Case Number: EWC/25/2019
21 January 2020

CENTRAL ARBITRATION COMMITTEE
TRANSNATIONAL INFORMATION AND CONSULTATION OF EMPLOYEES REGULATIONS 1999 AS AMENDED BY THE 2010 REGULATIONS
DECISION ON COMPLAINTS UNDER REGULATION 21

The Parties:

Frank Mueller and others

and

Vesuvius Plc

Introduction

1. On 14 October 2019 Mr. Frank Mueller, as chairman of the Vesuvius Plc European Works Council (the Complainants/the EWC), submitted a complaint against Vesuvius plc (the Employer) to the Central Arbitration Committee (CAC) pursuant to the Transnational Information and Consultation of Employees Regulations 1999, as amended by the 2010 Regulations (the Regulations or TICER).

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 complaint. The Panel consisted of Mr James Tayler as Chair and, as Members, Mr Gerry Veart and Mrs Sue Jordan. The Case Manager appointed to support the Panel was Kate Norgate.

3. The Employer is an international engineering company headquartered in London. It operates a European Works Council Agreement (the Agreement) under Article 6 of Council Directive 2009/38/EC (the Directive) and Regulation 17 of TICER.

4. The provisions of TICER relevant to this complaint are set out at Appendix 2 to this decision.

The complaint

5. In the complaint it was contended that in September 2019 the EWC had requested to be informed and consulted by Central Management on the announced closures of two factories in Spain and the relocation of production to Poland and the Czech Republic. It was alleged that the Employer had declined the request and considered that the reorganisation was a local issue only and, therefore, outside the remit of the EWC.

6. The complaint was made under regulation 21 TICER (failure to comply with the terms of an agreement under Regulation 17); alleging a failure inform and consult the EWC and comply with the mechanics of the dispute resolution procedure .

Summary of the Employer's response to the complaint

7. The Employer responded on 30 October 2019. The Employer stated that it did not accept that the matters complained of were transnational within the meaning of the Agreement so as to require information and consultation. They contended that the matters do not fall within the EWC's remit or EWC Agreement. They contend that there was no legitimate dispute concerning the interpretation and operation of the EWC Agreement so as to require the invocation of the dispute resolution procedure.

Summary of the Complainants' comments on the Employer's response

8. By letter to the CAC dated 5 November 2019 the Complainant contended that the dispute fell within the EWC agreement and also alleged that the Employer had failed to provide the EWC with the means required to attend a hearing in the European Parliament in Brussels about this matter.

Notice of hearing and further comments from the parties

9. Having reviewed the correspondence the Panel concluded that an informal meeting was unlikely to result in a resolution of the complaint and directed that a hearing be fixed to determine the complaint. On 14 November 2019 the parties were informed that the matter had been set down for hearing at 10:30 a.m. on 28 November 2019. The parties were asked to supply submissions by noon on 21 November 2019. The Complainant complied with this time limit. The Employer did not.

10. On 19 November 2019 the Employer wrote contending that given the speed with which the CAC had listed the Hearing the Employer would be significantly prejudiced if the Hearing proceeded as listed. They requested that the hearing be postponed on the basis that there was insufficient time for the parties to prepare. The Employer contended that the Complainant had expanded the scope of the complaint to include a failure to provide the means required to attend a hearing in the European Parliament in Brussels.

11. The Employer further stated that the Company's witness had prior commitments leading "up to and on" 28 November 2019. The Employer also stated that the Employer had recently attended the CAC for a separate claim (EWC/20/2019) at which Andrew Burns QC represented the Employer (at both the informal meeting and formal hearing). Mr Burns was said to have a significant amount of knowledge and insight about the Employer and, the Employer's history and relationship with the Complainant. They contended that in the letter of 5 November 2019, the Complainant had referred to the previous complaint, "asserting that this Complaint is somewhat predicated on the previous complaint". It was contended that it was crucial that Mr Burns also represented the Company at the Hearing. Mr Burns and the partner responsible for this matter both had prior commitments leading "up to and on" 28 November 2019. The Employer stated that if the CAC granted the postponement they would happily provide details of all dates to be avoided in so far as it is possible to assist the CAC in re-listing the hearing.

12 The Complainant responded on 19 November 2019. The Complainant contended that if the Employer was concerned about the date of the hearing these concerns should have been expressed immediately on the date the hearing date was communicated on 14 November 2019 and not at a significant later time. The Complainant stated that the EWC complaint relates to plant closures in Spain which belong – as announced by the employer - to a "Vesuvius Global

Project" including 6 plant closures by the end of 2019 and further upcoming restructuring measures. The Complainant contended that the CAC should consider the EWC complaint as a matter of urgency to obtain guidance for the parties on the involvement of the EWC in the pending restructuring program.

13. The Complainant denied that the complaint was "somewhat predicated" on the previous complaint. The Complainant denied that it has made any such statement in the letter of 5 November 2019. The Complainant contended that the two complaints were not interrelated and that any experienced labour lawyer could provide legal counsel.

14. The Complainant contended that the Employer had objected to any previous EWC attempts for informal dispute resolution such as mediation and categorically dismissed any proposal for dispute resolution made by the Panel at the informal Hearing on 7 June 2019 in the previous complaint although the management attendees and their legal counsel had demonstrated their support of the Panel´s proposal at the meeting.

15. On 21 November 2019, in an attempt to deal with the Employer's concerns without excessive delay in fixing a hearing, the CAC contacted the parties and suggested an alternative date for the hearing of 17 December 2019.

16. On 21 November 2019 the Complainant asked that the CAC maintain the date previously listed.

17. On 21 November 2019 the Employer's solicitors sought extra time to obtain instructions from their client and stated that their counsel was not available on the proposed new date.

18. On 22 November 2019, at the Employer's request, the Panel granted an extension of time until 25 November 2019 to enable the Employer to respond fully.

19. The Employer responded on 25 November 2019. The Employer stated: “The Company's key management witness is not available on that date and, facing acute pressures on their time and attention leading up to the Company's financial year ending on 31 December, management are simply unable to devote sufficient time and attention between now and the year end to prepare appropriately for a hearing.”

20 On 27 November 2019 the Caseworker on the instruction of the Panel Chair responded to the parties. The Panel had sought to accommodate the availability of the Employer and its witnesses but it was important that the matter was determined without excessive further delay. The CAC always seeks to deal with matters expeditiously. It was important that complaints about consultation are resolved swiftly so that all parties to EWC agreements understand the approach that is taken to their rights and obligations. The Employer had not put forward any workable proposal for resolving this dispute in a reasonable timeframe, nor had the Employer stated the identity of its witness or provided the specific and detailed reasons why he or she could not be available.

21. The Employer stated in its letter of 25 November 2019 that the issues raised in the EWC's claims are complex and, the Company will maintain, are a gross distortion of the truth. The Company stated it wished to adduce detailed evidence on all of these issues.

22. In the CAC Response of 27 November 2019 it was stated that while there may be some complexity in the matter it was the Employer’s contention that this matter falls outside the ambit of the EWC. That was a relatively straightforward contention. There was sufficient time to prepare the matter for hearing on 17 December 2019. The Employer has been aware of it from 14 October 2019 and should have been actively preparing to respond to the claim and to attend any hearing fixed.

23. The Employer stated in its letter of 25 November 2019: “The Company's chosen legal adviser, who has been advising the Company throughout is unavailable during the lead up to and on 17 December 2019. Whether or not there is any requirement in CAC hearings to use lawyers, the Company is entitled to legal representation and believes that its case can only fairly be advanced with the assistance of its chosen legal adviser.”

24. In the CAC Response of 27 November 2019 it was stated that where possible the CAC will seek to arrange hearings when the parties chosen representatives are available. However, it will not do so if this will result in an excessive delay to determining the complaint. The Employer could instruct alternative counsel for the hearing.

25. The Employer stated in its letter of 25 November 2019: “This dispute relates solely to historical matters such that, if (contrary to the evidence and submissions the Company will wish to adduce) the CAC were to find against the Company in relation to any of the EWC's three complaints, such findings would not and could not have any bearing, whatsoever, on future events. … The EWC's insistence that this matter is one of urgency is, therefore, simply not correct and is a gross misrepresentation of the true position. There is no urgency of any kind.”

26. In the CAC Response of 27 November 2019 it was stated that that the determination of complaints to the CAC will generally be relevant to the proper operation of a EWC. It is important that they are resolved swiftly, so that the parties properly understand their responsibilities. A key component of the relatively informal approach adopted by the CAC is to resolve disputes quickly.

27. The Employer stated in its letter of 25 November 2019: “for the above and our previously articulated reasons, we respectfully request that the CAC should take into account in setting a timetable and date for a hearing the availability of both parties' representatives and witnesses (and we will, happily provide a list of dates to avoid to assist the CAC in this task), thereby ensuring that it "will be even-handed in its application" of the TICE Regulations, that its procedures "will be as user-friendly as possible for employers, employees and their representatives", and that the "CAC's approach will be as flexible as possible", in line with the CAC's own published Guide to its role under the, analogous, UK Information and Consultation of Employees Regulations 2014.”

28. In the CAC Response of 27 November 2019 it was stated that ”the CAC has sought to take into account the availability of the parties, witnesses and representatives. However the Employer’s contention has been that they are not available “up to an including” both of the dates for hearing that the CAC has set. The Employer now contends that no hearing is possible

this year. This involves excessive delay. We have sought to be flexible and user friendly granting the employer extensions of time to respond to correspondence and providing an alternative hearing date. Flexibility cannot be unlimited and the interests of the Complaint must also be taken into account to be even handed. A key aspect of the informality and problem solving approach of the CAC is to deal with matters swiftly".

29. Having taken all matters into account, the Panel informed the parties that the matter was listed for a formal hearing on 17 December 2019 in London. The parties were invited to supply the Panel with, and to exchange, their written submissions in advance of the hearing. The names of those who attended the hearing on behalf of the parties are listed at Appendix 1 of this decision.

Considerations and Findings

30. The evidence upon which we have had to determine this case was far from satisfactory. The Employer called Agnieszka Tomczak, Chief HR Officer, who in many cases did not know the answers to the questions she was asked. While in seeking a postponement of the hearing the Employer stated "the Company's key management witness is not available" they did not state the identity of the witness or what evidence could be given by that witness, and none other. There were important factual issues to be considered that could include: when the decision was taken to close the plants in Langreo and Miranda del Ebroin, who took that decision, was there a plan to move production to Skawina in Poland and/or Trinec in the Czech Republic, are there still customers in Spain and from which factory are any orders being met. We do not accept that the Employer could not have brought any witnesses who could have given evidence on these points or that there are no documents that evidence what happened. The Employer chose to rely on assertion and provided only very limited documentary evidence. The majority of the documentary evidence came from the EWC. Having considered the submissions, documentation and oral evidence we made the following determinations.

31. The Employer, Vesuvius plc, is an international engineering company, headquartered in London, with three main business units, Steel Flow Control, Steel Advanced Refractories and Foundry.

32. Two of products of the Steel Flow Control business are VISO (a manufacturing process used to create isostatically-pressed ceramic tubes for use in the steel manufacturing industry) and Slide Gates (ceramic plates used in machinery to control the flow of molten steel).

33. In Spain VISO products were produced at Langreo (where there were between 113 and 119 employees) and Slidegates at Miranda del Ebro (where there were between 17 and 19 employees).

34. The Employer operates a European Works Council Agreement. It was entered into on 27 June 2014, and amended and updated on 3 July 2015 and 7 July 2017.

35. At paragraph 24 provision is made for Special Meetings on the occurrence of a Special Event:

> "20. On the occurrence of **a Special Event,** the Company Chairperson shall convene a Special Meeting to inform and consult the EWC on the matter. Where the EWC Select Committee reasonably believes that a Special Event has occurred, it may raise this with the Company Chairperson who will respond promptly to their concerns."

36. At Annex 1 the EWC Agreement includes the following definitions:

> "Special Event - A Collective Redundancy, merger or demerger, relocation or closure of a Transnational nature provided that it directly:
>
> • involves at least 20 Vesuvius Group employees in each of at least two countries in the EEA; and
> • results from a decision taken at European management level and/or was decided at global divisional management level and/or or global Vesuvius Group management level.
> Transnational - Issues shall be considered to be transnational where they directly concern:
> • Vesuvius or one of its divisions as a whole; or
> • at least 20 Vesuvius Group employees in each of two Vesuvius undertakings or establishments situated in two different countries in the EEA covered by this Agreement,

37. Paragraphs 57 to 62 of the EWC Agreement provide for a Dispute Resolution Procedure

"57. All disputes concerning the interpretation and operation of this Agreement will be dealt with in accordance with the provisions of clauses 56-59. The procedure has three stages:

• Stage 1: Formal discussion between Management and the EWC Select Committee
• Stage 2: Mediation
• Stage 3: Legal proceedings

Both parties will apply the disputes procedure in good faith. Where the issue in dispute is genuinely very urgent the parties will use their best efforts to arrange the holding of the Stages in a timely manner which recognises the degree of urgency.

58. Stage 1 will comply with the following rules:

• Management will meet with the EWC Select Committee in an attempt to resolve the dispute.
• This meeting will take place as soon as is reasonably practicable once the written dispute notification is received by the other party, normally within 7 working days.
• The party who is raising the dispute will send to the other party a written notification of the dispute which sets out:
(i) the clause in this agreement which it claims to have been contravened; and
(ii) an explanation of how it is claimed that the clause has been contravened;
• Wherever possible, the other party will send a brief written response to the allegation in advance of the meeting.
• The parties can decide to have further meetings at stage 1 if they both so agree.

59. Stage 2 will comply with the following rules:

• If either party considers that the dispute has not been resolved at Stage 1, it may trigger Stage 2 by sending a written notice to that effect on the other
party.

• Stage 2 shall be dealt with by way of mediation by a single mediator who shall be appointed by the President of the Law Society of England & Wales. Management shall have the responsibility of making such a request within 7 working days of receiving or sending the written notice to trigger Stage 2 for a mediator to be appointed. It will copy the EWC Select Committee with the request.

• The parties agree that they will use their reasonable efforts to ensure that the mediation takes place promptly and no later than 20 working days after the appointment of the mediator. Both parties recognise the logistical issues required to ensure that the relevant persons are able to attend the mediation.

• Stage 2 is mandatory unless both parties agree not to use it or to follow an alternative dispute resolution method.
• The Company shall bear the costs of providing the mediation facilities and the fees of the mediator.

60. Stage 3:

If Stage 1 & 2 fails to resolve the dispute, either party can take the matter to the Central Arbitration Committee (CAC) under the Regulations (Stage 3)."

38. Annex 6 of the EWC Agreement deals with certain principles of consultation and the stage at which management will engage with the EWC Select Committee:

"This Annex describes the spirit and principles of communication and consultation between Management and the European Works Council:

1) Management is willing to engage with the EWC Select Committee on matters which might result in a Special Event under the EWC Agreement earlier than strictly provided for under the EWC Agreement. These engagements and the information provided in these engagements will be confidential and for the information of the Select Committee only unless otherwise agreed and will not, in itself, signify that the subject discussed constitutes a Special Event or will develop into a Special Event as defined in the Agreement."

39. Patrick André was appointed as CEO of the Employer in 2016.

40. In 2017 the consultancy firm McKinsey were appointed to analyse the operation of the Employer's business, with the objective of improving efficiency.

41. A 7 day "continental" shift pattern was Trinec in the Czech Republic in December 2017.

42. In about October 2018 Agnieszka Tomczak was appointed as Chief HR Officer.

43. On 26 November 2018 Mr André held a meeting with representatives of the EWC Select Committee. Mr André stated that the Employer was considering terminating the EWC Agreement.

44. On 3 December 2018, the EWC wrote, proposing that the agreement be amended.

45. On 26 March 2019, the Employer gave notice to terminate the EWC Agreement. It is due to terminate on 6 June 2020.

46. On 17 May 2019 an announcement was made that the Skawina plant in Poland would be introducing the seven day "continental" shift pattern. Ms Tomczak's evidence was that this was something that had been discussed throughout 2018. Tadeusz Lakota, Vice-Chairman EWC, denied that this was the case, stating that significant discussion about a move to the continental working pattern started towards the beginning of 2019. We accept that was when significant discussions started about the possible change to the shift pattern.

47. From May to September 2019 there was an increase in staffing on the VISO line at Skawina:

Head count evolution Viso-line Skawina (Poland)

31.5.2019	116
31.07.2019	123
30.09.2019	137
Net increase	21

48. We accept the evidence of Mr Lakota that the move to the new working pattern occurred over the summer of 2019. Initially there was no significant increase in work. There was relatively little to be done on the new shifts. However, staff were told that new orders would be on the way.

49. The annual EWC Meeting was held on 23 and 24 July 2019.

50. On 26 July 2013 Mr Andre took part in a question and answer session with investors after the release of the Employer's half-year results that included the following exchanges:

> "Question by investor (Goldman Sachs) to Mr. Andre (CEO Vesuvius):
>
> Can you elaborate a bit more on what you are doing in this new restructuring program and how you come about with the costs and the benefits and your processes for those numbers?
>
> Answer by Mr. Andre (CEO Vesuvius):
>
> Basically, what we are doing is the same model: We are closing plants and transferring the capacity of those plants to other existing flagship-plants. We are concentrating our production capacity in a reduced number of flagship-plants which we are modernizing and automatizing. We are not reducing the ratio of overall production capacity because we believe that we are in growing market and we are in growing market where we plan to increase our market share. So, there is no way we want to decrease our production capacity. We are simply concentrating the production capacity on a reduced number of plants. This year we will close six plants. This year, by the end of the year we will have closed six plants worldwide. This is a difficult exercise as you can imagine, we are doing this mostly in Europe and North-Amerika so it's a bit complex but we are doing it and this is the basis of our program.
>
> Question by investor (Morgan) to Mr. Andre (CEO Vesuvius):
>
> You said earlier that from the CCPI plant closure you had not seen any impact on the

demand from customers. Can you extend this more generally to the other plant closures you are doing across the group and whether you see any impact on customer demands and response to this?

Answer by Mr. Andre (CEO Vesuvius):

So far, all our restructuring actions we have been conducting over the past three years we have been able to implement them without any negative impact on our customer base. But clearly, this requires preparation which means that before pushing the button, this is between six months and one-year preparation because the customer shall not see. In other terms, the day we push the button we assume the plant can go on strike immediately. That does not always happen, but you know how these negotiations can go. So we always get organized in a way that the day we push the button we, our supply-chain network is organized in a way that we are able to deliver the customer from the other plants in the network in a fluent way that our customers not even notice. And this has been the case up to now. Now we have some others to deliver. We still have some projects to implement but we have a clear methodology to make sure that the interests of our customers are fully protected when we implement those operations."

51. On 5 September 2019, the closure of Langreo and Miranda del Ebro plants was announced by Richard Sykes, Vice President Flow Control Europe at Vesuvius plc and Francisco Lorenzo, former Vice President Foundry, Europe at Vesuvius plc acting as a consultant. Ms Tomczak accepted in her evidence that this was a decision that had to be approved at the European level. The fact that Mr Sykes, who is based in the UK, had travelled to make the announcements makes it clear that this was a decision at European management level or, possibly, global divisional management level and/or or global Vesuvius Group management level. We do not know precisely when, by whom, or on what basis, this decision was taken. The Employer did not provide any documents about the making of the decision.

52. On 8 September Frank Műller sent an email to Ms Tomczak and others at raising his concern about the announcement and asking, when the decision had been taken, how many employees would be impacted, and the anticipated increase of production volume and headcount in Skawina and Trinec.

53. Ms Tomczak replied that the decision was part of the continuous effort to maximise manufacturing footprint. She stated the number of affected employees would be communicated in Spain. She provided some information about headcount at Skawina and Trinec. She stated that production at Skawina had been in constant ramp up for many months to increase "installed capacity utilisation".

54. On 13 September 2019 Mr Lakota replied invoking stage 1 of the Dispute Resolution Procedure, contending that there was a Special Event that required engagement with the EWC.

55. On 13 September 2019 Ms Tomczak sent a draft of a proposed new EWC Agreement that would operate under Polish law.

56. In a newspaper article in Spain on 13 September 2019 it was suggested that fewer than 20 employees would be left in Langreo. They would be engaged in sales or commercial work.

57. On 14 September 2019 Mr Lakota asked Jennifer Smith, EWC Meeting Secretary, to advise on the date of the stage 1 meeting.

58. As part of the Spanish consultation process the at Employer was required to provide an Explanatory Report. The report contained the following statements:

> "The Vesuvius Group has a surplus of productive capacity for both VISO products (35.9% excess capacity) and CNC products (Slide-Gate) (7 S.A.3.3% excess capacity).
>
> Within the productive structure of the Group for the production of VISO, the Langreo plant is the smallest in terms of square meters and in terms of installed capacity.
>
> Within the production structure of the Group for the production of Slide Gate, the Miranda de Ebro plant is the smallest in terms of square meters, focusing its production on the CNC.
>
> The Langreo plant has the largest unit production cost compared to the rest of the comparable plants, being 13.5% higher than that of the des Trinec plant (Czech

Republik) and 18.0% higher than that of the Skawina plant (Poland)

The Miranda de Ebro plant is less competitive than the Skawina plant in terms of total cost and conversion, both for the CNC product and for the pre-demotion of the rest of products manufactured in this plant.

….

In fact, the Langreo and Miranda de Ebro plants are the least competitive within the productive structure of the Vesuvius Group. Thus, the Skawina and Trinec plants would be able to absorb the total production recorded in the 2018 VISO exercise (without taking into account the Oostende plant that produces a different product than the Langreo plant), while the plants of Skawina and Istanbul, meanwhile, could absorb the total production in the 2018 fiscal year of CNC and Slide Gate.

…

Given the excess of production capacity at European level, Africa and the Middle East, and the inefficiencies derived from this overcapacity, the production must be concentrated in a smaller number of plants.

Not being competitive plants, Langreo and Miranda de Ebro cannot accommodate the concentration of Viso and Slide-Gate production, therefore the most convenient alternative lies in the transfer of production from Langreo to Trinec and Skawina generating a reduction in excess of Vesuvius Group capacity and an estimated annual saving of 3.9 million Euros.

The movement of production from Miranda de Ebro to Skawina and Istanbul means a reduction in the average unit cost of production for CNC production by 8.3%, while for the rest of the products, the average unit cost is reduced by 26, 7%."

59. On 18 September 2019 an agenda was provided for a meeting to be held on 23 September 2019. It included as an item "Dispute Resolution Stage 1 (Closure of the sites in Langreo and Miranda (Spain) and relocation of production)"

60. The EWC Select Committee meeting took place on 23 September 2019. We have not been provided with a note of the meeting from the Employer. The EWC note includes the following exchanges:

“AT: The EWC should know that more people are hired in Germany and Poland. Production will be scaled up.

Spain is a local market. Arcellor Metall will be releasing a lot of people. The market is deteriorating. In Skawina people are hired, the organization is changing. Negotiations in Spain have to proof how many people will be hired in Skawina. But it won't be enough to reach the threshold.

Again the threshold won't be reached ➔ Local matter in Spain.

HG: This is no Special Event today but the first step in the Dispute Resolution Procedure!

AT: Management does not see a Dispute Resolution Procedure.

HG: If the Management refuses to allow the Dispute Resolution Procedure then we have to start a second Dispute Resolution Procedure.

AT: I did not say that the management refuses. I agreed to a meeting immediately.
…
AT: Single country event, if there are even people affected in another country it won't be enough. At the end of the local process I will give the figures about the affected people to Select Committee

FM: How many jobs will be transferred? There must be a plan.

AT: Management has a master plan. This was explained in the plenary meeting. I cannot say anything about figures. The capacity in Skawina is really being scaled up. Spain produces for the local market. And the steel market is going down.

HG: What is the business plan?

FM : There is no more labor. Nothing is being transferred?

HG : So there is no transfer of production capacity?

AT: No!

61. Ms Tomczak stated that the last exchange may have been an error and that she had not suggested that there would be no transfer of production from Spain to Poland.

62. On 2 October 2019 and Mr Lakota wrote to Ms Tomczak seeking to instigate stage 2 of the Dispute Resolution Procedure.

63. On 7 October 2019 Ms Tomczak replied contending that there was no Special Event and, accordingly, the procedure was not engaged.

64. On the same date Ms Tomczak also wrote stating that the Employer would no longer negotiate with the EWC about a new EWC Agreement.

65. On 8 October 2019 Mr Müller wrote to the Employer stating that he had been asked to attend the European Parliament. Mr Müller also wrote that day contending that there was an obligation to instigate stage 2 of the Dispute Resolution Procedure and engage in mediation. He stated that if the management would not commit to that process that they would move to stage 3.

66. On 9 October 2019 Ms Tomczak wrote to Mr Müller refusing permission for him to travel under the aegis of the EWC to the European Parliament.

67. The EWC sent a complaint to the CAC on 14 October 2019.

68. In her evidence Ms Tomczak said that she believed there had been an increase of about 20 positions on the VISO at Skawina. She contended there would be no shift of substantial volumes of production from Spain, but stated that she did not know the details. She said that she did not know whether there were continuing customers in Spain. She did not know how many people were working in sales in Spain. She did not know what would happen if sales

were obtained in Spain, including where the manufacture would take place.

69. When asked about the closure of 6 factories that had been referred to by Mr André in his talk to investors on 25 July 2019 she stated that the number probably included all closures during the year. Four had taken place by 25 July 2019. She said she was not sure what the other two potential closures were and that "they were not necessarily the Spanish plants".

70. Having taken an overview of the evidence, unsatisfactory as it is, we have come to a clear conclusion. After McKinsey were appointed as consultants the Employer introduced an overall plan, a key component of which is closing smaller factories and moving production from them to larger factories in countries with relatively lower rates of pay. That is what Mr André said when he spoke to investors and what the Employer said to the Spanish authorities in the Explanatory Report. There was a European, global divisional and/or or global Vesuvius Group management level decision to move production of VISO and Slidegates from Langreo and Miranda del Ebro in Spain to Skawina in Poland and Trinec in the Czech Republic.

71. Determination of the complaint turns on the proper interpretation of the EWC Agreement and particularly on what the term "directly concerned" means for the purposes of considering whether there is a "transnational" event and "directly involves" means when referring to a "Collective Redundancy, merger or demerger, relocation or closure of a Transnational nature provided that it directly involves at least 20 Vesuvius Group employees in each of at least two countries in the EEA" to determine whether there has been a special event.

72. This is a matter of interpretation. The fact that there may be other occasions on which the parties have considered that a special event required redundancy or recruitment of 20 or more does not, in our view mean that it is limited to such circumstances. We have to "to ascertain the objective meaning of the language which the parties have chosen in which to express their agreement. [We] must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant": Lukoil Asia Pacific Pte Ltd v Ocean Tankers (Pte) Ltd (The "Ocean Neptune")

73. The question is which employees were directly concerned and involved in the redundancy and relocation. In the context of this agreement we do not consider there is any significant difference in meaning between the terms "concerned" for the purpose of deciding whether the event is transnational or "involved" for considering whether there is a special event. It is clear that more than 20 employees were directly concerned and involved by the closure of the plants in Spain as more than 20 were made redundant. We also consider that the shift to continental shift working Skawina was as part of a plan to move production from Spain to Skawina. We consider that the staff on the VISO product line who were required to move to continental shift working were also directly concerned and involved in the redundancy and relocation of the work because there was a significant change in their working pattern. There are some 137 employees working on the VISO line at Skawina. We consider on this basis alone more than 20 were also directly concerned and involved in Poland.

74. Furthermore, we consider, on balance of probabilities, that the 21 staff that have been added to the VISO line at Skawina were added because of the move of production from Spain to Poland. We were not told of any specific other transfer, or increase in production that explained the recruitment, other than ramping up to prepare for the move of production from Spain. Accordingly, we consider that in any event there was a redundancy of more than 20 in Spain and a recruitment of more than 20 in Poland so that at least 20 were directly concerned and involved. As stated above we find that this was a decision taken at European management level and/or decided at global divisional management level and/or or global Vesuvius Group management level.

75. Accordingly, there was a Special Event that required the convening a Special Meeting so that the EWC could be informed and consulted with the consequence that the Employer is in breach of the EWC Agreement.

76. We declare that the Employer was in breach of the EWC agreement in refusing to accept that that there was a Special Event and to call a Special Meeting at which the EWC could be informed and consulted.

77. When the matter was initially raised at stage 1 under the Dispute Resolution Procedure, it was accepted as such by the Employer. The meeting on 23 September 2019 was a Stage 1 meeting. It was put on the agenda under that heading. It was discussed as such, although the

Employer disputed that a Special Event had occurred. Thereafter, the Employer refused to move to stage 2. They did so in breach of the Dispute Resolution Procedure in the EWC agreement. We declare that there was a breach of the agreement.

78. The EWC did not pursue their third possible complaint in respect of the refusal of the Employer to allow Mr Müller to travel to address the European Parliament and stated that they did not propose to do so at a future date.

Decision and Orders

79. In their closing remarks to the Panel the Complainants confirmed that they were not seeking anything more than a determination that there had been failures to comply with the agreement.

80. We find that the complaints under Regulation 21 of TICER are well founded because there were failures to comply with the terms of the Agreement because the Employer refused to accept that that there was a Special Event and call a Special Meeting to inform and consult the EWC and because the Employer refused to move to stage 2 of the Dispute Resolution Procedure

Panel

Mr James Tayler, Panel Chair

Mr Gerry Veart

Mrs Sue Jordan

21 January 2020