

European trade-union strategies: between technocratic efficiency and democratic legitimacy

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The democratic nature of the EU, or the lack of it, has never been so important (Schmitter 2000; Erne *et. al.* 1995). It is generally acknowledged that the existing governance structures and mechanism of the EU “are not able to provide democratic legitimization for the EU polity as a whole” (Héritier 1999: 208; European Commission 2003a: 38). Indeed, a democratic *polis* needs as well as constitutional bodies, a tight network of intermediate institutions and social organisations such as the unions, other civil society associations and the media (Lepsius 1993). These offer more possibilities for citizens’ participation in the political system and thus an increase in its legitimacy. Hence, the making and performance of European civil society organisations is linked to the constitution of a democratic EU polity.

This chapter analyses one potential agent of Euro-democratisation, namely organized labour. Although unions have often played an important role in national democratisation processes, this does not necessarily promise a similar role for them at the EU level. Authoritarian regimes typically prohibit free trade-union activity and consequently impel unions to take part in democratisation movements, but the current institutional setting of the EU provides alternative options for organized labour, namely *Euro-democratisation*, *Euro-technocracy* and *(re-) nationalisation*.

I will assess the tensions between these options in a comparison of the different strategies of trade unions in two transnational company merger cases.¹ While the unions

and European Works Councils² involved seem to have adopted a Euro-democratic strategy in the ABB-Alstom merger case, they apparently pursued a Euro-technocratic strategy in the parallel Alcan-Pechiney-Algroup case. The adoption of different strategies seems surprising since it was the same European, German and French unions that played a decisive role in both cases. This indicates that unions have a range of options, something which leads one to reject any kind of determinism regarding the role of civil society organisations in the EU integration process.

1. Euro-democracy, Euro-technocracy and re-nationalisation

How do trade unions relate to the European integration process? To investigate this question, I differentiate between two dimensions of trade union action, each covering two categories: Europeanization versus re-nationalization³, and democratic versus technocratic action (cf. Figure 1).⁴

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Euro-technocracy describes a process leading to an expansion of “apolitical” decision-making by experts at the EU level, disconnected from partisan politics, whereas Euro-democratisation aims to raise the accountability of decision-making as well as the access and participation of citizens in EU politics. The strongest indicator for a Euro-technocratic strategy of organized labour would be its active support of “regulatory” EU decision-making (Majone 1994). In our merger cases, this would suggest the acceptance of the technocratic *modus operandi* of the Commission’s competition policy. By contrast, organized labour contributes to Euro-democratisation, if it encourages European collective action and a politicisation of the EU policy-making. As political mobilisation frequently led from “contestation to democracy” at the

national level (Giugni *et al.* 1998), a similar process is plausible at the EU level, too. Increasing European collective action would contribute to the rise of a European public sphere and to a politicisation of the EU-integration process (Imig/Tarrow 2001). In fact, (European) democracy requires a public sphere in which political leaders are obliged to legitimize their political actions (Wolton 1993). Euro-democratisation is only likely to happen if the process of European integration becomes political in its character. Moreover, while I would question the necessity of a pre-existing "national unity" (Rustow 1970) or a "demos" (Grimm 1995) as a condition for democratisation, I would still argue that democracy also requires a feeling of communality among its citizens. Yet, collective action could also contribute to the rise of a common identity. People start recognising that they belong to the same polity as soon as they begin to act together, even if they might contest its policies.

Given the increasing importance of EU policy-making, a Euro-democratic strategy of organized labour's activities seems imperative. Richard Hyman (2001:175) argued that supporting the emergence of an active European civil society and citizenship should be an important task for unions. In turn, some unions have actually increased their EU-level actions, as demonstrated by the recent emergence of transnational demonstrations and strikes (Lefébure 2002). Most studies, however, emphasize that EU-level unionism is primarily based on union executives and experts (Turner 1996; Dolvik 1997; Gobin 1996). This can be explained by the compatibility of these activities with the EU's technocratic mode of functioning. EU institutions may favour procedural union participation in European policy-making, because they require the unions' compliance, expertise and legitimacy to act in some policy fields. In turn, Euro-technocracy could also be a valuable EU-polity option for organized labour, as it provides access to European policy-making. However, this strategy might also imply that unions have to

marginalize some of their original objectives, given the selective interest of Community institutions regarding the participation of trade unions in its decision-making process

The trade unions might also adopt a democratic re-nationalisation strategy. In fact, the history of the labour movement is profoundly linked to the *national* welfare state (Pasture/Verberckmoes 1998). However, a democratic re-nationalisation strategy seems to lose its feasibility, precisely because national policies face firm restrictions in an integrated European and global economy.⁵ In turn, a technocratic re-nationalization strategy may emerge (Streeck 1999). Its typical sign is a particular design of social pacts, not as (social democratic) compromises between conflicting class interests, but as monistic alliances to enhance the national competitiveness (Rhodes 1997). Eventually, a national “competition state” (Cerny 1990) would replace the national welfare state. However, in relation to transnational company mergers, the prospect of any re-nationalisation strategy is very restricted. National governments cannot decide whether and under which conditions to allow, or to block, transnational company mergers. In fact, according to the EU law, only the European Commission can do that. Therefore, if the unions fail to influence the European Commission, it can be assumed that they will not have any impact whatsoever in this field.

2. Competition policy - a case of technocratic decision-making

The European competition policy represents a paradigm case of technocratic decision-making. This is not so much because its actors are technocrats, but rather because the notion of *overt political* debate and conflict is absent in this policy field. Although the Council adopts the European competition law by a qualified majority, the European Parliament has no co-decision role in this policy area. Since the national parliaments cannot co-determine the European law-making process, the democratic legitimacy of the European competition policy is very weak. Yet, some scholars have

argued that there can be legitimate EU policy-making beyond the classic democratic constitutional state: namely the decision-making by committees in the EU, in which the concerned interest groups would be represented and would, thus, produce through their deliberation a corresponding, issue-specific European *demos* (Joerges 2001: 7). However, while some EU committees recognize social conflicts and try to come to decisions that are acceptable to a large number of interest groups, the decision-making procedures in the field of EC competition policy do not aim to make the logic of market integration compatible with other social concerns and interests. While competition lawyers, economists and experts from the concerned companies and EU member states advise the Commission in its conduct of the competition policy, the Commission is free to choose which ideas and proposals to adopt (McGowan 2000). It implements autonomously the EC competition policy and holds extensive investigation, decision and fining powers. Finally, the College of Commissioners adopts the decision of its Directorate-General for Competition whether, or under which conditions, to allow European mergers and acquisitions.

This mode of functioning raises the problem of accountability. Nonetheless, supporters of technocratic decision-making have argued that it would be legitimate if compared with the supposed "negative consequences" of the "election pressures" for the "quality of legislation" (Majone 1994: 94). Hence, the existence of an objective and universal criteria for the definition of the decision-making "quality" is taken for granted.⁶ The assumed impartiality of the decision-makers is very questionable. In fact, regulative agencies frequently tend to be shaped – and at times even captured – by powerful political interest groups and paradigms. J. J. H. Weiler *et al.* have demonstrated that technocratic regulations often mask "ideological choices which are not debated and subject to public scrutiny beyond the immediate interests related to the regulatory management area" (1995: 33). In fact, the technocratic structure of the

European competition policy depends on the prevalence of the liberal market doctrine, which is indeed a *political* paradigm.

According to the political will of the Commission the effects of a proposed concentration “on competition” must be the only criterion of its merger control policy (Rakovsi 2002; Monti 2002). Additional concerns, such as labour, have been excluded from the cognitive image of the reality that guides the functioning of the EU competition policy. Employment issues are not part of the “frame of references” – or “*référentielle*” (Muller 1994) – of the Commission’s competition policy.⁷ Given this setting, it would be reasonable to expect that unions have no role to play in this policy field. However, since 2000 unions have increasingly been trying to influence the European competition policy (Rakovsi 2002). Their specific activities, however, have differed considerably. While, for instance, the ABB-Alstom workers’ representatives tried to politicize the competition policy, the Alcan-Pechiney-Algroup workers’ representatives adopted a strategy that was compatible with the technocratic competition policy *référentielle* of the Commission.

3. The Euro-democratic ABB-Alstom case

On 10 April 2000 almost 2,000 European ABB Alstom Power (AAP) workers demonstrated in Brussels to protest against the post-merger restructuring plan of AAP to cut a fifth of its workforce. They also protested against the lack of information and consultation and urged the management to resume European negotiations to prevent the negative social consequences of the merger. Finally, they urged the Commission to take full account of the employment policy objectives of the Amsterdam Treaty in its competition policy (EMF 2000). This demonstration also generated significant press coverage, especially in France. Although it was not the first EU-level union demonstration, it was the first time that a European Works Council, national unions and

the European Metalworkers' Federation (EMF)⁸ had jointly organized such an event (Lemaître 2000). The ABB Alstom unions triggered European collective action and thus contributed to the creation of a European public sphere and a politicisation of the EU-integration process, i.e. to Euro-democratisation, according to my analytical framework. The following sections will now describe the chain of events, which led to this outcome.

3.1. *Organized labour's first reactions after the ABB-Alstom Merger*

Both the ABB and the Alstom EWC learned about the ABB-Alstom merger project via the press. ABB and Alstom informed and consulted their EWCs, but only after the approval of the merger project by the European Commission. The EWCs maintained that they had not been consulted in good time by either the management or the Commission. The Alstom EWC wrote to the president of the European Commission questioning the Commission's authorisation of the ABB Alstom Power merger, because it had not consulted the workers' representatives and did not consider any aspects other than those of competition policy. Moreover, the Alstom EWC urged the *Président-Directeur Général* (PDG) of Alstom to meet its EWC. Subsequently, these letters were translated into German, French, English and Spanish and distributed – together with an additional leaflet – in most European Alstom sites. Commission President Romano Prodi responded that the Commissioner in charge of the EC competition policy was not available at the moment but would be willing to meet an EWC delegation later. Conversely, the Alstom management agreed to meet the EWC. At this meeting in July 1999, the central human resources director of Alstom declared however that he was no longer competent to say anything about Alstom's former power-station sector. This statement further strengthened the outrage of the workers' representatives: it was too early to discuss the merger, because it had not taken place and then it was too late to discuss it, because it had already taken place.

3.2. *The Mannheim seminar*

In November 1999, the German IG Metall union organized an international ABB Alstom trade union seminar in Mannheim. It gathered approximately 40 people, i.e. the general secretary of the EMF, ABB and Alstom EWC members, union officials and experts from 20 unions out of 11 different countries. Compared with the failure to bring together all European employee organisations during the previous BBC-ASEA merger, which led to the creation of ABB in 1988 (Hammarström 1994), the ample participation at the Mannheim meeting represents remarkable progress. The seminar participants inferred from the reports of the EWC representatives and union experts that the AAP management was planning a company restructuring that would threaten 12,000 of the 58,000 AAP jobs. The participants expected that the restructurings would hit AAP plants proportionally, which triggered a certain feeling of common interest. This led to the unanimous adoption of a Mannheim declaration. It urged the management to secure employment, prevent plant closures and to inform and consult the worker representatives. Furthermore, the declaration proposed a European day of action.

3.3. *Politicising the conflict – the European Parliament*

As the answer of Commission President Romano Prodi to their letter did not satisfy the AAP worker representatives, the French CGT unionist and secretary of the Alstom EWC discussed the AAP case with MEPs from the radical United Left group. Subsequently, the Alstom EWC wrote a letter to all groups of the European Parliament emphasising that neither the Commission nor the management consulted the two EWCs, even though the AAP merger might lead to 10,000-15,000 dismissals. On 19 January 2000, several social democratic, green and communist MEPs received a delegation of 25 AAP works councillors and unionists from six countries in Strasbourg. In turn, on 17

February 2000 the EP adopted a resolution "On restructuring of European industry, with special attention for the closure of Goodyear in Italy and the problems of ABB Alstom". It emphasized that the Alstom EWC was not informed either before or after the merger and that "the Commission, when authorising the merger between ABB and Alstom, did not evaluate the possible social consequences of this operation, thus not respecting Article 127(2) of the EC Treaty" that states that "the objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies and activities" (European Parliament 2000). The EP suggested to the Commission: 1) not to authorize mergers, if the companies concerned did not respect European social legislation, especially on information and consultation of the (European) employee representatives; 2) to undertake without delay an evaluation of the directive on collective dismissal and propose effective sanctions; and, 3) to speed up its re-examination of the EWC directive, in order to strengthen the EWC's information and consultation rights. The Commissioner for Employment and Social Affairs, Anna Diamantopoulou, concluded the day before in another meeting with an Alstom EWC delegation that in her opinion the management in the AAP case had not respected the information and consultation rights of the ABB and Alstom EWC. She also promised to write to the French minister of employment and to urge Commissioner Monti to respect the social obligations of the Treaty.

3.4. Negotiating a new European Works Council

After the criticism from the European Parliament, the French Government and the Commissioner Diamantopoulou, the AAP management pressed for a rapid negotiation of a new AAP EWC, to prevent to be taken to court for an infringement of the workers' consultation rights. At the first meeting with the AAP workers' representatives, the Chief Executive Officer (CEO) asked the workers' representatives whether they agreed

to consider this “Special Negotiation Body” (SNB) as provisory EWC. Most worker representatives reacted positively. They believed that this step of the management would be a good sign for future labour-management relations. However, these hopes were rapidly dashed, when they realized that the management only recognized the SNB in order to speed up the implementation of a restructuring plan, which included the reduction of the AAP workforce by 20 percent.

3.5. *The Brussels demonstration*

The announcement of the collective dismissal plan reinforced the motivation to organize a European action day. Almost 2000 AAP workers participated in the European demonstration on 10 April 2000 in Brussels, i.e. at the location of both the central AAP headquarters and the European Commission. While most protesters came from the various French, German and Belgian AAP plants, Italian, Portuguese and Swiss unionists also participated at the multi-coloured European AAP demonstration. The demonstration also produced headlines in the national and the concerned regional press, especially in France.

The ABB Alstom Power (AAP) case underlines that a European trade unionism is slowly emerging, not only among the extraordinarily committed AAP EWC members and union activists, but also at the level of the rank-and-file. The ABB Alstom unionists did not accept the massive post-merger collective dismissal plan and thought that their protest should also reach the AAP central headquarters in Brussels. Moreover, they protested against the European Commission, because they felt that they had no "voice" in its (merger control) policy. This virtually impelled the AAP unions to adopt a Euro-democratic EU-polity strategy.

3.6. *Effects of organized labour's activities in the ABB Alstom case*

The AAP demonstration did not prevent the restructuring plan, but did contribute to delaying and reducing the amount of the planned dismissals, especially in France and Germany. Although the management refused negotiations about the restructuring plan at the EU-level, the demonstration was a success in the eyes of the local AAP unionists. It considerably increased their self-confidence in view of the subsequent, successful mobilisations and social plan negotiations in France and Germany (Altmeier 2001, Heller 2000).

The ABB Alstom resolution of the European Parliament (2000) and the ABB Alstom demonstration also highlighted the need for better European employee consultation rights and an integration of social concerns in the EC competition policy. In autumn 2000, the ETUC (2000) drafted a merger manual for EWC representatives, which refers to the ABB Alstom resolution of the European Parliament and to Article 127(2) TEC: "The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies and activities." This was not the first time that the conflicting relation between the social and competition policy objectives of the EU became an issue at the EU-level. However, whereas in 1999, a judgment of the European Court of Justice triggered a debate about the extent collective agreements were sheltered from competition law (Brun/Hellsten 2001; Voudsen 2000), the AAP workers' representatives and, as a result of their action, the ETUC and the European Parliament turned the debate upside down by reviewing the extent European competition policy is sheltered from the EC Treaty's social and employment provisions. I cannot enter further into the debate here about the relationship between the EC social and competition law. Nevertheless, it is evident that the EU's social, employment and competition objectives conflict with each other. The Commission has to find a balance

between conflicting objectives in carrying out its competition policy. But such a reconciliation of interests would question the technocratic decision-making logic of the Commission, since any reconciliation of conflicting interests implies *political* choices. Conflicting interests can be reconciled in various ways, favouring one or the other of the involved parties. But if Commission acknowledged this fact, it would undermine the legitimacy of its competition policy, which is based on the technocratic assumption that there is always only *one* solution available. It is therefore not very surprising that the Directorate-General for Competition continues to reject any politicization and democratization of its merger-control policy. Yet, the following Alcan-Pechiney-Algroup case study also demonstrates that in 2000 the General-Directorate for Competition started to integrate the European workers' representatives in the conduct of its merger control policy, which can also be understood as a pragmatic reaction to the politicisation threats expressed by the European Parliament and unions.

4. The Euro-technocratic Alcan-Pechiney-Algroup (APA) case

Immediately after the announcement of the APA merger project, the concerned EWC leaders set up a joint working group within the European Metalworkers' Federation (EMF). It aimed to limit the negative social consequences of the merger and sought corresponding negotiations with the management of the APA companies. Moreover, the working group also lobbied the Commission to prevent the authorization of the merger. The Commission recognized the EMF as a sufficiently interested party and invited it to its APA control merger hearing. In turn, the workers' representatives adapted a language that fitted well into the technocratic logic of the Commission's merger control policy. Finally, the Commission blocked the Alcan-Pechiney leg of the APA merger, which suggested that organized labour successfully adopted a Euro-technocratic strategy in the APA case.

4.1. *Organized labour's first reactions*

On 11 August 1999, the executives of the Montreal-based *Alcan*, the Paris-based *Pechiney* and the Zürich-based *Algroup* announced a three-way merger project to create APA, which would be the largest aluminium company in the world (Amernic/Craig 2001). The companies expected that the merger would increase profits by US \$ 600 million, due to the resulting post-merger “synergies”, such as the projected five per cent reduction of the combined 91,000 APA workforces. The merger plan worried the workers’ representatives of all three companies. Without delay, the EWC leaders of Alcan, Algroup and Pechiney agreed a joint meeting within the EMF and urged the managements of the three APA companies to organize an extraordinary EWC meeting.

4.2. *The first extraordinary meetings of the three European Works Councils*

At its extraordinary meetings, the EWC representatives primarily tried to obtain additional information about the APA merger and its consequences. They also used the EWC as a tool to foster a coordinated transnational response to the announced post-merger redundancies. The Algroup’s EWC leaders carefully prepared their extraordinary EWC meeting in Rotterdam (26.08.1999). At this meeting, the management was confronted with a well-coordinated set of questions and requests from the EWC leaders and union experts. They urged Algroup’s CEO to guarantee a wide-ranging involvement of the EWC during the whole merger process.

Pechiney’s management did not present any supplementary information to the worker representatives either at the extraordinary French Group Works Council (31.08.1999) or at the extraordinary EWC meeting (07.09.1999). Nevertheless, the Pechiney EWC quickly acquired a broad overview of the redundant activities of the APA companies, due to an analysis of its French consultancy firm; the union-related

Secafi Alpha.⁹ The Pechiney EWC forwarded the *Alpha* study to the two other EWCs, and *Secafi Alpha* established close working relations with *ISA Consult* and *IMU-Institut*, the consultancy firms of the German works councils of Alcan and Algroup, respectively.

Although the management did not spell out the concrete employment consequences of the APA merger, the *Alcan* EWC did not question the management at its EWC meeting (8 September 1999). Nevertheless, the Alcan worker representatives also discussed the reports from the EWC meetings of Algroup and Pechiney and agreed to establish the joint EMF working group of APA's EWC leaders.

4.3. *The first joint meeting of APA EWC leaders in Brussels*

On 22 October 1999, delegations of the three APA EWCs and their trade union coordinators met each other in Brussels in the framework of the EMF to discuss the APA merger case.¹⁰ This meeting was not only meant to exchange information, but also to discuss and adopt a joint European APA strategy of organized labour. At the EMF meeting the worker representatives from the three corporations agreed on the following two lines of action: first, to seek EU-level negotiations with the three corporations on a new APA EWC and on a transnational job security agreement; secondly, to urge the Commission to involve the EMF in its APA merger-control decision-making process.

However, it is noteworthy that neither of the two approaches was backed up by a mobilisation of organized labour's rank-and-file or by any other attempt to raise public awareness. The EMF and the European workers' representatives of APA did not try to politicize the APA merger case. This mirrored the frustration of the Pechiney's EWC representatives about the "merely rhetorical" commitments of politicians in earlier restructuring cases. Moreover, the APA workers' representatives hoped that they could

reach an agreement with management without having recourse to collective action, given the management's interest in a trouble-free merger process.

4.4. *Negotiating transnational job security agreement?*

At the EMF meeting in Brussels a so-called "group of six" was empowered to resume *negotiations* with the APA management about a wide range of issues, ranging from the set up of a new APA EWC to the adoption of a job security agreement.¹¹ In mid-December the central human resource directors of Alcan Europe, Pechiney and Algroup eventually agreed to meet the EWC leaders and to discuss the mechanisms for establishing a future APA EWC. However, the three APA companies did not agree among themselves about several issues, such as the involvement of union officials in the discussions. Nevertheless, on 27 January 2000, the EMF/EWC "group of six" eventually met the three APA Human Resources directors in Zürich. Apart from the implicit recognition of this EMF working group as negotiation partner, the meeting did not produce any results. There was a decision to meet again on 24 February 2000, but this meeting never took place. On 18 February 2000, the Pechiney EWC withdrew its two members of the "group of six" since it did not want anymore that this group would start negotiations about post-merger company restructurings with the central APA management (cf. Levy 2002; Verdier 2000).

It is worth mentioning that the departure of the Pechiney EWC representatives also resulted from organized labour's technocratic, top-down approach in the APA case. Incidentally, the Pechiney EWC member and CGT delegate, Claude Verdier, explained that he opposed transnational negotiations due to the lack of involvement of the national unions and the rank-and-file in this process:

"Faut-il négocier au niveau européen? Négocier au nom de qui? Au nom d'une instance supranationale hors l'interventions des syndicats et des salariés? Négocier avec quel objectif? Celui de monnayer tel site contre tel autre, dans tel pays européen plutôt que dans tel autre? Opposer les pays d'Europe contre le reste du monde alors que cette fusion couvre quarante-neuf pays sur les trois continents? Quel décalage avec nos conceptions!" (Verdier 2000:7).

However, this top-down approach nevertheless did produce some results, not in relation to the failed negotiations with the management, but regarding the EMF's second objective; that of influencing the Commission's merger control decision.

4.5. *Influencing the Commission's APA merger control decision*

The role of organized labour in the APA merger has to be seen in a wider context. The Commission must consult the employee representatives of merging undertakings, if they have requested to be heard and show that their representative status is recognized under the relevant law.¹² However, the Commission did not consult any employee representatives before the Total/Fina-Elf (21 January 2000) and the APA merger (1 February 2000) hearings.¹³ This mirrors indecisive union action in the first place. The employee representatives were usually not aware that they had to submit an explicit request to be heard by the Commission (Article 18 (4) Merger Regulation). Moreover, the Commission and the undertakings concerned usually showed no interest in enhancing the participation of organized labour in the merger control procedure. Some companies, such as ABB and Alstom, avoided informing and consulting their EWC representatives prior to the authorisation of the merger by the Commission, which effectively circumvented the right of the employee representatives to be heard by the Commission. Therefore, the recognition of the EMF as a sufficiently interested party in

the APA case by the Commission constituted an important step forward for organized labour.

At their first meeting in Brussels, the EWC leaders of the three APA companies also chose to contact Mario Monti, the Commissioner in charge of the competition policy. However, the main concern of the workers' representatives, i.e. the negative employment consequences of the merger, was not mentioned in the letter that the EMF general secretary, Reinhard Kuhlmann, wrote to the Commissioner. They assumed that even massive post-merger collective dismissals would not prevent the Commission from approving the APA merger. Whereas Kuhlmann identified some positive aspects of the merger, he stressed that APA probably would acquire a dominant position in some product markets. Kuhlmann explicitly asked to be heard in the course of the Commission's APA merger control procedure and requested a meeting with concerned officials. Hence, the EMF framed its objections with regard to the APA merger in a language that was completely compatible with the logic of the Commission's merger-control policy. Kuhlmann's letter to the Commissioner Monti proved to be effective. An informal meeting between the two took place, following the Commission's decision to study the APA case in more detail. However, on 14 January 2000 the EMF still did not know the date of the Commission's APA merger hearing, not to mention any other substantive information about the Commission's proceedings.

On 21 January 2000, the DG Competition invited the EMF to its joint Alcan/Pechiney and Alcan/Algroup merger hearing that was scheduled for 31 January and 1 February 2000. But the EMF secretariat did not forward it at once to the EWC leaders and union experts of APA. Therefore, the invitation of the Commission reached the APA EWC representatives on 25 January 2000. This demonstrates major deficiencies of the significantly understaffed EMF secretariat. However, it is even more striking that the Commission did not e-mail the EMF the preparatory APA hearing

documents until after office hours on the Friday before the Monday morning meeting of 31 January 2000.¹⁴

The very short time frame of the Commission's merger control procedure caused crucial difficulties for the employee representatives. It is difficult to imagine how workers' representatives of different countries and companies, which met each other for the first time only some weeks previously, could prepare a hearing in a coordinated way. Bottom-up consultation processes in democratic organisations are necessarily more time-consuming than the respective top-down processes in managerial hierarchies. Thus, the workers' representatives at the hearing¹⁵ had no chance to prepare jointly the hearing, which further increased the mutual suspicions among the European APA workers' representatives. However, at the hearing itself the emerging tensions within organized labour remained under the surface.

In its initial investigation the Commission came to the temporary conclusion that the two notified Alcan/Algroup and Alcan/Pechiney mergers would be incompatible with the common market. But the Commission gave the representatives of the undertakings to be merged, its clients and competitors and the employees representatives the opportunity of being heard on that matter. The hearing focussed not only on the overall impact of the merger, but tackled the competition problems in each individual product market with the intention of identifying remedies, such as disinvestments, that would permit a conditional endorsement of the concentration. While the APA managements tried to dismiss the reservations of the Commission, the representatives of APA's clients and competitors emphasized their worries with regard to the merger. The workers' representatives neither constantly endorsed nor discharged the reservation of the Commission concerning the APA merger. They did not back all reservations to prevent the merger, because they had no particular interest in damaging the competitive position of the three APA companies. However, they were also aware that the only available

state intervention that could prevent the APA merger – and the ensuing collective dismissals – consisted precisely in the Commission’s merger control procedure. Therefore, they supported the concerns of the Commission regarding the most critical parts of the APA merger operation, such as the resulting joint dominant position of Alcan’s *Alunorf* and Pechiney’s *Rhenalu* aluminium rolling plants. Furthermore, the workers’ representatives also presented evidence, which proved that the Pechiney management instructed local customer relation employees to transfer sensitive customer data from one plant to another, in order to bypass the predictable disinvestment requirements of the Commission concerning the aerosol can sector.

Finally, the Commission concluded that the Alcan/Pechiney merger would create a dominant position in the markets for beverage can body stock, aerosol cans, can sheet and aluminium cartridges. On 14 March 2000, it conditionally approved the Alcan/Alusuisse merger as an independent concentration, while Alcan and Pechiney withdrew their merger notification (Giotakos 2000: 11).¹⁶ With this withdrawal, the three APA companies were trying to gain additional time to find a series of remedies that would eventually alleviate the Commission’s concerns concerning the Alcan/Pechiney merger. But while APA proposed solutions for almost all product markets, Alcan failed to sell its participation in the *Alunorf* rolling plant (Giotakos 2000: 11). As a result, Alcan(-Algroup) and Pechiney finally abandoned the APA project. Obviously, the APA workers’ representatives were pleased with this outcome. The approved integration of Algroup into Alcan set off fewer “synergy effects” – or better fewer “collective dismissals” – than planned in the APA project.

4.6. *Effects of organized labour’s activities in the APA case*

The negative response of the Commission regarding the APA merger case seems to suggest that the union’s adoption of a Euro-technocratic strategy was rather successful.

But due to the confidentiality of the deliberations of the Commission, it is not possible to measure the impact of organized labour's arguments in the final decision-making process. Nevertheless, it is evident that the lobbying of the EWC representatives supported the Commission's negative assessment. Given the Commission's lack of information concerning the internal functioning of the Alunorf joint venture, it had based its initial argumentation essentially on rational choice theory.¹⁷ Therefore, the Commission at last supported the involvement of employee representatives, seeing that it added empirical substance to the Commission's appraisal. This conclusion is also confirmed by the more open-minded attitude of the DG for Competition about the role of unions in its competition policy. Although the director of the DG Competition still refuses to consider social and employment aspects, he has explicitly recognized that the information provided by unions and work councils can compensate the Commission's information deficits with regard to the companies to be merged:

"Mais souvent les travailleurs, qui connaissent parfaitement leur terrain, peuvent contribuer à combler le déficit d'information entre les entreprises notificantes et la Commission et aider cette dernière à apprécier le cas en meilleure connaissance de causes, y compris sur les questions de concurrence" (Rakovsi 2002: 21).

In 2001 the EWC leaders of APA evaluated their action positively, despite the tensions between the Pechiney and Alcan/Algroup EWC representatives. However, in summer 2003 this positive evaluation dramatically changed again, after Alcan launched a successful takeover bid against Pechiney. Once more, the EWC representatives of Alcan and Pechiney tried to influence the Commission. The EWC of the two companies again mandated the EMF, which in turn requested to be involved in the merger control procedure of the Commission.¹⁸ However, on 29 September 2003 the Commission cleared the Alcan takeover bid for Pechiney without entering into the second phase of

its examination procedure and without hearing any third parties including the EMF. Although the review of the Commission “highlighted serious concerns in a number of markets, Alcan was able to address these concerns by offering to divest a number of businesses” (European Commission 2003b).

Hence, the situation in the 2003 Alcan-Pechiney takeover was entirely different if compared to the APA case. In the first APA merger case *all* APA companies had to accept the disinvestments requirements of the Commission. The 2003 takeover of Pechiney allowed Alcan to enforce unilaterally the disinvestments requirements of the Commission against the will of the Pechiney management (Rodier 2003). Hence, the worker representatives of Pechiney and Alcan could not hope anymore that severe disinvestments requirements would finally prevent the takeover, in contrast to the first APA merger case. It is therefore not very surprising that both the workers’ representatives and the management of *Pechiney* regretted that the APA merger failed in 2000. Without doubt, it would have allowed a “more balanced and consensual development” than the final Alcan takeover (Secafi Alpha 2003). This suggests that the prospects of a Euro-technocratic strategy of organized labour in the field of competition policy are much more limited than one might have thought after the initial blockage of the APA merger. In fact, one has also to bear in mind that the Commission approves approximately 90 per cent of the notified mergers and takeovers before entering into the second phase of its anti-trust procedure and thus, without a formal hearing of the concerned third parties (McGowan 2000: 137). Therefore, the adoption of a *mere* Euro-technocratic union strategy does in almost all merger and takeover cases not seem to be very promising. While it certainly makes sense to be involved in the “technocratic” merger control procedure, organized labour would increase its chances to reduce the negative consequences of post-merger company restructurings if it would also mobilize its membership and politicize the company concentrations.

5. Conclusion

By applying a typology of various strategies that trade unions might adopt in response to the EU and, especially, European competition policy-making, this paper demonstrated that the unions have a range of feasible options. This implies the rejection of any kind of structuralist determinism. The paper presented two cases that questioned the suggestion that organized labour has no role whatsoever in the European merger control policy. While the analyzed unions adopted a Euro-democratic strategy in the ABB Alstom Power case, the same unions adopted a Euro-technocratic strategy in the parallel APA case. The EWCs and the European trade-union organisations provided a useful framework for transnational trade-union cooperation, but they did not predetermine the adoption of a specific strategy. This questions the conclusions of Corinne Gobin (1996) and Jean-Marie Pernot (1998), who argued that the rising access of local and national unionist to EU politics would engender a dissemination of a Euro-technocratic jargon and policy style, rather than a rise of European collective action.

Both company merger announcements triggered a transnational trade union reaction. This seems to confirm the suggestion that "historically, as markets expanded unions had to enlarge their strategic domain to keep workers from being played off against each other, undermining wage and labour standards" (Martin/Ross 1999: 312). However, in both merger cases, transnational trade-union cooperation was limited to the core of Western Europe. This suggests that expanding markets do not sufficiently explain transnational trade union cooperation. However, the findings of my case studies also do not confirm the notion that the competition for local production capacities must preclude transnational trade union cooperation (cf. Streeck 1999; Hancké 2001).

The regulation of transnational company mergers takes place exclusively at the EU level. Therefore, the Commission and the European Parliament represented a focal point

for the analysed EWCs and unions. Already in an early stage, both the ABB-Alstom and the Alcan-Pechiney-Algroup workers' representatives addressed the Commission. However, only in the APA case were European workers' representatives invited to a merger control hearing. This suggests that the different accessibility to the Commission's DG Competition might explain the differences between the two cases. While the APA merger was likely to produce a dominant position in different product markets, the ABB Alstom merger was unproblematic from the point of view of the EC competition policy. Therefore, the Commission's merger control officials had no interest in hearing the ABB Alstom representatives. After the APA case they acknowledged that organized labour could provide useful information in tricky merger cases. This suggests that organized labour can only aspire to have a say within the technocratic EC merger control procedure, if a case is "problematical" and if the Commission is in need of additional internal information, that is in approximately five per cent of the notified merger cases. In all other cases, organized labour cannot make itself heard within the Commission's regulatory decision-making process. This considerably reduces the scope of a Euro-technocratic strategy. The absence of "voice" within the institutional framework of the EC competition policy is likely to increase the interest of organized labour in Euro-democratisation. Incidentally, the same also seems to apply to the European Parliament, which also has no co-decision power in this policy area. This might explain why it turned out to be a useful partner of organized labour in the ABB Alstom case. However, the adoption of a democratic Europeanisation strategy could, ironically, also create more leverage for the pursuit of a Euro-technocratic strategy. In fact, the more the Commission is challenged politically, the bigger is its interest in integrating latent protests in order to sustain the myth of an 'apolitical' merger-control policy.

The difference between a technocratic and a democratic polity orientation of organized labour also reflects the ability of the involved unionist to politicize the respective markets. The more the unionists succeed in politicizing the "markets" in which the companies operate, and the more governmental institutions are willing to intervene in the economy, the more the unions adopt a democratic polity strategy. In the ABB Alstom Power case, the (French) state is still the major client of the company's products. Correspondingly, Alstom is more sensitive to political pressures than the aluminium companies that sell their products neither to the state, nor to other end users that care about the political and social implications of the aluminium production process. This might explain why the Alstom EWC representatives demonstrated a higher affinity to political trade-union action than their Pechiney colleagues.

Finally, the ABB Alstom case suggests that the different cultural backgrounds of the national unions do not preclude European collective action. However, the ABB Alstom demonstration as well as the eventual breakdown of the EMF working group in the APA case also demonstrate that transnational trade union cooperation is critically dependent on mutual "learning and trust-building" (Klebe/Roth 2000) and "intense discussion processes" (Kelly 1998: 127) amongst activists and workers. Probably, this points to the most important difference between the two cases: in the ABB Alstom case, the leading German and French trade unionists already knew each other from the prior Alstom EWC. Moreover, they also made their European activities public, through leafleting and the press. The leading European APA representatives, on the other hand, who did not know each other, even failed to involve all members of the respective EWCs in their European activities. This illustrates that Euro-democratisation is difficult but not impossible.

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Notes

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- ¹ This research is based on document analysis, participative observations and expert interviews. I have studied documents of the German, French and European work councils involved and the corresponding company-level, national and European metalworkers' union organisations. I have concluded 30 semi-structured interviews, with European, national, and enterprise-level trade union leaders, work councillors and business consultants. The research on which the article is based has been supported by the *Irish Research Council for the Humanities and Social Sciences*, the *Swiss Research Foundation*, the French *Institut de Recherches Economiques et Sociales* and the *European University Institute*.
- ² On 22 September 1994 the Council approved the European Works Council Directive (94/45/EC), which requires companies with more than 1000 employees, and at least 150 employees in each of two or more member states, to negotiate the set up of a European Works Council with its employees' representatives. The Directive seeks to ensure that the employees' representatives in multinational companies are informed and consulted by the central European management on matters of a transnational nature affecting the employees' interests (cf. Müller and Platzer 2003).
- ³ The verb "to nationalise" has different meanings: first, the transfer of a branch of industry from private to state ownership and, second, to make something

distinctively national. In this article re-nationalisation is used to refer to its second meaning, as a concept that is opposed to Europeanisation.

- ⁴ This typology provides us with an analytical framework, which facilitates the analysis of the various strategies that actors can pursue regarding the future European integration process (Erne 2002). Nevertheless, this typology should not be read as an instruction manual for political action. Real-life actors can hardly afford to pursue a simple, clear-cut strategy, because real situations are hardly ever clear-cut. The typology does not aim to put every case into one specific category, but this does not mean that one has to give up using clear-cut typologies, since they can facilitate the explanation of the incongruencies and ambiguities of the cases in question.
- ⁵ Autonomy is the essential precondition of any democratic polity. Democracy as a system of self-determination is only possible if the respective polity has the capacity to affect the processes that shape the lives of its citizens. Governments can only be held accountable if they *can* implement the will of the citizens. Correspondingly, a decline of the autonomy of the nation-state erodes not only the essence of the democratic (welfare) state, but also the effectiveness of any democratic re-nationalisation strategy.
- ⁶ However, if citizens have divergent preferences, this assumption turns out to be problematic: What might be a "good" regulation for one citizen might be a "bad" one for another.
- ⁷ Yet, the EC Treaty states that the Commission must place its policies in the framework of the attainment of the Treaty's fundamental objectives, which includes employment and social objectives. It is noteworthy that the Court of First Instance stated in 1995, i.e. before the reinforcement of the Treaty's employment objectives through the Amsterdam Treaty (cf. Article 127 (2) EC), that the Commission may

reconcile its assessment of whether a concentration is compatible with the common market, “with the taking into consideration of the social effects of that operation if they are liable to affect adversely the social objectives referred to in Article 2 of the Treaty. The Commission may therefore have to ascertain whether the concentration is liable to have consequences, even if only indirectly, for the position of the employees in the undertaking in question, such as to affect the level or conditions of employment in the Community or a substantial part of it.” Case T-96/92, *Comité Central d’Entreprise de la Société Générale des Grandes Sources and others v Commission*, ECR 1995, II-01213, para. 28.

- ⁸ The EMF is the umbrella organisation of almost all national metalworkers’ unions of Europe.
- ⁹ According to the French labour law the works council of a company can commission an independent analysis of the company’s annual accounts as well as specific studies in case of major company restructurings at the expenses of the management. This provision created a market for union-related consultancy firms, such as the CGT-related Group Alpha (Clavel-Fauquenot and Marignier 2000). The German *Betriebsverfassungsgesetz* includes similar provisions regarding company restructurings.
- ¹⁰ Incidentally, in September 1999 the *United Steelworkers of America* – the union that organises the Alcan workforce in the US and in Canada – rejected the proposal of the three APA EWCs and the EMF to discuss the APA merger also within the *International Metalworkers’ Federation*.
- ¹¹ Incidentally, the EMF secretariat and the IG Metall adopted the same strategy as in the parallel Ford-Visteon case, which led to a binding EU-framework agreement

(European Foundation for the Improvement of Living and Working Conditions 2001: 77-81).

- ¹² Case T-96/92, *Comité Central d'Entreprise de la Société Générale des Grandes Sources and others v Commission*, European Court reports 1995, pp. II-01213, para 56.
- ¹³ "Fusions d'entreprise. Les syndicats s'invitent à Bruxelles", in: *Liaisons Sociales Europe*, N° 3, 9 22 February 2000: 1.
- ¹⁴ European Commission, *letter to Alcan Aluminium Limited and Alusuisse Lonza Group AG. Merger procedure statement of objections. Non-confidential version to third parties. Case No. COMP/M. 1663 – Alcan/Algroup*, Brussels, 14 January 2000 and European Commission, *letter to Alcan Aluminium Limited and Pechiney. Merger procedure statement of objections. Non-confidential version to third parties. Case No. IV/M. 1715 – ALCAN/PECHINEY*, Brussels, 14 January 2000.
- ¹⁵ I.e. the *Group Alpha* consultant and an additional member of the Pechiney EWC as well as IG Metall official in charge of the Alcan EWC. The Swiss and German union officials in charge of the Algroup EWC as well as the secretary of the Pechiney EWC could not attend the Commission hearing, because its date conflicted with the date of another APA working group meeting.
- ¹⁶ European Commission, Case No COMP/M. 1663 –ALCAN/ALUSUISSE, 14.03.2000.
- ¹⁷ "Economic theory suggests that the existence of a joint venture can lead either to anticompetitive parallel behaviour of the parent companies or to independent behaviour having equivalent effects." European Commission, *letter to Alcan Aluminium Limited and Alusuisse Lonza Group AG. op. cit.* 14 January 2000, 5.

¹⁸ R. Kuhlmann, FEM, *Lettre à Monsieur le Commissaire MONTI*, Bruxelles, 7 August 2003, available at: <http://perso.wanadoo.fr/lacgtpechiney/doc50.htm>.