and, if appropriately organised, allows the EEEWC, with the help of experts, to consider, question and give feedback to management on the information given. The Panel does not accept that the Complainants' submission that the Employer's failure to provide information in advance constitutes a failure to provide the EEEWC or the Select Committee with the means required to carry out their duties and obligations laid down in the Agreement.

52. The complaint relating to the refusal to provide translations of information was confined to information provided in advance of the annual meeting. It follows from the conclusion set out in paragraph 50 above that the Panel finds that this refusal does not breach EEEWC Agreement. However the Panel welcomes the offer, made by the Employer at the hearing, to consider a request if made to provide translations of material provided at the annual meeting itself, action which the Panel considers would give positive effect to the principles in Articles 3.1 and 6.1.

53. In their original complaint and written submissions the Complainants alleged that, in addition to breaching the EEEWC Agreement, the Employer had failed to comply with regulations 18A(3), 18A(5) and 19A of TICER. However, as stated in paragraph 39 above, at the hearing the Complainants said that, for all three categories of complaint that were the subject of the hearing, the dispute between the parties began and ended with the EEEWC Agreement and both parties focussed their submissions on the interpretation of that Agreement. That being so, the Panel has not considered whether there was a breach of regulations 18A(3), 18A(5) and 19A of TICER and has made no findings on this point.

Decision

54. The Panel's decision is that the complaint that the Employer's failure/refusal to provide information prior to the EEEWC annual meeting breached the EEEWC Agreement is not well-founded. It follows that the complaint that the Employer's failure/refusal to provide translations of such information in advance is also not well-founded.

Category 3 Complaints.

55. The EEEWC raised the following complaints for the failure of the Employer to comply with the terms of the EWC Agreement and Regulation 18A of TICER:

- Refusal to allow the EEEWC an expert of their choice, namely Cubism Law, under Articles 10.4, 12.1 and 12.2 of the EWC Agreement.
- Refusal to allow any expert participation outside of meetings in breach of Article 10 of the EWC Agreement.
- Refusal to pay the costs of an agreed expert, namely Jonathan Hayward, in breach of Articles 7.4, 10.5, 12.1 and 12.2 of the EWC Agreement.
- Refusal to pay the expenses relating to the appointment of legal representation as an expert under the EWC Agreement to pursue a complaint with the CAC under Articles 10.1, 12.1 and 12.2 of the EWC Agreement.

The Select Committee raised the following complaints under regulations 19A and 21A of TICER for the failure by the Employer to provide the means required to fulfil their duty to represent collectively the interests of employees, namely the Employer's:

- Refusal to pay the costs for the use of an agreed and appointed expert, namely Jonathan Hayward.
- Refusal to pay the expenses of or allow any expert assistance for the EEEWC outside of attendance at formal meetings.
- Refusal to allow the EEEWC an expert of their choice.
- Refusal to pay the expenses relating to the appointment of legal representation to pursue a complaint with the CAC.

56. Following discussion between the parties at the hearing the Employer agreed to settle Mr Hayward's outstanding invoice but said that that any future involvement in the EEEWC on the part of Mr Hayward should be on the basis of pre-agreed terms and conditions. This was agreed between the parties and the Panel has not, therefore, considered or made any findings on the complaints relating to the payment of Mr Hayward.

Summary of the Complainants' submissions

57. The Complainants drew attention to Article 10 of the EEEWC Agreement which reads, so far as material, as follows:

> 10.1 The EWC employee representatives may be aided by an expert of their choice to assist in the coordination of the EWC, who may, if requested (by the EWC or select committee) participate in all aspects and functioning of the EWC including pre-meetings, full meetings and select committee meetings. A further expert may be appointed to provide additional support and expertise if requested.
>
> 10.4 Any expert adviser used by the EWC will be selected and nominated by the Select Committee, subject to ratification by a majority vote of the EWC as per their internal rules of procedure.
>
> 10.5 The company will pay all reasonable costs of the experts including professional fees and disbursements.

The Complainants submitted that the Employer's view that the role of experts was confined to attendance at meetings was incorrect. The Complainants said that regulation 19A of TICER, which obliges the central management to provide the members of a European Works Council "with the means required to fulfil their duty to represent collectively the interests of the employees", showed that the function of EEEWC members and the role of experts went beyond attending particular meetings. The Complainants also pointed to the role of employee representatives as described in Article 10(1) of Directive 2009/38/EC as "represent[ing] collectively the interests of the employees". The Complainants submitted that Article 10.1 of the EEEWC Agreement gave permission to the expert to participate in meetings but did not mean that their role was confined to such participation.

58. The Complainants submitted that, under Article 10.1 of the EEEWC Agreement, the EEEWC was entitled to choose its own expert and that it was inappropriate for management

to seek to be convinced of the qualifications of a chosen expert as it had done in the case of Mr Buckle. The Complainants submitted that there was no restriction under Article 10.5 on the category of professional expert, such as lawyers, whose fees were covered by that article. The Complainants referred to an e-mail from Mr Buckley to the Select Committee on 14 July 2015 in which Mr Buckley had said that it was the Employer's "firm belief" that if the Select Committee wished to seek clarification on its claims that management was in breach of its obligations under the EEEWC Agreement or TICER the CAC was "the most relevant and appropriate body to hear such a claim". The Complainants submitted that the EEEWC had no choice but to come to the CAC – and indeed, had been invited to do so – and that Mr Buckle's fees as an expert in relation to that were being claimed under Article 10.5. The Complainants submitted that the reference to "disbursements" in Article 10.5 included counsel's fees.

59. The Complainants submitted that the importance of an effective remedy was a general principle of EU law. The Complainants referred to Article 47 of the EU Charter of Fundamental Rights which provides that:

> Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
>
> Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.

The Complainants also refereed to Recital 36 of Directive 209/38/EC which provides that

> In accordance with the general principles of Community law, administrative or judicial procedures, as well as sanctions that are effective, dissuasive and proportionate in relation to the seriousness of the offence, should be applicable in cases of infringement of the obligations arising from this Directive.

The Complainants submitted that the EEEWC Agreement and regulation 19A of TICER needed to be interpreted in the light of these fundamental rights and principles. The Complainants submitted that the Employer's contention that lawyers were not required in relation to CAC proceedings was flawed and that it was difficult to argue that an EWC bringing this claim was not likely to be assisted by legal representation. The Complainants contended that the Employer's argument that this would open the floodgates to an unlimited number of claims was also flawed. Article 10.5 referred to "reasonable " costs and it would not be reasonable to bring a claim before the CAC without first trying to resolve the matter informally, which the EEEWC had attempted to do in this case by suggesting Acas arbitration. The Complainants submitted that EWC agreements were unlikely to be effective if employees had no means of seeking legal redress as a last resort and that it must be part of the role of the EEEWC to seek to enforce its agreement with the Employer. The Complainants drew attention to Article 12.1 of the EEEWC Agreement, which states that the "EWC and Select Committee will be provided with the means required to apply their rights arising from this agreement". The Complainants also pointed to the principle of equality of arms; the Employer was a large multi-national company which could afford expensive lawyers and in this case had been represented and advised by Mr Tom Hayes, the Executive Director of Brussels European Employee Relations Consultants. The Complainants said that the majority of EEEWC members did not reside in the UK, did not speak English as their first language, had no knowledge of the procedures of English courts or tribunals, and could not hold any funds. The Complainants submitted that if the "means required" did not include funded assistance for an EWC to complain to the CAC where it was given no other option this would potentially make any rights unenforceable in practice.

60. The Complainants sought an order from the CAC that in the circumstances of this case the Employer should pay the professional fees and disbursements of Cubism Law within a specified time.

Summary of the Employer's Submissions

61. The Employer contended that it was only obliged to pay the costs of two experts to assist the EEEWC during the annual meeting process with management (including immediate

pre and post meetings), meetings in "exceptional circumstances" should they arise, and meetings between the Select Committee and management. The Employer noted that there was nothing in the EEEWC Agreement to state that experts could not be changed from meeting to meeting and said that that experts could come from any profession. The Employer said that the role of the EEEWC was to meet with management and to be informed and consulted and that the expert was there to assist employee representatives in this role. The Employer emphasised that the role of the expert was confined to assistance; it was not their role to represent or to lead the EEEWC. The Employer said that it would have paid for one or two experts to assist the Select Committee at the CAC. The Employer submitted that "disbursements" in Article 10.5 covered costs such as travel expenses and did not constitute a backdoor way of an expert bringing in any additional expert.

62. The Employer initially submitted that experts needed to have expertise that was relevant to the issue under discussion between management and the EEEWC and said that the Employer would accept them as experts where it was reasonably clear that they had such expertise. Following questions from the Panel, the Employer accepted that it had no veto over the EEEWC's choice of expert and said that, at the end of the day, it would accept the person of the EEEWC's choice.

63. The Employer conceded that it was a contentious issue whether European Works Councils were entitled to have their legal costs covered by employers. The Employers said that the payment of legal costs for employee representatives taking action against the employer may exist in other jurisdictions within the EU but that it had never been part of UK industrial relations practice for employers to be required to fund these costs upfront. The Employer emphasised that in the case of the CAC there were no fees to bring a claim; no requirement to use lawyers; and no provision for costs to be awarded. The Employer pointed to the amendment to TICER in 2010 which had made the CAC rather than the Employment Appeal Tribunal the forum for complaints, a change which the Employer understood had taken place to provide a cost-free environment for EWCs to submit complaints without the obligation on the other party to incur legal fees. The Employer also pointed to the lack of formality in bringing a complaint before the CAC. The Employer said that during negotiations the SNB had proposed a clause at the end of what became Article 12.1 stating

that the "means required" included "financial support as and when required". The Employer had not been willing to provide unlimited funds for the EEEWC to sue it and Article 12.1 contained no reference to financial support. The Employer submitted that "means required" in Article 12.1 did not cover legal fees.

64. Following the parties' submissions on the role of experts the Employer offered to pay the reasonable fees of Mr Buckle for attending the CAC hearing and the Select Committee in his capacity as an expert. The Employer did not agree at the hearing to pay any other costs in relation to Mr Buckle which had been incurred by the EEEWC without prior agreement with management nor did it consider that the reference to "disbursements" covered counsel's fees.

Considerations

65. The issues arising in this category of complaints are three-fold: the choice of expert; the role of experts; and whether the EEEWC has a right to legal representation in bringing complaints before the CAC.

66. In relation to the choice of expert, the Panel considers the EEEWC Agreement to be clear. Article 10.1 states that the EWC employee representatives may be aided by an expert of their choice. The Employer acknowledged at the hearing that it had no right of veto over the choice of expert and we consider the selection of the expert to be entirely a matter for the EEEWC. What constitute "reasonable costs" of the experts is a matter for agreement between the parties. In this case the Employer did not, ultimately, refuse to allow the EEEWC an expert of their choice and for that reason we do not consider the complaints relating to the appointment of Cubism Law as an expert to be well-founded. However we suggest that in future the Employer should not seek information regarding the expertise of the EEEWC's chosen expert prior to their appointment to avoid misunderstandings in this area.

67. The Complainants alleged that the Employer had refused to allow any expert participation outside of meetings and that this constituted a breach of the EEEWC and of TICER. The only specific context in which a dispute about this matter arose was in relation to these proceedings. The Employer stated at the hearing that it would have been willing to fund

one or two experts to assist the Select Committee in these proceedings but that this did not give those experts the right to engage any other experts in addition. The Employer offered at the hearing to pay the reasonable fees of Mr Buckle of Cubism Law in attending the CAC hearing as an expert. The Panel notes these assurances by the Employer and does not, therefore, consider that it is required to make any additional findings in relation to the role of experts.

68. The Panel was asked to decide whether the EEEWC Agreement and TICER provide a right to legal representation to pursue a complaint before the CAC. The CAC is not a body where lawyers are required, and the CAC takes steps to ensure that an unrepresented party is not disadvantaged. The Panel does not consider that failure to pay legal costs as such constitutes a breach of this Agreement or of regulation 19A of TICER.

Decision

69. For the reasons given in paragraphs 55 and 65-67 above the CAC has either not been required to make a decision on the complaints set out in paragraph 54 above or does not consider the complaints to be well-founded.

Concluding remarks

70. In its written submissions the Employer alleged that the complaints made by the EEEWC were, in reality, an attempt to change significantly the terms of the EEEWC Agreement and, as such, an abuse of the CAC's process. These allegations were not repeated at the hearing but the Panel wishes to place on record that it does not agree that any of these complaints could be characterised as an abuse of process. It also wishes to thank the parties for their helpful and constructive approach to the hearing.

71. The Employer was keen to emphasise that the EEEWC was relatively new and would inevitably take time to establish its working methods. The Employer pointed to Article 15.4 of the Agreement, which provides that discussions on the amendment to the Agreement may be conducted at any time, and said that it was receptive to considering proposed amendments

where experience showed that these may be beneficial. The Panel hopes that the parties will operate the EEEWC in a spirit of goodwill and co-operation and wishes them well in this endeavour.

The Panel

Professor Gillian Morris – Chairman of the Panel

Mr Len Aspell

Mr Malcolm Wing

19 January 2016

Appendix 1

Names of those who attended the hearing:

For the Complainants

David Buckle. Solicitor, Cubism Law
Richard O'Dair, Counsel
Jonathan Hayward, Unite
Johan Ingberg (Chairperson of EEEWC) Emerson Network Power
Fabrice Jofroit (Vice Chairperson of the EEEWC)
Kathryn Alexander (Select Committee Member of the EEEWC)
Josipa Bicanic (Select Committee Member of the EEEWC)
Dirk Held (Select Committee Member of the EEEWC)

For the Employer

Tom Hayes BEERG
Tim Volk Vice President Global Human Resources at Emerson
Kati Teer CEE HR Director
William Buckley Vice President Human Resources Europe Corporate

Appendix 2

Transnational Information and Consultation of Employees Regulations 1999, as amended: regulations relevant to this decision

Content and scope of a European Works Council agreement and information and consultation procedure

17.—(1) The central management and the special negotiating body are under a duty to negotiate in a spirit of cooperation with a view to reaching a written agreement on the detailed arrangements for the information and consultation of employees in a Community-scale undertaking or Community-scale group of undertakings.

(2) In this regulation and regulations 18 and 20, the central management and the special negotiating body are referred to as "the parties".

(3) The parties may decide in writing to establish an information and consultation procedure instead of a European Works Council.

(4) Without prejudice to the autonomy of the parties, where the parties decide to proceed with the establishment of a European Works Council, the agreement establishing it shall determine—

(a)the undertakings of the Community-scale group of undertakings or the establishments of the Community-scale undertaking which are covered by the agreement;

(b)the composition of the European Works Council, the number of members, the allocation of seats and the term of office of the members;

(c)the functions and the procedure for information and consultation of the European Works Council and arrangements to link information and consultation of the European Works Council with information and consultation of national employee representation bodies;

(d)the venue, frequency and duration of meetings of the European Works Council;

(dd)where the parties decide that it is necessary to establish a select committee, the composition of the select committee, the procedure for appointing its members, the functions and the procedural rules;

(e)the financial and material resources to be allocated to the European Works Council; and

(f)the date of entry into force of the agreement and its duration, the arrangements for amending or terminating the agreement, the circumstances in which the agreement is to be renegotiated including where the structure of the Community-scale undertaking or Community-scale group of undertakings changes and the procedure for renegotiation of the agreement.

(4A) In determining the allocation of seats under paragraph (4)(b), an agreement shall, so far as reasonably practicable, take into account the need for balanced representation of employees with regard to their role and gender and the sector in which they work.

(5) If the parties decide to establish an information and consultation procedure instead of a European Works Council, the agreement establishing the procedure must specify a method by which the information and consultation representatives are to enjoy the right to meet to discuss the information conveyed to them.

(6) An agreement referred to in paragraph (4) or (5) is not to be subject to the provisions of the Schedule, except to the extent that the parties provide in the agreement that any of those requirements are to apply.

(7) Where a Community-scale group of undertakings comprises one or more undertakings or groups of undertakings which are themselves Community-scale undertakings or Community-scale groups of undertakings, the European Works Council shall be established at the level of the first-mentioned Community-scale group of undertakings, unless an agreement referred to in paragraph (4) provides otherwise.

(8) Unless a wider scope is provided for in an agreement referred to in paragraph (1), the powers and competence of a European Works Council and the scope of an information and consultation procedure shall, in the case of a Community-scale undertaking, cover all the establishments located within the Member States and, in the case of a Community-scale group of undertakings, all group undertakings located within the Member States.

(9) Where information disclosed under a European Works Council agreement or an information and consultation procedure includes information as to the employment situation in the Community-scale undertaking or, as the case may be, the Community-scale group of undertakings, this shall include suitable information relating to the use of agency workers (if any).

Information and consultation

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

(a)a European Works Council or information and consultation procedure has been established under regulation 17; or

(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.

(8) Where information as to the employment situation in the Community-scale undertaking or, as the case may be, the Community-scale group of undertakings, is disclosed by the central management or any more appropriate level of management, this shall include suitable information relating to the use of agency workers (if any).

Means required

19A.—(1) Subject to paragraph (2), the central management shall provide the members of a European Works Council with the means required to fulfil their duty to represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings under these Regulations.

(2) The obligation on central management in paragraph (1) does not include an obligation to provide a member of a European Works Council with—

(a)time off during working hours to perform functions as such a member, or remuneration for such time off (as required by regulations 25 and 26);

(b)the means required to undertake training (as required by regulation 19B); or

(c)time off during working hours to undertake training, or remuneration for such time off (as required by regulations 25 and 26).

21.—(1) Where—

(a)a European Works Council or information and consultation procedure has been established under regulation 17; or

(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—

(a)the terms of the agreement under regulation 17 or, as the case may be, the provisions of the Schedule, have not been complied with; or

(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.

(3) In this regulation "relevant applicant" means—

(a)in the case of a failure concerning a European Works Council, either the central management or the European Works Council; or

(b)in the case of a failure concerning an information and consultation procedure, either the central management or any one or more of the information and consultation representatives,

and "defaulter" means the persons mentioned in sub-paragraph (a) or (b) against whom the complaint is presented.

(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.

(6) If the CAC makes a decision under paragraph (4) and the defaulter in question is the central management, the relevant applicant may, within the period of three months beginning with the date on which the decision is made, make an application to the Appeal Tribunal for a penalty notice to be issued.

(6A) Where such an application is made, the Appeal Tribunal shall issue a written penalty notice to the central management requiring it to pay a penalty to the Secretary of State in respect of the failure.

(7) Paragraph (6A) shall not apply if the Appeal Tribunal is satisfied, on hearing the representations of the central management, that the failure resulted from a reason beyond the central management's control or that it has some other reasonable excuse for its failure.

(8) Regulation 22 shall apply in respect of a penalty notice issued under this regulation.

(9) No order of the CAC under this regulation shall have the effect of suspending or altering the effect of any act done or of any agreement made by the central management or the local management.

Disputes about failures of management

21A.—(1) A complaint may be presented to the CAC by a relevant applicant who considers that—

(a)because of the failure of a defaulter, the members of the special negotiating body have been unable to meet in accordance with regulation 16(1A);

(b)because of the failure of a defaulter, the members of the European Works Council have not been provided with the means required to fulfil their duty to represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings in accordance with regulation 19A;

(c)because of the failure of a defaulter, a member of a special negotiating body or a member of the European Works Council has not been provided with the means required to undertake the training referred to in regulation 19B; or

(d)regulation 19E(2) applies and that, because of the failure of a defaulter, the European Works Council and the national employee representation bodies have not been informed and consulted in accordance with that regulation.

(2) A complaint brought under paragraph (1) must be brought within a period of six months beginning with the date of the alleged failure.

(3) 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 regulation 16(1A), 19A, 19B or 19E(2), as the case may be.

(4) An order made under paragraph (3) 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.

(5) If the CAC makes a decision under paragraph (3), the relevant applicant may, within the period of three months beginning with the date on which the decision is made, make an application to the Appeal Tribunal for a penalty notice to be issued.

(6) Where such an application is made, the Appeal Tribunal shall issue a written penalty notice to the defaulter requiring it to pay a penalty to the Secretary of State in respect of the failure.

(7) Paragraph (6) shall not apply if the Appeal Tribunal is satisfied, on hearing the representations of the defaulter, that the failure resulted from a reason beyond the defaulter's control or that it has some other reasonable excuse for its failure.

(8) Regulation 22 shall apply to a penalty notice issued under this regulation.

(9) No order of the CAC under this regulation shall have the effect of suspending or altering the effect of any act done or of any agreement made by the central management or the local management.

(10) In this regulation—

(a)"defaulter" means, as the case may be—

(i)the management of any undertaking belonging to the Community-scale group of undertakings;

(ii)the central management; or

(iii)the 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);

(b)"failure" means an act or omission and a failure by the local management shall be treated as a failure by the central management;

(c)“relevant applicant” means—

(i)for a complaint in relation to regulation 16(1A), a member of the special negotiating body;

(ii)for a complaint in relation to regulation 19A, a member of the European Works Council;

(iii)for a complaint in relation to regulation 19B, a member of the special negotiating body or a member of the European Works Council;

(iv)for a complaint in relation to regulation 19E(2), a member of the European Works Council, a national employee representation body, an employee, or an employees’ representative.

Appendix 3

EMERSON ELECTRIC EUROPEAN WORKS COUNCIL

ARTICLE 1 –INTRODUCTION

1.1 This agreement is made between the central management of Emerson Electric Europe and the duly appointed or elected members of the Special Negotiating Body representing Emerson Electric Europe employees in the European Union and European Economic Area.

1.2 This agreement defines the scope, role, membership and operation of the Emerson Electric Europe, European Works Council (EWC) and fulfils Emerson Electric's obligations under EU Directive 2009/38/EC, and the Transnational Information and Consultation of Employees Regulations 1999 (as amended) ("TICE").

1.3 If there are no former SNB members on the first EWC, the SNB Select Committee representatives will be invited to attend the first EWC meeting.

1.4 Upon signature of this agreement, the Emerson Electric European Works Council will replace all existing European Works Councils that exist in any Emerson Electric subsidiary, which will be dissolved effective the date of the signature of this agreement.

1.5 In accordance with Directive2009/38/EC the role of the Special Negotiating Body will end upon the signing of this agreement.

ARTICLE 2 – AIM AND SCOPE OF AGREEMENT

2.1 The EWC is an employee representatives only body, consisting of EWC members. Emerson Electric central management will inform and consult with the EWC on matters within the scope of this agreement so as to encourage a free exchange of views and opinions between the parties on said information.

2.2. Emerson Electric Europe will provide the EWC with transnational information, as defined in this agreement, concerning employees in its operations in the European Union (EU) and Economic Area (EEA). Issues that affect only one country are not the responsibility of the EWC, unless any issue is of major importance to the European employees in terms of the scope of their potential effect. The Emerson Electric Europe EWC will not engage with local or national issues subject to national legislation and/or collective agreements. The parties agree that this agreement complements and is without prejudice to existing or future mechanisms for information and consultation at local and national level.

2.3 The parties shall participate in the EWC in a spirit of co-operation, good faith and mutual trust, for the benefit of the company recognizing and confirming that the EWC shall not affect the prerogative of management who remain solely competent and responsible for all

business decisions including but not limited to, financial, commercial and technological decisions at local, national and transnational levels.

2.4 The Company will however inform and consult with the EWC in a proactive and timely manner that enables the EWC to ask questions and form and give an opinion before transnational decisions falling within its scope as set out above are reached. The parties to this Agreement both recognise and confirm this.

ARTICLE 3 – DEFINITIONS

3.1 **Information** - is defined as the transmission of written and/or verbal data by Emerson Electric Europe to EWC employee representatives in order to enable them to acquaint themselves with the subject matter and to examine it; this information will be given at such time, in such fashion and with such content as are appropriate to enable employee representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations.

3.2 **Consultation** - is defined as the exchange of views and establishment of dialogue between the EWC employee representatives and central management (or other appropriate level of management), at such time, in such fashion and with such content as to enable employee 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, or the business necessity and within a reasonable time.

3.3 **Transnational** - issues shall be considered to be transnational where they affect, as defined in this agreement, Emerson Electric employees in Emerson Electric Europe as a whole, or at least two undertakings or establishments of Emerson Electric Europe situated in two different EU or EEA Member States.

3.4 **Employee Representative** – is defined as an Employee appointed in accordance with national legislation or elected by Employees to represent them in the Emerson Electric Europe EWC.

3.5 **Employee**: For the purposes of this agreement an "employee" means any person who, in the Member State concerned, is defined as an employee under national employment law.

3.6 **Select Committee** – is defined as a delegation of employee representatives, to represent the Emerson Electric Europe EWC both in Extraordinary Meetings with Central Management and also in pre-planned meetings to support the planning and administration of the Emerson Electric Europe EWC.

3.7 **Central Management** – is defined as members of the senior executive group of Emerson Electric Europe, or other appropriate relevant level of management, designated as the management representatives on the Emerson Electric Europe EWC.

ARTICLE 4 – OPERATIONS COVERED

4.1 This agreement covers Emerson Electric Europe employees within any firm, business entity or other association within the EU and EEA which is majority owned and controlled by Emerson Electric Europe.

4.2 If Emerson Electric or any group company acquires another company or group with a presence within the EU/ EEA (an "Acquired EU Entity"), its EU/EEA employees are automatically covered by this Agreement except where Article 4.3 applies.

4.3 If the Acquired EU Entity itself has an EWC, the Emerson Electric EWC will cover the EU/EEA employees of the Acquired EU Entity, and that the EWC of the Acquired EU Entity will be dissolved.

4.4 Where a new acquisition has a significant impact on headcount in a particular country, and the proportion of Emerson Electric Europe employees in this country crosses one of the thresholds set out in paragraph 5.2 of this agreement, and therefore requires a larger representation on the Emerson Electric Europe EWC, the variation in headcount will be dealt with in accordance with the process laid down in paragraph 5.3 of this agreement.

4.5 Newly acquired companies with operations in EU and EEA member states where there is already a pre-existing company presence and pre-existing representation on the Emerson Electric Europe EWC will be represented by the existing Emerson Electric Europe EWC employee representative(s) until the completion of their term of office.

ARTICLE 5 - COMPOSITION OF THE EMERSON ELECTRIC EUROPE EWC

5.1 **Employee Representatives** - Employees will be elected or appointed in accordance with national legislation to represent employees in the Emerson Electric Europe EWC. It is hoped that those elected and appointed will represent the diversity of the Emerson Electric Europe workforce in terms of nationality, gender, position within the Company and ethnic backgrounds. Employees seeking nomination as a EWC employee representative need to be aware of and appreciate any conflicts of interests that may impact on their ability to properly represent the interests of the employees.

A. **Term of Office of Employee Representatives** - Employee representatives will serve for a 4 year term and will be subject to re-election or re-appointment at the end of their four year period in office, unless otherwise provided for by national law and/or practice.

B. **Substitutes** - Substitutes may be nominated or elected per country, according to the same procedures as for the election or appointment of employee representatives. Each country may nominate or elect as many substitutes as there are employee representatives from that country. They will substitute for the elected employee representative in the event that the elected employee representative is unable to attend a meeting, such unavailability being notified to the Central Management at least one week prior to the annual Forum meeting. Subject to the provisions of the relevant national law, the substitutes will automatically replace the employee representatives in the event that the permanent employee representatives are unable to continue their responsibilities for whatever reason. In those circumstances, substitutes will replace elected representatives for the remainder of the original mandate.

C. **Termination of Office** - Employee representatives who cease to be employees of Emerson Electric Europe for whatever reason shall immediately forego any rights as employee representatives on the EWC but shall continue to be bound by a duty of confidentiality as defined in this Agreement.

5.2 **Numbers of Employee Representatives** - The number of Employee Representatives on the Emerson Electric Europe EWC will be based on the number of Employees in each country and in accordance with the thresholds, set out below:

a. One (1) representative per EU / EEA country in which Emerson Electric Europe has an operation

b. One (1) additional representative per country for every tranche of 10%, over 10% of the total headcount of Emerson Electric Europe.

c. The headcount upon which employee representation by country will be calculated will be as of September 30th each year. When the updated headcount has been calculated and duly communicated to the EWC Select Committee, the number of seats per country will be adapted accordingly.

5.3 **Variations in the Numbers of Representatives Per Country** - Should there be an increase over the headcount threshold referred to above due to organic growth or acquisition in countries covered by this agreement where there is already an Emerson Electric presence and which has representation on the EWC, employees shall be represented by the existing

EWC employee representative(s) until the completion of their term of office. If the number of employees in the acquired business increases the employment level in any particular country so as to justify additional representatives, then, the additional representatives will be elected / selected and seated at the next EWC meeting after their election / selection.

5.4 For newly acquired businesses with operations in EU countries without an Emerson Electric presence and therefore having no employee representative on the EWC, the company will arrange for the election / selection of the appropriate number of representatives as provided for in this agreement. Where possible, these representatives will take their seat on the EWC as of the next EWC meeting after the date of their election. The period of office of these representatives will end at the same date as the other EWC employee representatives who were elected or appointed at the normal time.

5.5 Should the Emerson Electric Europe headcount in a country show a decline, either absolutely or proportionately, and as a result fall below a headcount threshold thereby suggesting a lower number of Employee Representatives for that country on the Emerson Electric Europe EWC, then the delegation for that country will be reduced as appropriate at the earlier of:

a. The annual EWC meeting of the following year or

b. A resignation of one of the country's Employee Representatives, or

c. The end of the term in office.

ARTICLE 6 - THE EMERSON ELECTRIC EUROPE EWC ANNUAL MEETING

6.1 The annual general meeting is understood to be an opportunity for management to share and provide information to the employees' representatives as to the current, probable and future position and progress of the business and to receive feedback and an opinion from the employee representatives at the meeting on the basis of the information provided.

6.2 **Meeting Timing** - The Annual meeting will normally be held as soon as reasonably practicable after the publication of Emerson Electric Company's annual results. This will normally be late in Quarter one of the financial year, or early in Quarter two. The formal Emerson Electric Europe EWC meeting itself will be up to three (3) day's duration (including pre and post meeting of employee representatives only), to be agreed between the Select Committee and Central Management. The day before any formal EWC meeting will be considered a travel and arrival day.

6.3 **Meeting Content** - At the annual meeting, central management will provide information on;

- European wide company results
- The economic and financial situation

- Probable developments in production and sales
- The progress of the business and its prospects
- The situation and probable trend of employment and investments
- Substantial changes concerning: work organisation; transfers of production and transfers of technology; the introduction of new working methods or production processes; cut backs or closures;

6.4 **Annual Meeting Administration** - Central Management, following agreement with the Select Committee, will advise employee representatives of the dates and location of Annual Meetings.

6.5 Meetings will be conducted in English, which is the official working language of Emerson Electric Europe. The agenda and summary minutes will be agreed between Central Management and the EWC and produced in English and translated into EU and EEA languages where Emerson Electric Europe has sites. To ensure as far as possible that there is meaningful dialogue and a full exchange of views at the meetings, simultaneous interpretation facilities will be made available in as many official EU and EEA languages as are required by the language skills of the employee representatives.

6.6 As soon as practicable or within three weeks (unless prior agreement with the select committee) following the Annual Meeting, Central Management and the select committee will agree the summary minutes of the meeting. These minutes will then be electronically circulated in accordance with current practice within Emerson Electric Europe.

ARTICLE 7 - SELECT COMMITTEE

7.1 **Select Committee Role** - Employee Representatives shall elect from their number a Select Committee. The members of the Select Committee will not exceed five (5). In the absences of exceptional circumstances or other agreed meetings, the Select Committee shall meet with Central Management at least once per year to ensure ongoing dialogue, unless agreed otherwise, review the previous annual meeting, and plan the next. This will not preclude regular communication as needed between Central Management and the Select Committee throughout the year.

7.2 The Select Committee will discuss with Central Management the following:

a. Dates, time and venue of meetings

b. Any needed experts, their costs and the nature of their mandate.

c. Training requirements

d. The need for and attendance at meetings in "exceptional circumstances".

e. The relevant level of management to attend EWC meetings

7.3 The select committee will be provided with administrative support in order to enable them to fulfil their function. The administrative support required will be discussed and agreed in advance with Central Management.

7.4 The Emerson Electric EWC and the Select Committee will establish their own internal rules of procedure. Costs incurred in the operation of the Select Committee and the EWC will be discussed and agreed between Central Management and the EWC, which will not be unreasonably denied.

7.5 The Select Committee will raise any issues with central management regarding any situation or impasse in relation to the implementation of this agreement and its terms at a national and local level. Central management will resolve any situation or impasse that occurs at a national/local level.

ARTICLE 8 - EXTRAORDINARY MEETINGS

8.1 **Exceptional Circumstances or Decisions** - are defined as those in which a proposed transnational circumstance or decision by Central Management will affect the interests to a considerable extent of a majority of countries or employees, or at least 300 employees in at least two different EU Member States within a 120 day timeframe.

8.2 In Exceptional Circumstances the company or the Select Committee at its request, may call an extraordinary meeting. The Company and the Select Committee will jointly decide whether the extraordinary meeting should be with the full EWC or the Select Committee and those EWC employee representatives from the countries directly affected by the issues to be discussed.

8.3 Emerson Electric and the Employee Representatives agree to act reasonably, cooperate and make every effort to efficiently conclude the consultation process where exceptional circumstances or decisions arise.

In particular:-

- Where exceptional circumstances arise, Emerson Electric will firstly discuss the suggested timescales for consultation with the Select Committee with a view to agreeing

a timetable, not to exceed twenty five (25) working days unless otherwise agreed, for information and consultation.

- Where an in-depth assessment by the Employee Representatives is requested it shall not take longer than twenty (20) working days from receipt of all necessary and requested relevant information. Within five working days of receipt of the provided information, a request for further information can be made by the select committee (or their designated expert), in order to formulate an opinion. In such a case the 20 day period can be extended accordingly by five working days.

- Once the in-depth assessment has been completed the EWC, the Select Committee or the Select Committee and those EWC members from the countries directly affected by the issues will meet with Central Management to provide an opinion on the issues under consideration, on the basis of the information provided. Central Management will either respond to the opinion at the end of the consultation meeting, or in writing within five (5) working days, as appropriate.

8.4 **Information and Consultation Process** - If an issue is transnational, and falls within the scope of this agreement, then Central Management will trigger information and consultation simultaneously at local and at European levels. It is understood and accepted that these processes will continue concurrently and independently of each other, in such a way that the prerogatives of both the EWC and those of national employee representative bodies are respected. National information and consultation will follow the procedures and timetables set out in national law. European information and consultation will follow the procedures set out in this agreement.

ARTICLE 9 - COMMUNICATION METHODS

9.1. The Employee Representatives have a responsibility to communicate to their constituents the outcomes and issues discussed at the EWC and/or EWC related meetings. The aim of this is not only to provide for continuous improvement in the operation of the EWC, but also to allow for rapid responses to employees in relation to matters within the scope of this agreement

9.2. Each Employee Representative will be provided by Central Management with the names and addresses of sites and establishments within their country covered by this EWC agreement, the number of employees within each site and the name of the appropriate contact person for the site.

ARTICLE 10 EXTERNAL EXPERTS

10.1. The EWC employee representatives may be aided by an expert of their choice to assist in the coordination of the EWC, who may, if requested (by the EWC or select committee) participate in all aspects and functioning of the EWC including pre-meetings, full meetings and select committee meetings. A further expert may be appointed to provide additional support and expertise if requested.

10.2 Any expert selected by the EWC employee representatives will be bound by the confidentiality terms of this Agreement and their statutory duties under Regulation 23 of TICE, and may be required to sign an agreement to that effect. They may not disclose to any third party, information given to them without the express written consent of the Company in advance. Information so provided may only be used in the course of their work with the Emerson Electric European Works Council and for no other purpose.

10.3 It is a strict condition of their appointment that such expert advisers do not and acknowledge that they will not work with a business competitor of Emerson Electric in any capacity unless agreed in advance with Central Management.

10.4 Any expert adviser used by the EWC will be selected and nominated by the Select Committee, subject to ratification by a majority vote of the EWC as per their internal rules of procedure.

10.5 The company will pay all reasonable costs of the experts including professional fees and disbursements.

ARTICLE 11 - CONFIDENTIALITY

11.1 In order to support the free exchange of information all employee representatives attending Emerson Electric Europe EWC meetings, Select Committee meetings, or any other kind of forum or meeting associated with the Emerson Electric Europe EWC, agree not to misuse or divulge confidential information that may be communicated to them, except for communications to local employee representatives or expert advisers who are themselves regulated and covered by confidentiality obligations. This obligation continues after the conclusion, for whatever reasons, of their terms of office or employment, and for as long as the information remains confidential. Any proven breach of this provision will lead to the individual employee representative being excluded from any further participation in meetings and will be viewed as a serious offence and dealt with in accordance with national and/or local laws and procedures in the representative's country of employment.

11.2 It is accepted that Emerson Electric Europe has no obligation to release price sensitive or other confidential information which Emerson Electric believes is of such a nature that its

release would harm the functioning of Emerson Electric, or be prejudicial to it, could risk contravening or is in contravention of any national law or regulations where it has operations or could be prejudicial to any of the undertakings that form part of Emerson Electric or to any third party with whom Emerson Electric does business. This includes statutory or regulatory rules, including stock exchange rules, on disclosure of information applying to Emerson Electric Europe in whatever jurisdiction it carries on business.

ARTICLE 12 – COSTS, ADMINISTRATION AND FACILITIES

12.1 The EWC and Select Committee will be provided with the means required to apply their rights arising from this agreement and also to carry out their duties and obligations laid down within this agreement.

12.2 The Company will pay for all reasonable costs associated with the functioning of the Emerson Electric Europe EWC and all related EWC meetings , including travel, meals, accommodation, external experts (in accordance with Article 10), education/training and translation when required in the application of this Agreement.

12.3 Employee Representatives shall be given time off with pay to attend EWC meetings and EWC related meetings and to carry out their duties or responsibilities as EWC representatives. No Employee Representative will suffer financial detriment as a result of membership of the EWC. The costs of any EWC related meetings and any necessary accommodation will be borne by Central Management.

12.4 Local Company management within each country will take responsibility for travel arrangements and the costs of transportation to and from meetings. All members of the Emerson Electric Europe EWC will be guided by the travel policies of the Company for which they work, however these policies may need to be amended to accommodate and ensure that EWC representatives are able to carry out their role and responsibilities.

12.5 Appropriate facilities, work spaces, logistical support and office supplies will be supplied to Employee Representatives as necessary in order for them to be able to fulfil their role as Employee Representative.

12.6 The company will provide Employee Representatives with the means required to undertake Training in order to assist them in performing their duties efficiently in so far as this is necessary for the exercise of their representative duties in an international environment. Central Management must be notified in advance of any proposed training.

12.7 The official language of all meetings and communication in regard to the Emerson Electric Europe EWC, and all its meetings, Select Committee meetings, or any other forum or meeting associated with it, will be English. This document, the agenda and minutes of the

annual meeting, and any other communication will be executed in English and then subsequently translated into all required languages.

12.8 Any dispute relating to the interpretation or application of the provisions of this article will be discussed between Central Management and the Select Committee.

ARTICLE 13 – PROTECTION OF EMPLOYEE REPRESENTATIVES

13.1 EWC members in the exercise of their function under this agreement are entitled to the same protection and guarantees provided for EWC members by the national legislation of their country of employment and will suffer no advantage or disadvantage or detriment through their membership of the EWC.

ARTICLE 14 - GOVERNING LAW AND JURISDICTION

14.1 This Agreement is negotiated under Article 6 of Council Directive 2009/38/EC and is to be governed by The Transnational Information and Consultation of Employees (Amendment) Regulations 1999 and 2010.

14.2 Any disputes between the parties as regards the meaning and/or operation of this agreement shall be resolved in accordance with the procedures set out in The Transnational Information and Consultation of Employees (Amendment) Regulations 1999 and 2010.

14.3 If there is any dispute or disagreement over the interpretation or application of this agreement, the English version of this agreement will be taken as final and authoritative.

ARTICLE 15 - DURATION

15.1. This Agreement shall commence on the date it is signed and shall continue for an initial period of 4 years.

15.2 In the final year of the initial period, Central Management or the EWC employee representatives, following a majority vote in favour may give six months written notice of intent to withdraw from this Agreement.

15.3 After the initial period this agreement will continue indefinitely, unless either Central Management or the EWC employee representatives by majority vote gives six months written notice of their intent to withdraw from this Agreement.

15.4 Unless terminated under 15.2 or 15.3, discussions on the renewal of/amendment to this Agreement may be conducted at any time and the outcome of any such discussions will be subject to the approval of both Central Management and a majority vote of the EWC employee representatives.

15.5 If notice to terminate is given and a new agreement cannot be reached during the notice period the terms of this agreement shall, subject to any continuing obligations of confidentiality, be dissolved and replaced by the subsidiary requirements as set out in the Transnational Information and Consultation of Employees Regulations 1999 (as amended) ("TICE").

15.6 All obligations of confidentiality shall survive the termination of this Agreement.

Signed on 18th June 2014, for and on behalf of Emerson Electric Europe Central Management:

Tim Volk

Bill Buckley

Signed on 18th June 2014, for an on behalf of Emerson Electric European Special Negotiating Body Employee Representatives

Amanda Diaczuk

Fabrice Jofroit

Guy Lamaison

Jose Detry

Ivan Pribyl

Jojanneke Bos

Johan Ingberg

Dirk Held

Borislav Mladenov

Branislav Polák

Jesper Nyberg

Ville Parpala

Deolinda Gouveia

Dimitrios Gerokostas

Elisabeth Savinescu

Fergal McCaffrey

Bruno Betato

Helmut Engl

Maria Madaraszne Ecker

Maria Pedersen

Maria del Carmen Lopez

Stephen Ryan

~~Isabella~~ Herburt IZABELLA