

European Works Councils and SE Works Councils in 2015

Facts & figures

Stan De Spiegelaere - Romuald Jagodzinski



etui.

The European Trade Union Institute (ETUI)

The ETUI conducts research in areas of relevance to the trade unions, including the labour market and industrial relations, and produces European comparative studies in these and related areas. It also provides trade union educational and training activities and technical support in the field of occupational health and safety. The ETUI places its expertise – acquired in particular in the context of its links with universities, academic and expert networks – in the service of workers' interests at European level and of the strengthening of the social dimension of the European Union. Its aim is to support, reinforce and stimulate the trade union movement.

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- The crisis and the European semester
- Workers participation
- Sustainable development and industrial policy
- Working conditions and job quality
- Trade union renewal

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1071 EWCs are currently active



On average over the last five years, **25 NEW EWCs** have been established **per year**

8%

of **EWCs** are established as SE Works Councils

→ **SE WC**



39% of EWCs (pre-directive Article 13 agreements) are **not fully covered** by the EWC directives



86% of the EWCs have a Select Committee



Less than one in ten EWCs have **competences** extending beyond information, consultation and giving opinions



1 in **3** **EWCs** have **NO training provision**



Only **18%** of **EWC** agreements explicitly entitle representatives to visit the company premises



In **40%** of EWCs, representatives of European Trade Union Federations are allowed to attend meetings



3% of the **EWCs** have the competence to **negotiate** with the management on transnational issues

1. Introduction



1. Introduction

In 2016 it will be 20 years since the first European Works Councils directive came into force in the EU. After two decades of experience with EWCs, it is time to take a step back so as to gain an overview of the state of play in EWCs. In the same year, the European Commission is planning an evaluation of the EWC recast directive that will undoubtedly lead to debate on the need for further review of European regulation of EWCs.

The current year, meanwhile, is the fifteenth anniversary of adoption of the EU directive on the European Company (Societas Europaea, SE), a legislative act that also includes some rules on the establishment of a European-level works council. Both bodies for the transnational information and consultation of employees draw upon the same basic model, namely, giving information and consultation rights on transnational issues to elected employee representatives.

In this context, the ETUI took the decision to publish an overview of the current situation of EWCs and SE WCs. This publication accordingly provides a broad selection of key figures on the basic characteristics of EWCs and SE WCs and the companies in which they operate. We provide, in this way, some valuable food for thought about the importance of this European institution, its potential effects on the Europeanisation of industrial relations, and its future development.

Most importantly, however, the EWC and SE WC statistical data provide insight for practitioners (works council members, trade union coordinators, experts) and stakeholders into the distinctive features and characteristics of EWCs and SE WCs. Such information is essential for developing the education and understanding of people involved in EWC work. Our hope is that this publication will help them to position themselves in the EWC and SE WC field and inspire them to proceed further with their own EWC and achieve an ever better functioning representative body. We also hope that presenting updated facts and figures on EWCs and SE works councils will create a point of reference for the debates scheduled to take place in 2015 and 2016 and that are likely to prove decisive for the future of these forms of transnational information and consultation.

In this publication we cover aspects of the history of EWCs and SE WCs, of their establishment, their demographic features, as well as their composition, competences, meetings, facilities and resources. Some aspects – such as the definition of information and consultation, the confidentiality arrangements or a thorough analysis of the determinants of EWC and SE WC characteristics – fall beyond the scope of this booklet. These will receive attention in future publications.

The ETUI's EWC Database

The data-service of the European Trade Union Institute on EWCs and worker representation has a longstanding history in the provision of digital, printed and online resources (such as the EWC portal www.ewcdb.eu and www.worker-participation.eu). With a new web portal, the EWC Database is now freely accessible to all. It provides easy-search modules for agreements and many figures and data on the content of EWC agreements.

The EWC database was established in late 1990s as the first and sole source of comprehensive information on EWCs, the multinational companies in which they operate and the agreements according to which they are set up. It has evolved over the years and, still the most comprehensive source of information on EWCs, has provided input for trade unions, academics, policy-makers, and practitioners. It has sourced several publications, *EWC Facts and Figures* (2004 and 2006) by Peter Kerckhofs and Irmgard Pas being the most important. Since 2008 the database has been further extended to include more diverse agreements, content analysis of agreements and information on SE works councils.

Disclaimer: This publication reports facts and figures on the currently active EWCs, based on analysis of the EWC agreements in the ETUI's EWC Database. This database contains over 1900 EWC agreements including original agreements, renegotiations and amendments and is recognized as the most complete database on EWCs available. Nevertheless, the figures reported in this publication should be regarded as estimates as they contain a degree of error and bias, related to different factors. First, not all the EWC agreements and renegotiations are included in the database (some are not available, others subject to delayed reporting). Secondly, some agreements included in the database have not yet been analysed due to language issues. Thirdly, some degree of measurement error is traditionally to be taken into account in the coding process. Although the ETUI is engaged in a continuous effort to minimise these sources of error and bias, the figures supplied should nevertheless be considered as estimates of the population parameters.

EWC Directive 1994

EWC Recast Directive 2009

How to establish an EWC?



Where to establish an EWC?

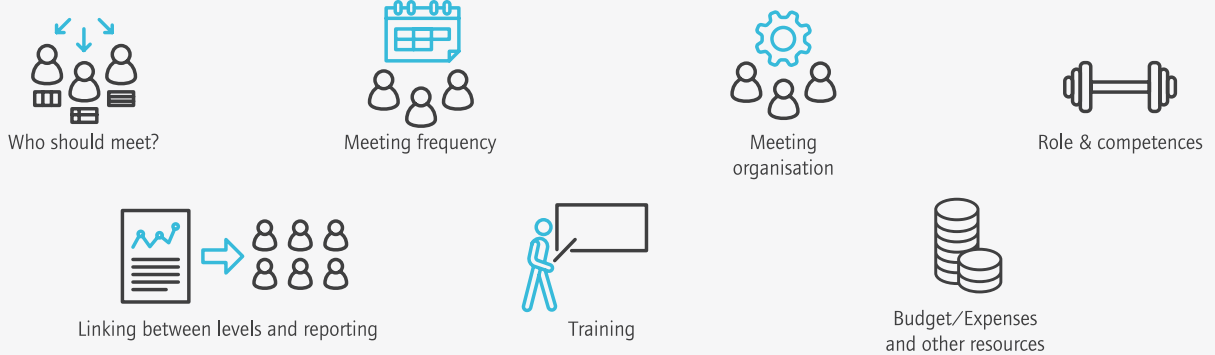
- ≥ 1000 employees
- ≥ 150 employees in 2 member states

EWC competence



All establishments in all member states of the EEA

EWC organisation: mandatory elements




EWC organisation: optional elements



And much more... See www.ecwd.eu

2. EWCs and SE works councils over time

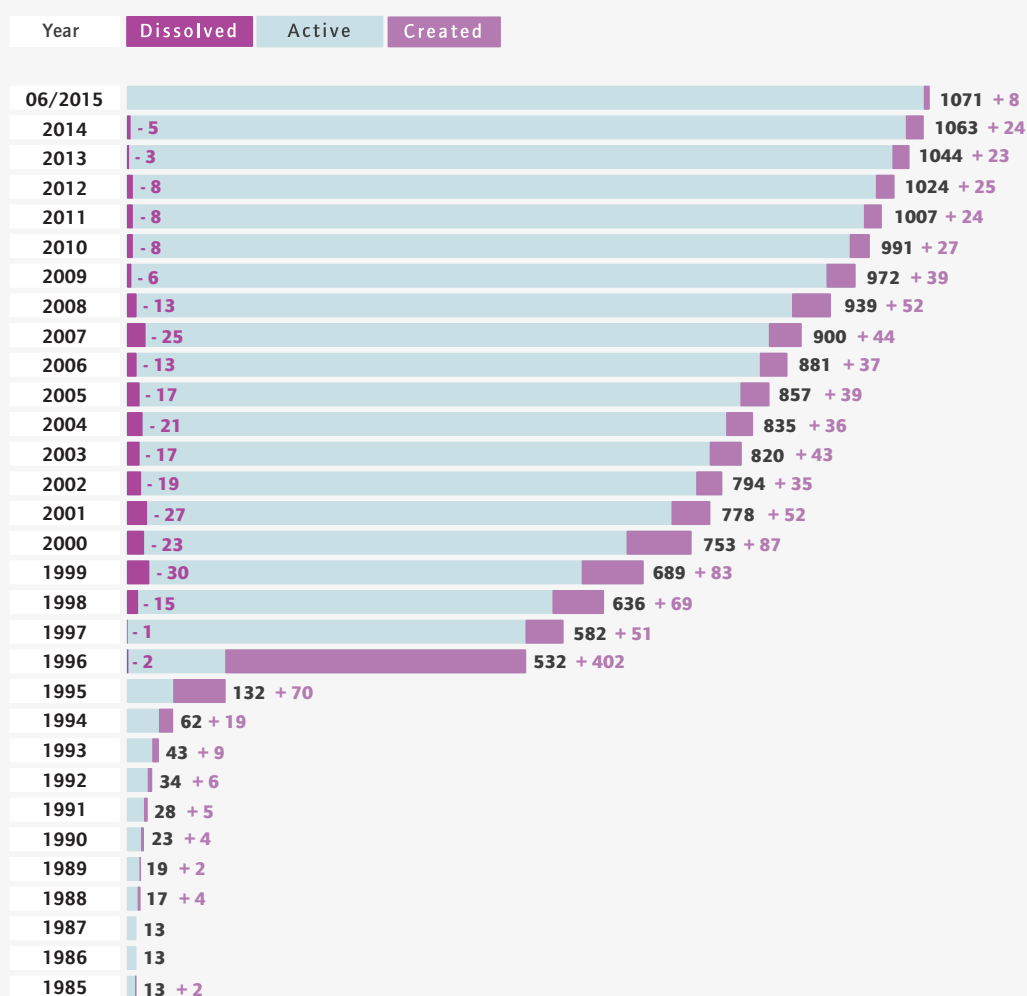


2. EWCs & SE work councils over time

2.1. Establishment

2.1.1. Timeline

Figure 1 EWCs and SE works councils growth over time



Plans on transnational information and consultation mechanisms in the European Union were first made as early as the 1970s. Theory became practice in the 1980s when members of group works councils in French multinational companies decided to invite employee representatives of foreign subsidiaries to their meetings. Soon enough this spontaneous bottom-up development was picked up again on the European level but, due to member state resistance to EU involvement in the social sphere, the initiative failed again. With the 1992 Maastricht Treaty, majority voting was introduced and the opposition of some member states was overcome with the initial opt-out decision of the UK. This opened up the path so

that Directive 94/45/EC, the first on the subject, was able to be signed in 1994 and to come into force in 1996. Subsequently, in 2009, after years of delay and heated political debates, the European Commission completed the Recast Directive 2009/38/EC (entry into force in 2011).

Since the 1994 initiative, the number of active EWCs has been constantly rising. As of June 2015, a total of 1071 EWCs are up and running. While this number continues to increase year upon year, the rate of increase has slowed. Over the last five years, some 25 new EWCs have become active every year. During the 2004-2009 period the average was about 42 new

402 the **staggering number** of **EWCs** created in 1996



25 the **average number** of **New EWCs** in the last five years

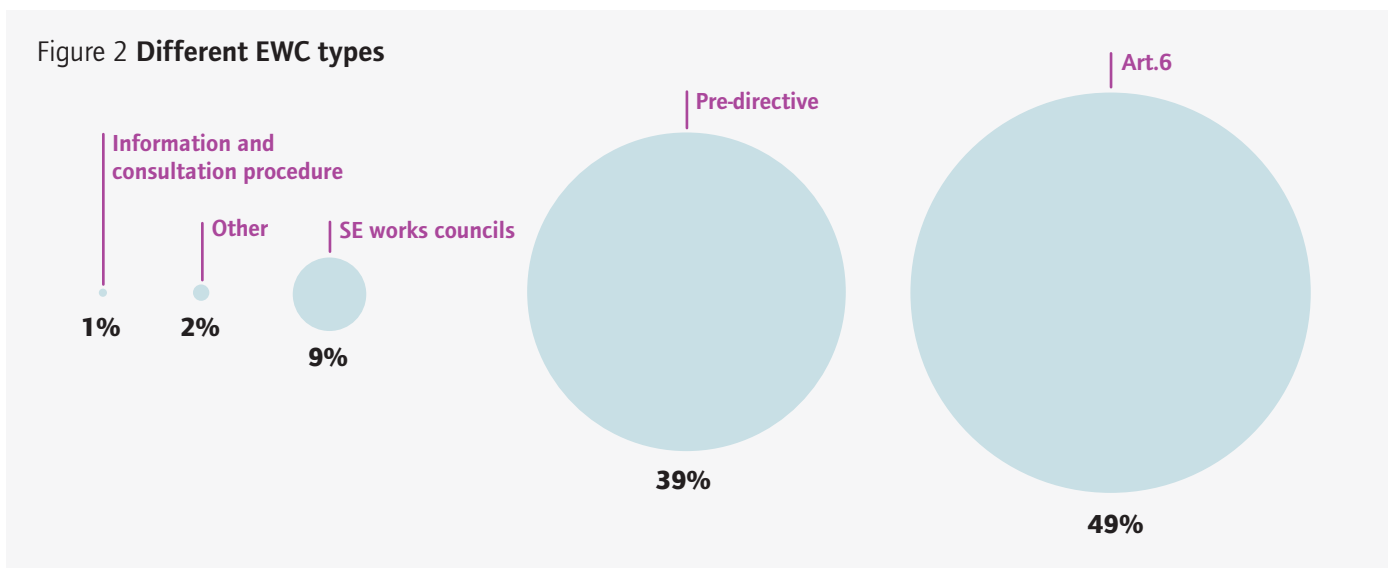
1071 the **total amount** of **EWCs** in 2015

EWCs per year; earlier the pace had been even higher. There exist estimates of the number of European multinationals covered by the EWC directive but these are neither up to date nor accurate. The latest available estimation goes back to 2005 when at least 2200 companies were identified as being covered by the EWC directive (more than 1000 employees with 150 in at least 2 EEA countries).

EWC creation reached a peak in 1996 when a staggering 402 such bodies were set up within a single year due to a window of opportunity created by the EU regulation: all EWCs established before the entry into force of the first EWC directive in 1996 had the legal status of ‘voluntary agreements’ and were exempt from many of the requirements stipulated in the 1996 directive, an

instance of flexibility that served as an important and effective incentive for companies to set the process in motion and reach an agreement before 1996.

The effect of voluntary establishment of EWCs has never been reproduced since 1996. It did not happen in 2004 with the EU enlargement after the accession of ten new member states; nor did the 2007 EU enlargement have a significant effect on the number of EWCs created. With the entry into force of the EWC Recast Directive (2009/38/EC) in 2011, a similar window of opportunity as in 1994-96 was opened for agreements signed between 2009 and 2011. Yet this time, contrary to expectations of the European law-makers, no radical change in the number of EWCs created was observed.



2.1.2. Types of European Works Councils

Depending on the company, the date and the characteristics of the agreement founding an EWC, we can distinguish between different types of European Works Council. Most of the EWCs (49%) are the so-called **Article 6 EWCs**. These EWCs are fully regulated by the EWC Directive of 1994 and the 2009 Recast Directive. On the other hand, 39% of the existing EWCs are ‘pre-directive’ EWCs. Here, the first agreements were signed before 22 September 1996. These EWCs are not fully covered by the EU Directive of 1994 and its Recast of 2009.

About 9% of all EWCs are EWCs founded in a company with the European Company statute (SE). This statute is common across the entire EU and in terms of worker rights allows for information and consultation in the form of the SE works council (essentially identical to the EWC) and participation rights on the board level. The share of **SE works councils** has been growing steadily over time; as recently as 2011 the share of SE WCs in the pool of all EWCs was only 4%.

How the SE works councils differ from other EWCs is discussed in detail in part 7; it is however important to note that most SE works councils are established in German undertakings with a developed experience and structures of worker participation.

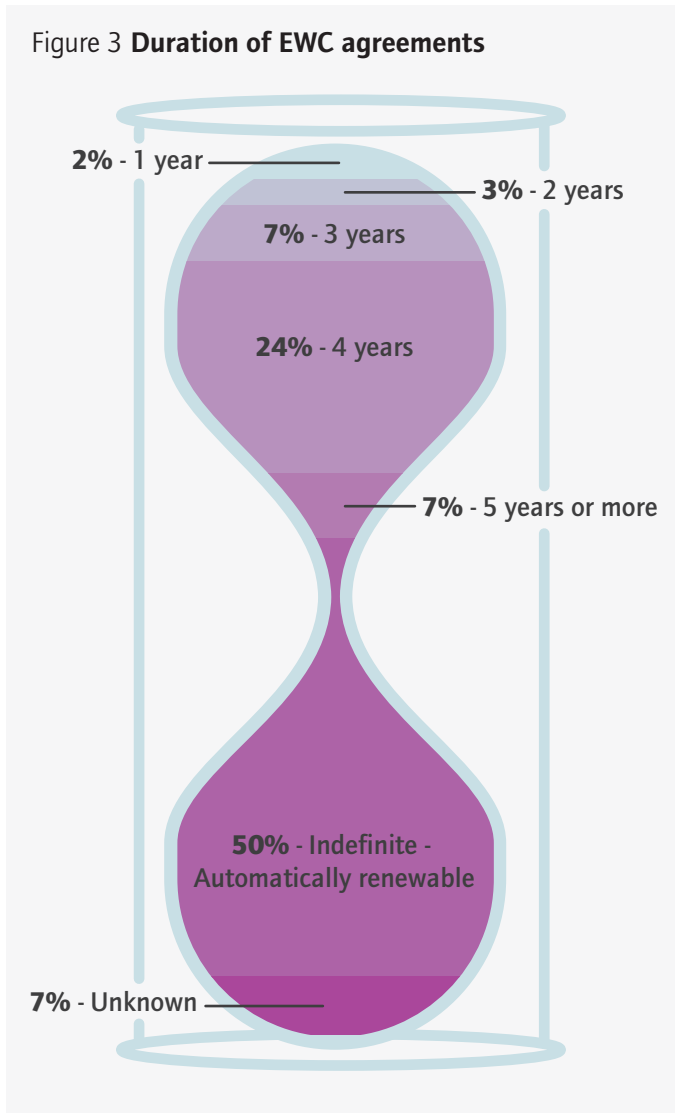
↑9% of current **EWCs** are established in SEs and the share is rising over time

2% of current EWCs have decided to **enlarge their scope** from Europe to the world

39% of **EWCs** are still **not** fully covered by the rules of the directive or its recast

2.2. Duration – Renegotiation

Figure 3 Duration of EWC agreements



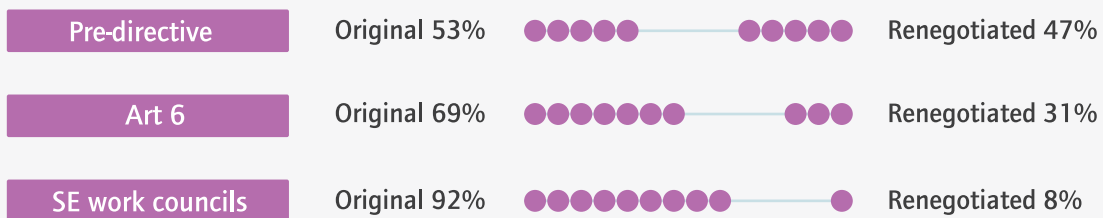
Renegotiation of an EWC agreement is an important way of bringing it up to date due to changed context, amending it to benefit from new rights in legal frameworks or simply improving the existing rights. It is therefore very important that EWC agreements include appropriate arrangements for renegotiation and continuity.

In practice we see that as many as one in every two active EWCs are based on agreements valid for an indeterminate period. This means they can be changed only by an explicit demand for renegotiation or the termination of the agreement by one of the two parties. The other bodies have agreements that are valid for a specific period, usually four years but sometimes longer (7%) or shorter (12%). Of those agreements valid for a specific period, 29% have an article that foresees a tacit renewal of the agreement. For the other 71% explicit renewal or renegotiation will be necessary at the end of the term.

The duration of the agreement also reflects some country-specific traditions, with companies headquartered in Germany opting in 75% of cases for agreements for an indefinite period.

- 1 in 2** EWCs are based on indefinite or automatically renewable agreements
- 81%** of EWCs have special clauses on how their agreements should be renegotiated
- 76%** of EWCs have a clause specifying how the agreement can be terminated by one of the two parties

Figure 4 Renegotiation of EWC agreements by EWC type*



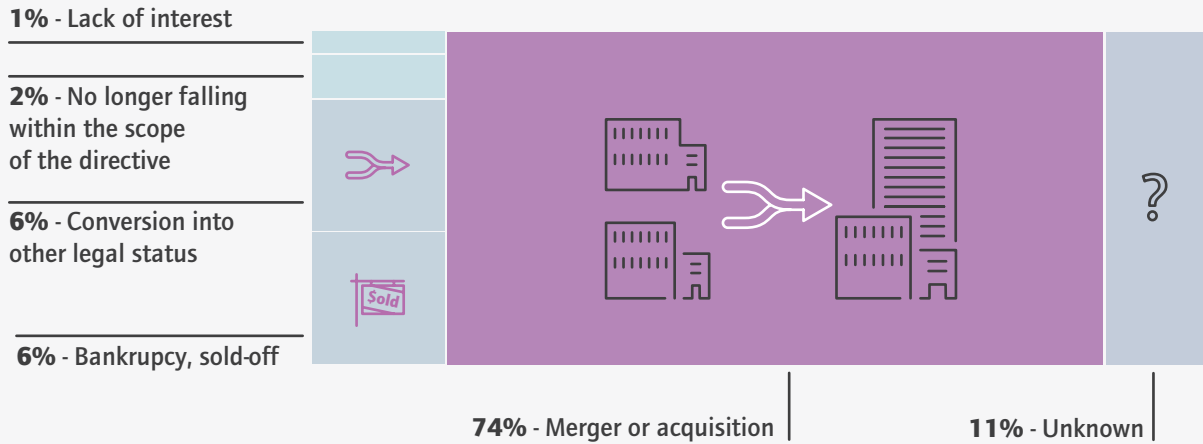
We see that, of all the active EWC bodies, at least 35% have already renegotiated their agreement. In the main it is the pre-directive EWCs that have been renegotiated as these agreements are older. Nevertheless, approximately half of the pre-directive EWCs have not been renegotiated meaning, that these EWCs have not had the opportunity to incorporate some

regulatory or company changes. The SE WCs have been rarely renegotiated as most of them have been established much more recently. Moreover, SE WCs are generally established in companies which already had a working EWC but changed their legal structure

*This figure (fig. 4) might be an underestimation as not all renegotiations are communicated to the ETUI EWC database.

2.3. Dissolution

Figure 5 Dissolved EWCs by reason of dissolution



While the total figure of EWCs grows thanks to new EWCs being set up, it is affected also by some of them being dissolved. Of the EWC bodies set up, over 240 have ceased to exist. The vast majority of these dissolutions are attributable to structural changes within the companies in question, i.e. generally a merger with another company or acquisition by another company. Usually in such cases, either a new EWC is negotiated, or the existing EWCs merge to form a single new body. Of the total EWC dissolutions 6% can be attributed to changes in the legal status of a company and another 6% to bankruptcies or

companies being sold. Only 2% of the known dissolutions have occurred due to the company no longer falling within the scope of the directive (decrease in number of employees) and only 1% have been directly linked to a lack of interest in the EWC. This last figure provides a clear indication that EWCs, once established, do perform – admittedly to differing degrees – their function of representing employee interests and providing information and consultation rights; it shows also that it is essential that worker rights to information and consultation be adequately protected in cases of changes to company structure.

240

EWCs have been dissolved

Only
1%

DISSOLUTIONS were attributable to lack of interest

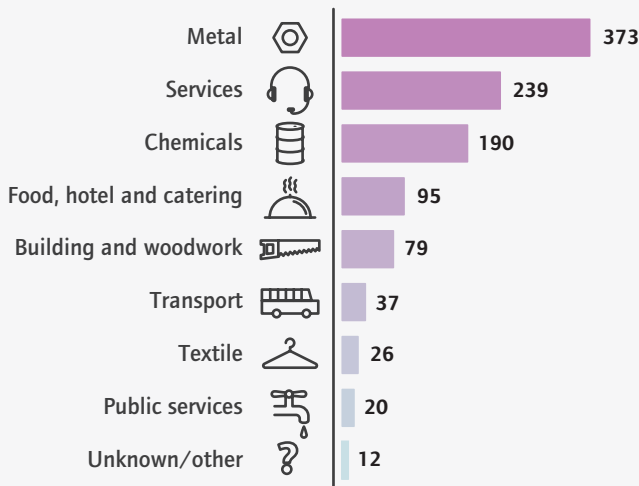
74%

DISSOLUTIONS were due to changes in company structure/status

2.4. Coverage

2.4.1. Sector

Figure 6 EWCs' sectoral distribution



The population of EWCs is not spread equally across all sectors. The sectors with most EWCs are metals and chemicals and the service sector. These together represent more than three quarters of all active EWC bodies. In sectors such as textiles, transport and public services, the numbers of EWCs are significantly smaller and the number of newly created EWCs tends to increase slightly over time. Generally speaking, the reason for the variation in numbers of EWCs between sectors is their differing characteristics. Specifically, one of the main reasons for these significant sectoral differences in terms of EWCs is the presence of multinationals covered by the directive. An important factor is also whether companies in the given sector operate on sites with a high concentration in terms of employee numbers (thereby facilitating worker organisation), such as big factories or production facilities, or whether the workforce is spread out, as is the case in the transport or building industries. In some sectors, the prevalence of family companies, in which management-worker relationships have traditionally been non-institutionalised, represents another obstacle to an increasing proportion of EWCs.

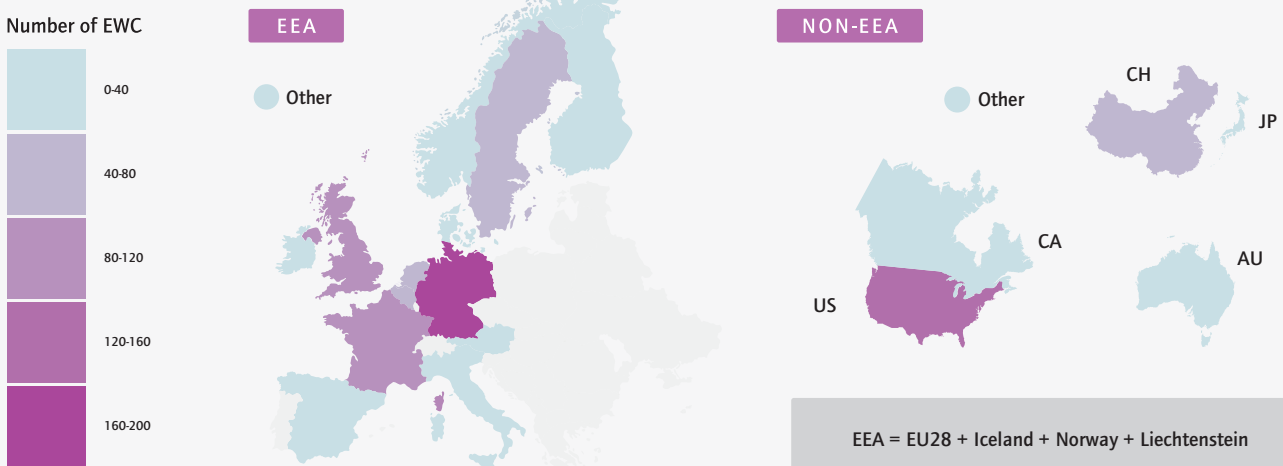
More than



of all EWCs are in the metals, chemicals and services industries

2.4.2. Country of headquarters of multinational company

Figure 7 EWCs' headquarter countries



Similarly as in the case of sectors, we observe a high variation in numbers of EWCs depending on the country where the company in which they are set up has its headquarters. Looking at the headquarters of the companies having an EWC, we see that the vast majority of EWCs are active in companies having their headquarters in the 'old' member states. Germany is in the leader position, followed by France and the UK. What is more, EWCs are also frequently active in non-European multinationals having their headquarters in the US, Switzerland, Japan or Canada.

151

EWCs have been set up in companies with their HQ in the US

20%

of EWCs are established in companies headquartered in Germany

2.5. Choosing EWC legislation

EU directives are not directly applicable in EU member states. They have to be transposed and implemented through national legislation. Every country therefore decides autonomously how to implement the EU regulations on European Works Councils. At the same time, the EWC regulation covers multinationals active in at least two member states, giving rise to the question of which rules these EWCs have to follow.

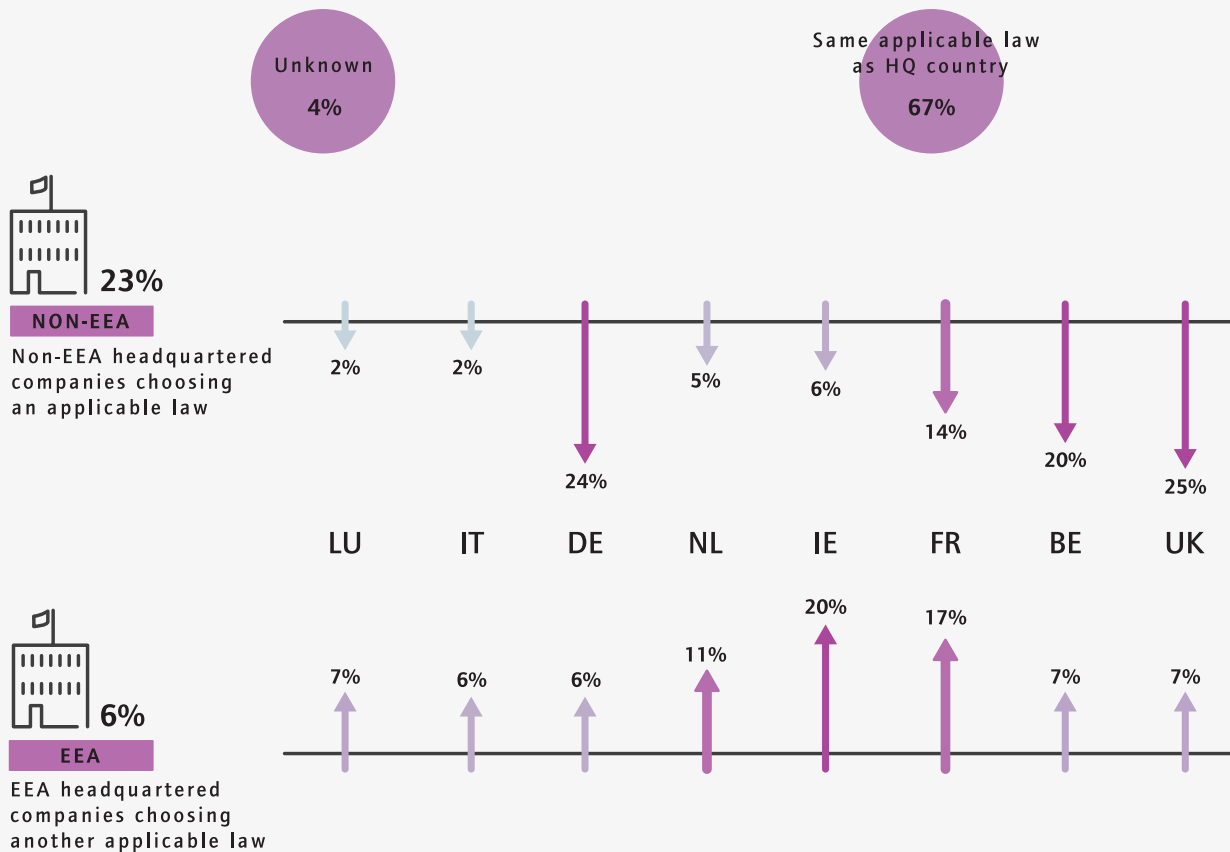
In the majority of cases (67% of all EWCs), EWCs are established according to the rules of the headquarter country. Yet this is not always so. First of all, if the headquarters of a company is established in a non-EEA country, the agreement establishing an EWC has to choose a national legislation whose rules it will

follow. Secondly, even if companies are headquartered in a European country, the negotiating parties are still entitled to agree to establish their EWC according to the national rules of another European country.

Non-EEA headquartered companies

In about 23% of cases, the country of headquarters is a non-EU country. These EWCs have to make a decision on the national law that will be applicable, and most choose the UK, Danish, Belgian or French EWC implementation laws. Less popular choices have been the Irish, Dutch and Italian implementation laws; only rarely have other implementation laws been chosen.

Figure 8 Choice of applicable law



European MNC choosing another applicable law

Companies headquartered in one of the EEA states can also, given an agreement, choose to establish their EWC according to a national law other than that of their headquarter country. 6% of EWCs with their headquarters in Europe do not choose the law of their headquarter country as the applicable law; instead they generally choose for their EWC the Irish or French implementation laws.

EWCs in Europe's 'New Member States'

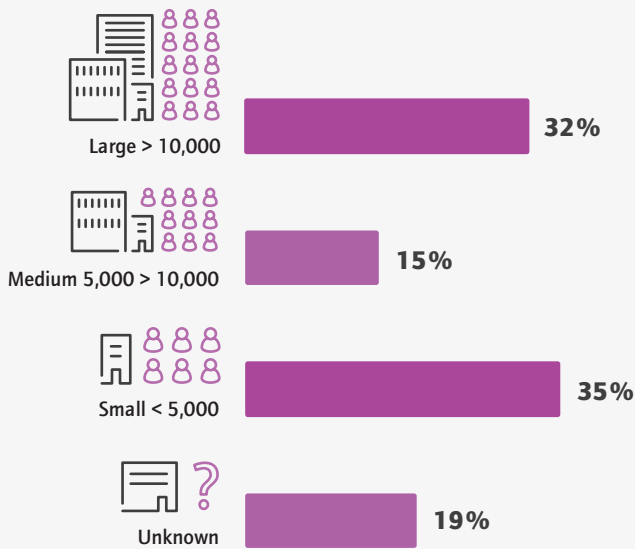
More than half of all EWCs are established in firms headquartered in Germany, France, the UK, Sweden or the Netherlands. Given the size of these economies this should come as no surprise.

What is striking, however, is the low number of EWCs set up in companies headquartered in the new member states that joined the EU after 2004. There are only five Hungarian companies with an EWC and one company from each of Czechia, Poland and Cyprus.

At the same time, worker representatives from those new member states do participate in the system of transnational information and consultation. More than 250 EWCs have representatives from various new member states, meaning that employees in those companies enjoy the information and consultation rights through their active representative involvement. A total of 25 EWCs even have representatives from candidate countries such as Turkey, Macedonia, Serbia or Montenegro.

2.5.1. Company size

Figure 9 Company size



Company size in terms of numbers of workers employed is another important factor influencing the distribution of EWCs. Most EWCs are established in larger European MNCs. Over 47% of the EWCs are operating in companies with more than 5000 employees.

35% of the EWCs are established in companies with less than 5000 employees

2.5.2. Countries of operations

Figure 10 EWC company activity in European countries



An important factor shaping the distribution of EWCs is the degree of internationalisation of a company, i.e. the number of EU countries in which the company has activities. For a multinational to be covered by the EWC directives, it needs to employ over a thousand employees in each of at least two member states. A lot of the multinationals with an EWC are nevertheless far more internationalised than that; about 42% have activities in more than 10 member states, 30% in 5 to 10 member states, and only 18% in less than 5 member states.

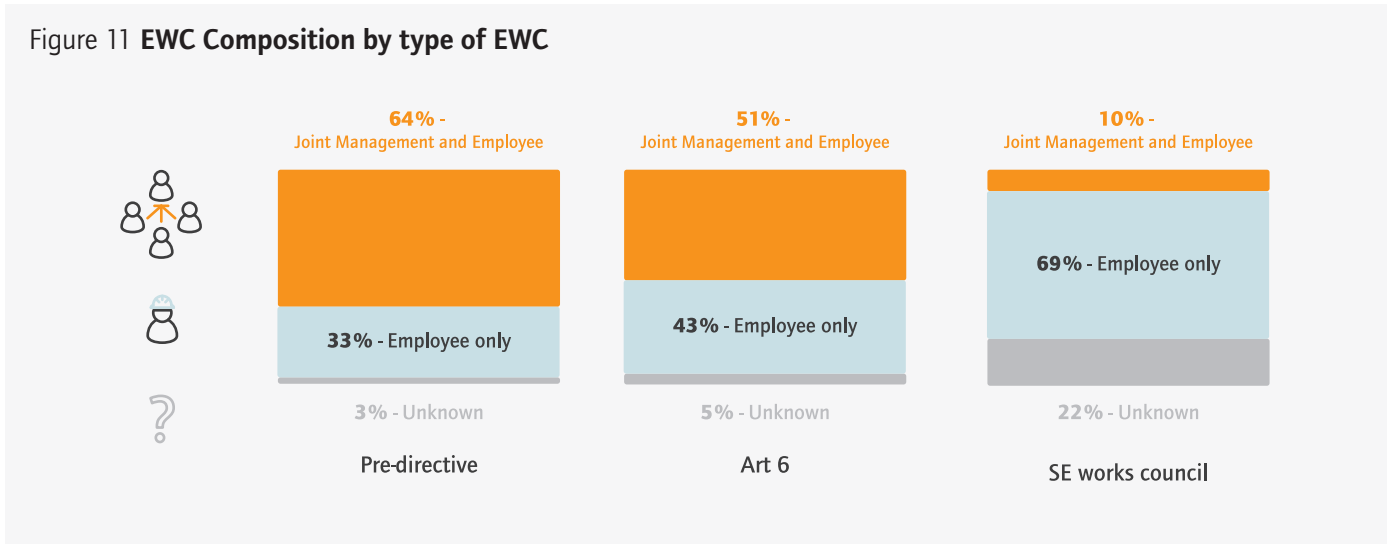
This completes the picture of a typical company with an EWC: a big company with more than 10 thousand employees across the EU, in metals, chemicals or the services sector, headquartered in Germany, France or the UK (or US or Japan) and highly internationalised (i.e. with operations in more than 10 member states).



3. EWC composition

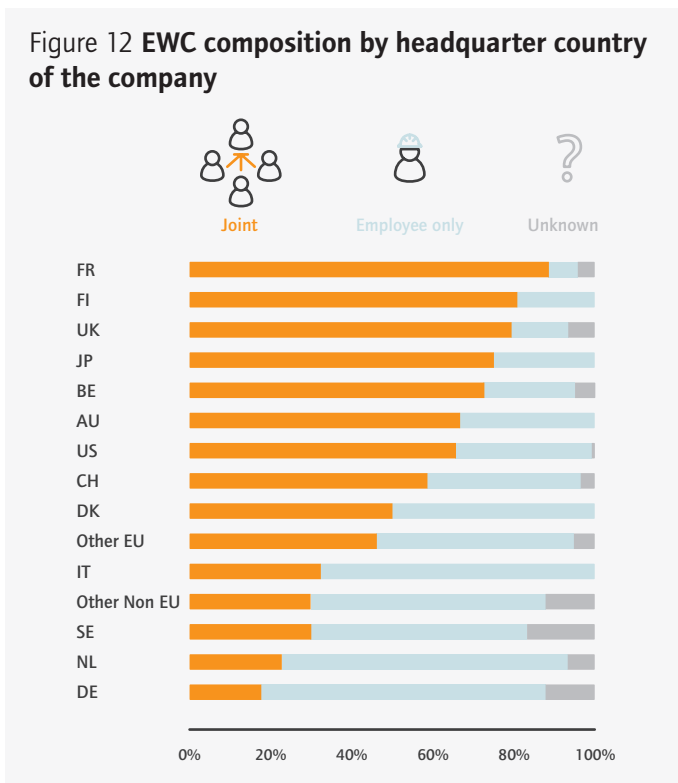
3. EWC composition

3.1. The composition of the EWC: only employees or joint bodies?



One determinant of the way EWCs work is their composition; they may either be composed of employee representatives alone (German-type EWC) or of employee and employer representatives (French-type EWC). Most of the EWCs have the latter form of joint composition. Specifically in large companies

EWCs are more likely to have joint rather than employee-only composition. A major difference is also observed in relation to EWCs established in SEs, most of which have an employee-only composition. This is not surprising given the fact that most SE works councils operate in companies headquartered in Germany.

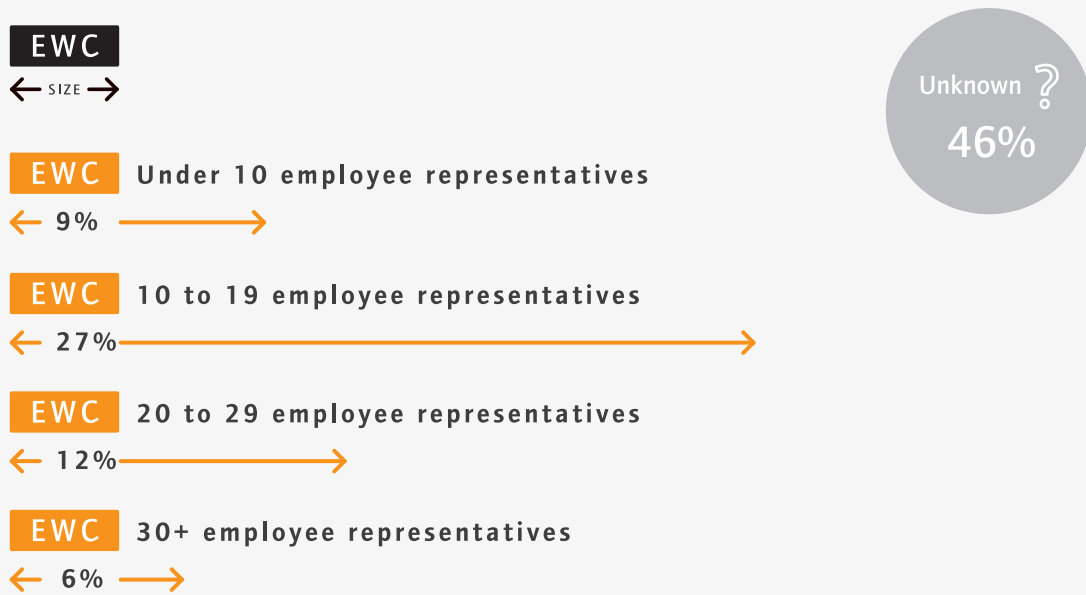


Regarding composition of the EWC, there are significant procedural differences relative to the headquarter country of the multinational. German and Dutch multinationals predominantly choose in favour of EWCs with only employees as representatives, while multinationals based in France or the UK tend to prefer a joint EWC on which both the employee and the employer side are represented. We can therefore speak of a ‘German model’ (employee only) and a French model (joint) with regard to EWC composition.

In practice, however, in spite of procedural differences between the models, their outcome is similar. In German-type EWCs exclusively internal meetings are followed by a joint session with the management, during which all issues are discussed again. In the French-type EWC, on the other hand, it is common for the joint sessions of the EWC to be preceded by preparatory meetings of the employee representatives. During these pre-sessions the employee delegates prepare the agenda, discuss points of special interest, agree upon strategy, and so forth. Therefore, although the two models represent different industrial relations philosophies and traditions, the differences have relatively slight implications for the functioning of EWCs.

3.2. How many employee representatives?

Figure 13 EWC employee representation size

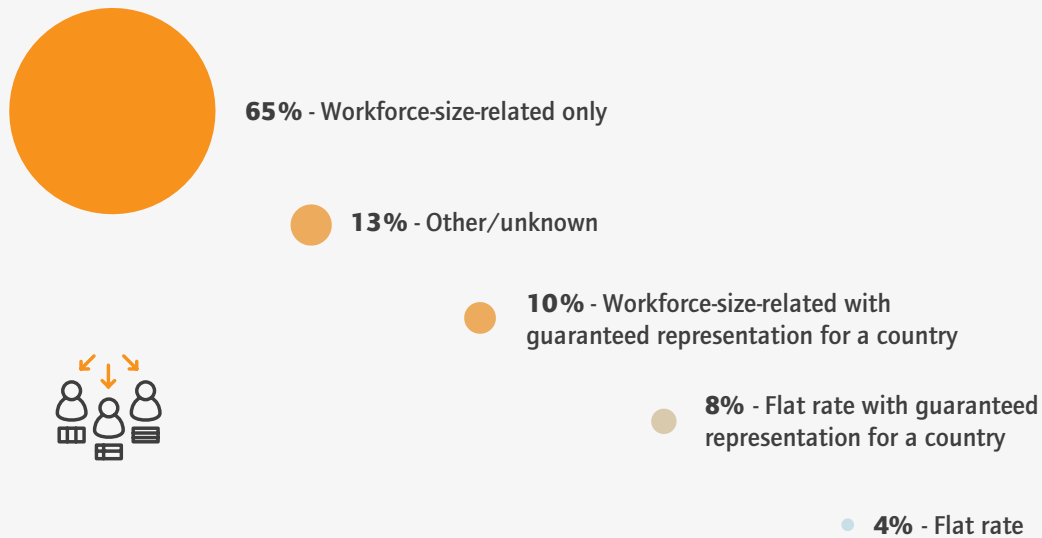


Another important factor determining the work of an EWC is its size. The number of EWC members has an impact on communication, the exchange of information, necessity to set up a select committee, time needed to reach a conclusion or to react to consultation by management, frequency of meetings, and many other facets.

The employee delegation in an EWC can, indeed, vary greatly in terms of size. As such, there are EWCs with only three employee representatives while others have 70. For about half of the EWCs there is no information in the agreements concerning the number of employee representatives. Of those for which sufficient information is available, most have between 10 and 20 employee representatives. Only rarely do EWCs have less than 10 or more than 30 employee representatives.

3.3. Seat distribution over countries

Figure 14 **Seat distribution over countries**



As EWCs are naturally composed of employee representatives from different countries, a system has to be devised to determine how many representatives can be sent by which countries. As in parliamentary elections, the rules governing the distribution of representatives over countries are of key importance as they directly impact the relative strength of the different employee representations.

In most EWCs (67%) there is a minimum workforce number (threshold) required for a country to be assigned a seat for a representative in the EWC.

In the large majority of EWCs (65%), seat distribution over countries is based on the proportion of employees working in the respective countries. 4% choose a flat-rate, meaning that every country has the same number of representatives irrespective of workforce numbers. Furthermore, 18% choose a combination of a proportional (10%) or a flat-rate (8%) system with a guaranteed representation of a specific country (mostly the HQ country). The EWCs choosing such a structure generally have their headquarters in countries that include Germany, Italy, Sweden and Denmark.

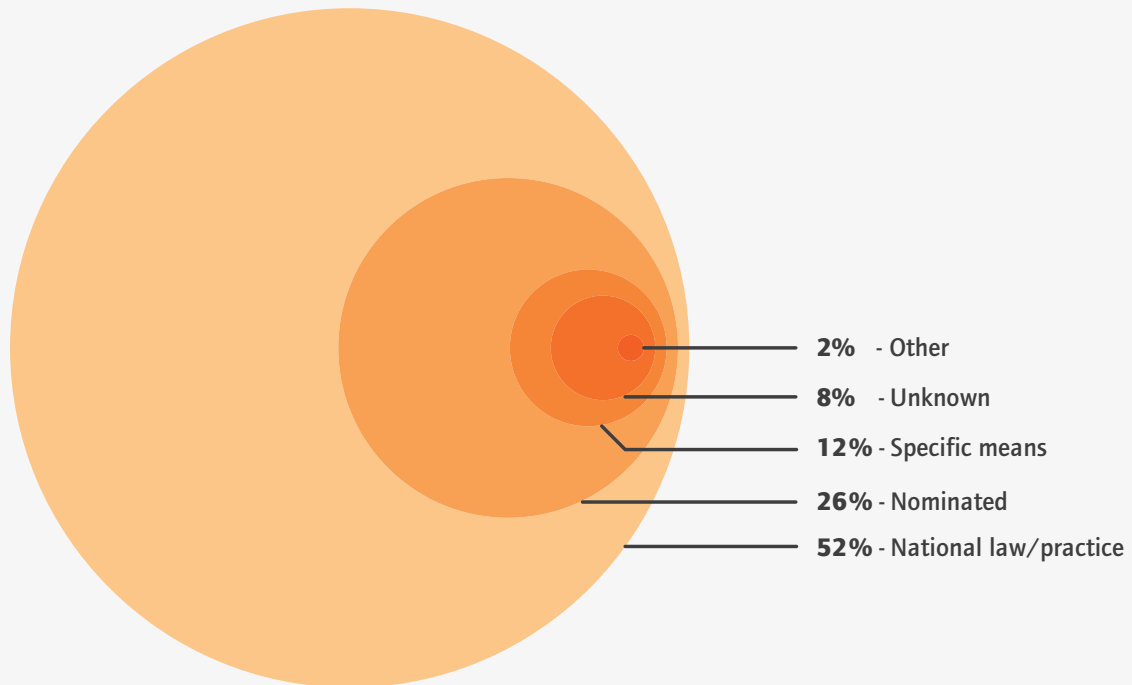
63% of **EWC** bodies have rules to **adapt the seat distribution** when the employee figures change **significantly**

37% of **EWC** works with a **threshold of a minimum number of employees** before a country can send a representative

27% of **EWCs** working with a threshold also provide a **possibility for several (smaller) countries** to be represented by a **common representative**

3.4. Legal rules for the selection of representatives

Figure 15 Representative selection method*



Regarding the selection of employee representatives for EWC seats, the majority of EWC agreements (52%) refer to national laws or practices. One in four leaves it to the trade unions or national representation bodies to nominate representatives (instead of general elections). 12% of agreements foresee some specific means for some particular or for all countries. EWCs from companies with their headquarters in Belgium or Italy opt significantly more frequently for a nomination procedure.

The embeddedness of employee representatives in national trade unions is an important factor determining the quality of EWC work. EWC members who are affiliated to trade unions are generally more effective than non-affiliated counterparts as unions provide support and expertise in various respects (Recital 27 of EWC Recast Directive 2009/38/EC) as well as access to international networks, experts, and training. A trade unions' support for EWCs has also been recognised as factor stimulating the setting up of new bodies.



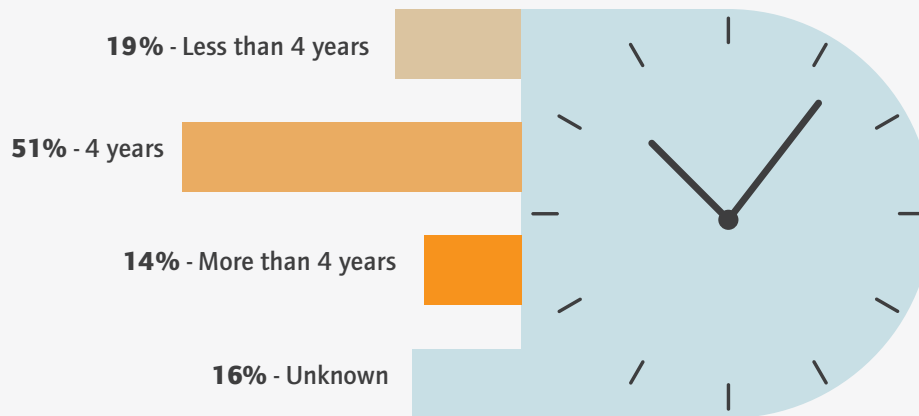
EWCs

specifies that the national trade unions or works councils are responsible for the selection of the EWC representatives

*In this figure (fig. 15) the category 'nomination' refers to the situation where national trade unions and/or works councils are responsible for selecting the EWC representatives. 'Specific means' relates to EWCs' specifying explicitly how representatives of some particular or all countries should be selected.

3.5. Mandate duration

Figure 16 EWC mandate duration



The pace of re-election of EWCs is another important factor determining the work and outcomes of EWC activities.

Most EWC representatives have a four-year mandate (51%); one in five has a mandate of less than four years and 14% of more. The remaining 16% have a mandate of unspecified duration. The bodies with unspecified mandates or mandates of less than four years are predominantly pre-directive bodies. In SE works councils, we see a trend towards a standard four-year mandate (63%).

35%

of the mandates with a **specific term** are **explicitly renewable**. Most agreements **do not specify** whether mandates are **renewable or not**

7%

of the bodies with **renewable mandates** also place a **limit** on the length of tenure

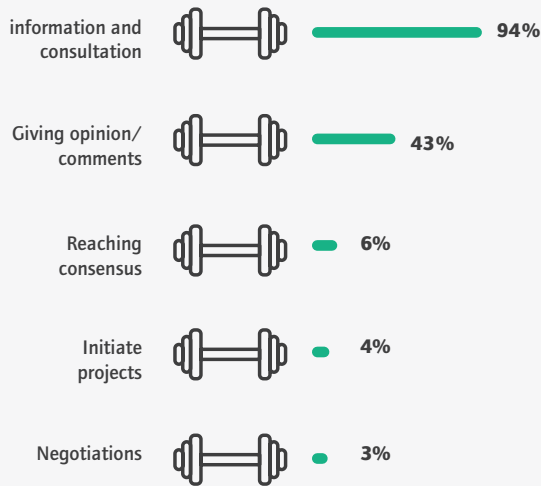
4. Competences

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4. Competences

4.1. EWCs' procedural competences

Figure 17 EWC procedural competences

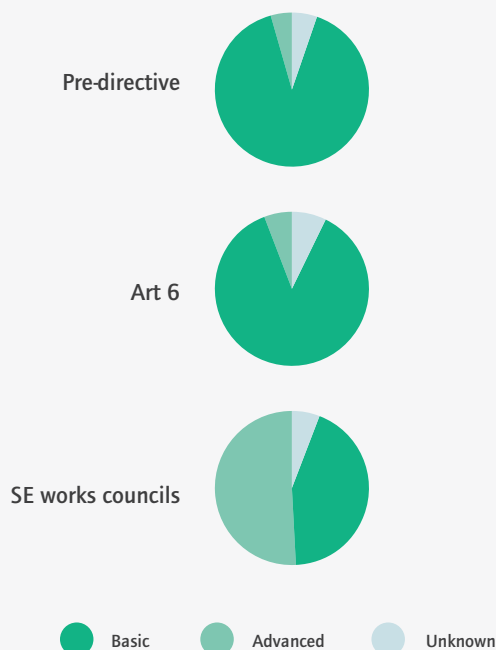


One key determinant of an EWC's impact is the competences and roles it can assume. Almost all EWCs are explicitly competent to receive information and be consulted upon transnational issues. For a large minority of the EWCs, this competence is extended to giving comments and opinions on the issues at stake.

Only rarely do EWCs have competences that go beyond these roles. Less than one in ten EWCs can initiate projects, reach consensus or enter into negotiations with management. While the explicit mention of those competences is important, in practice some EWCs with only basic competences do make recommendations or initiate projects.

One example of an EWC with negotiation competences is the EWC of Solvay. In its agreement, a clear reference is made to the ability of the EWC to draft charters on matters of transnational significance. And this stipulation has not been without consequence. Since 1999, Solvay has signed several Transnational Company Agreements regarding health and safety, social policy and sustainable development. The last agreement installed a profit-sharing system which directly impacts the income of the Solvay employees. Similar competences are provided to EWCs in companies that include Allianz SE, Crédit Lyonnais, Danone and Danske Bank.

Figure 18 EWC procedural competences by type of EWC*



4% of EWCs have the explicit competence to initiate projects

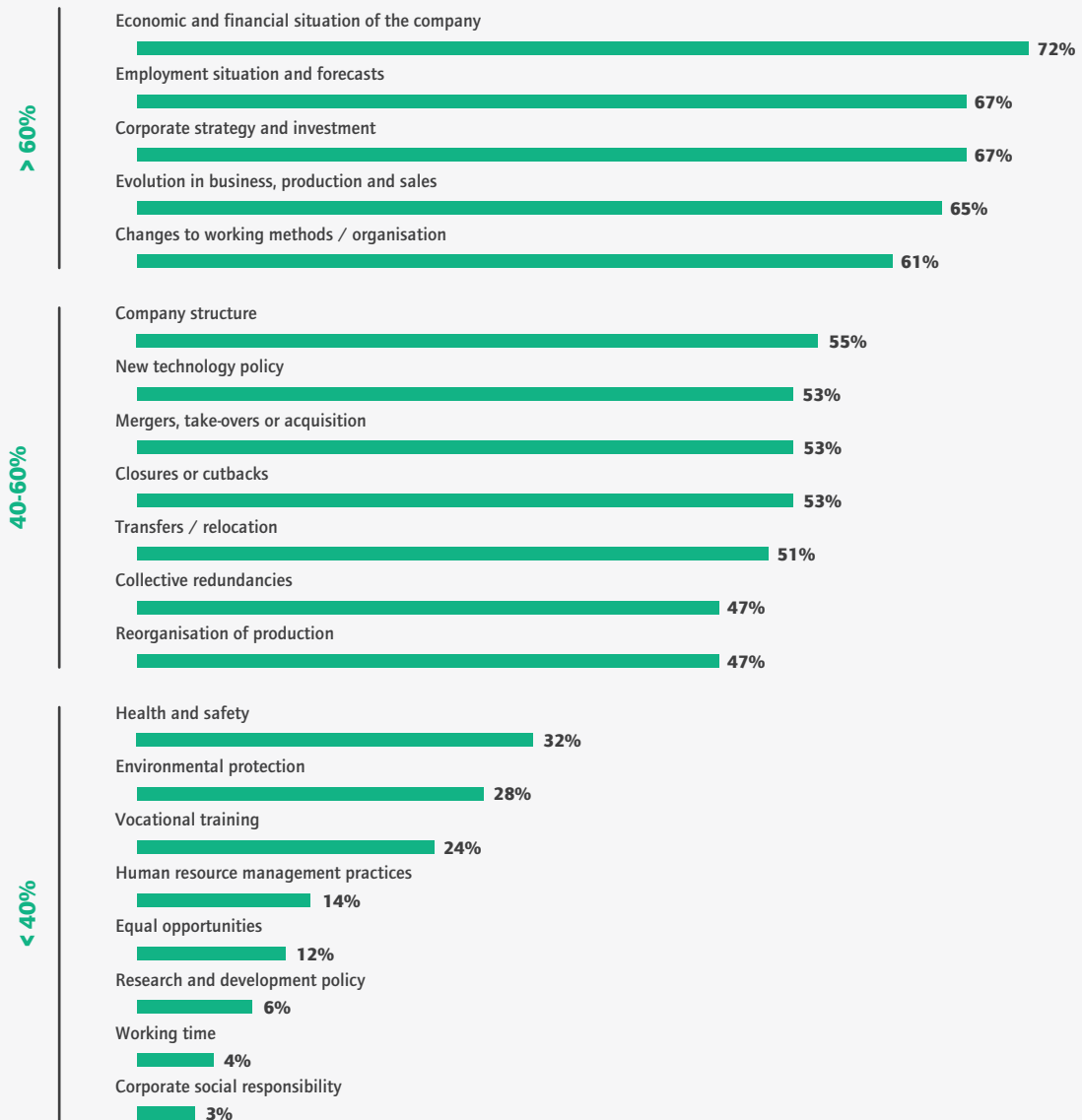
3% of EWCs have the competence to negotiate with the management on transnational issues

In comparing EWCs with basic and those with more advanced competences, significant differences are to be observed between different types of EWC. As such, SE WCs are far more likely to have advanced competences than other EWCs. Of the current SE WCs, more than half can do more than just be informed and consulted. Alongside type of body, the headquarter country also plays a role in this respect. In multinationals headquartered in Germany, the Netherlands and France, EWCs are more likely than in other countries to have advanced competences. The fact that most SE works councils are established in companies headquartered in Germany is a likely explanation of their more extensive competences.

*In this figure (fig. 18) 'Basic' refers to an EWC being responsible for information, consultation and/or giving opinions. 'Advanced' refers to EWC being competent for making recommendations, reaching consensus, initiating projects and/or negotiations.

4.2. EWCs' thematic competences

Figure 19 Thematic competences of EWCs

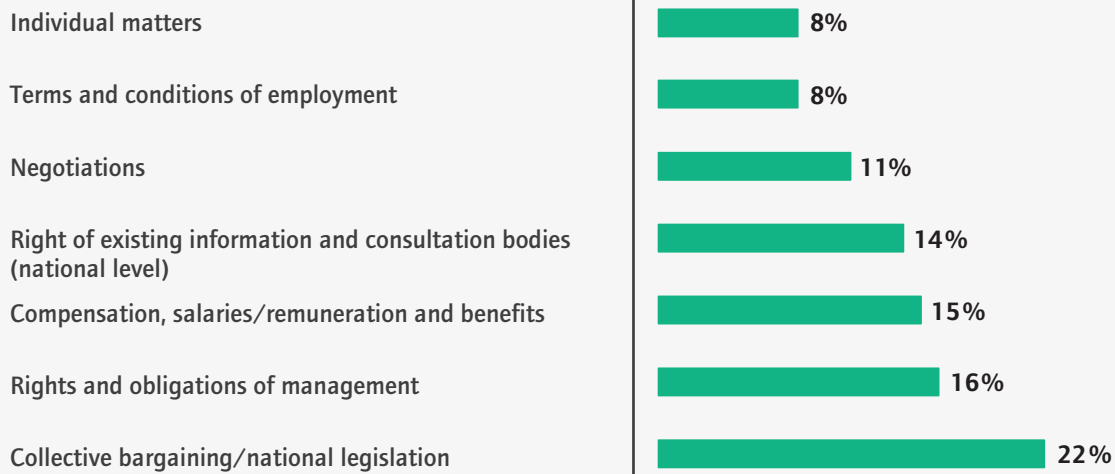


In almost all EWC agreements, a list of topics specifying the thematic competences of the EWC is included and is a centrepiece in relation to EWC operation insofar as such a list gives employee representatives a clear orientation on what information they are required to receive and on which topics a consultation procedure should be held. However, these enumerations of EWC areas of competence are not necessarily exclusive. In practice an EWC can, on the basis of tacit agreement, tackle matters that are not on the list. In 28% of cases, such extension by agreement is indeed explicitly foreseen in the agreement.

In **28%** of EWCs additional topics can be discussed upon agreement

4.3. Excluded competences

Figure 20 Excluded competences



One in five EWCs cannot be involved in issues regarding national collective bargaining or national legislation/rights. Other frequently excluded issues are rights and obligations of management, local issues, wage issues, negotiations, employment conditions and personal matters.

On top of often significant problems with obtaining information and consultation due to refusal of management on the grounds of alleged lacking transnational dimension of matters, EWCs are sometimes confronted with explicit exclusions of their competence in some matters. Some of these exclusions may give rise to problems. They can effectively limit the capacity of the EWC to become a forum of genuine workers' representation as

their role is explicitly limited to selected areas rather than the entirety of workers' interests.

Furthermore, the exclusion of negotiating powers shows how diversified EWC practices may be: while some EWCs are prohibited from bargaining, others are given explicit authorisation to enter into negotiations with management and yet others sign Transnational Company Agreements with company management.

1/5 EWCs cannot be involved in national collective bargaining issues

1/10 EWCs is explicitly forbidden to enter into negotiations with management

5. Meetings

The background of the slide features a complex pattern of overlapping line graphs. A prominent yellow line graph is in the foreground, showing a series of peaks and valleys. Behind it, several lighter grey line graphs are visible, creating a sense of depth and data analysis. The overall aesthetic is clean and professional, typical of a business presentation.

5. Meetings

5.1. Plenary meetings

Figure 21 Plenary meetings



The frequency with which the EWC meets is an important determinant of its ability to form a strong information network between employee representatives from different countries. Plenary meetings set the pace of EWC work as they allow representatives from various countries to get together, devise common strategies, and prepare responses to management.

Even though the plenary meeting is regarded as the centrepiece of the annual life-cycle of most EWCs, it is not enough to make an EWC effective. In the current context of permanent change and restructuring, a single annual meeting does not enable an EWC to properly perform its functions. Therefore it is important that employee representatives remain in contact and exchange information regularly as well as that they are provided with the resources to do so.

Even though the plenary meeting is regarded as the centrepiece of the annual life-cycle of most EWCs, it is a mistake to treat this meeting as the sole important event. In the current context of permanent change and restructuring, a single annual meeting does not enable an EWC to take on a proactive role and, for this reason, it is important that employee representatives meet more often and that they have the resources and facilities to cooperate on a constant basis. These issues will be discussed in part 7.

1/4 of EWCs meet more than once a year in a plenary meeting

In **50%** of the EWCs the plenary meetings are spread over more than one day

5.2. Preparatory & debriefing meetings

Figure 22 Preparatory & debriefing meetings



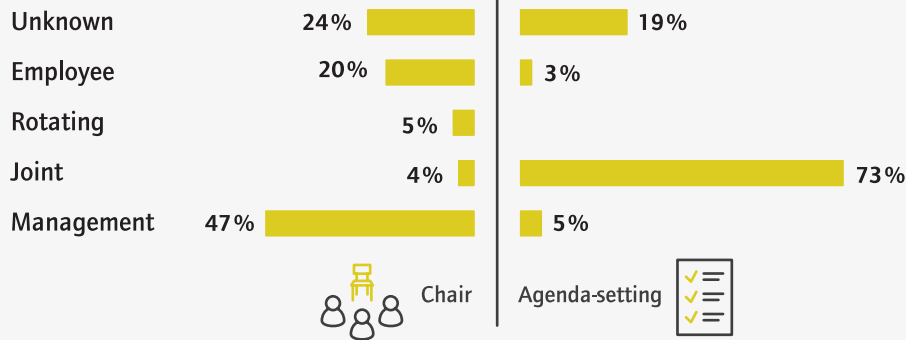
In most EWCs the employee representatives have the possibility to hold a preparatory or debriefing meeting without management presence before and/or after the plenary session. In 44% of EWCs both a preparatory and a debriefing meeting are foreseen. In 15% of cases, the EWC agreement fails to specify whether such meetings can be organised.

44% of EWCs foresee an **employee-only preparatory and debriefing meeting**

Both types of adjacent meeting provide worker representatives with crucial tools. Preparatory meetings allow evaluation, discussion and exchange of information as well as the preparation of views on data provided by management (ideally) in advance of the common meeting. Debriefing (or follow-up) meetings, on the other hand, allow worker representatives to agree appropriate actions in the immediate wake of the exchange with management. In the absence of these two types of meeting, the usefulness of the EWC plenary session is liable to be significantly limited.

5.3. Chair & agenda

Figure 23 EWC meetings: chair and agenda-setting



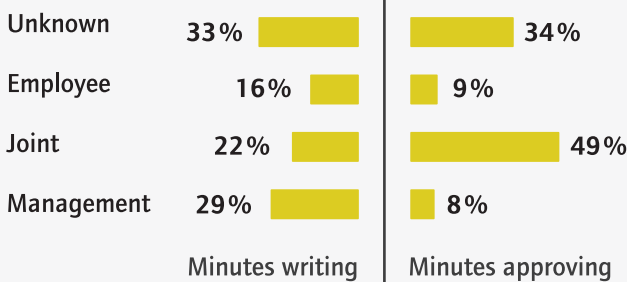
In almost **3/4** of EWCs the agenda is set jointly by the management and the employee representatives

In **1/5** of EWCs the employees chair the meeting

Chairmanship is an important factor in the operation of an EWC. It is the chair who can steer debates and allocate time. If this role is performed by the management alone, there is no guarantee that the decisions taken will reflect the worker representatives' priorities and interests. And yet, in about 47% of EWCs, meetings are chaired by a management representative alone. In no more than about 20% of cases are plenary meetings chaired by an employee representative. Other more conciliatory forms (rotating or joint chairmanship) are scarce, accounting for approximately 10% of EWCs.

Alongside chairing of the meeting, agenda-setting is another important aspect that conditions the effectiveness of an EWC. It is at this stage that decisions are taken on what to discuss and what not to discuss and on how much time should be devoted to certain subjects. Generally speaking, agenda-setting is done jointly by employees and management, meaning either that management and worker representatives must agree on an overall agenda or, alternatively, that both sides are free to propose items that will automatically be taken on board. Only rarely is agenda-setting a matter for employee- or management-only decision.

Figure 24 Writing and approving minutes

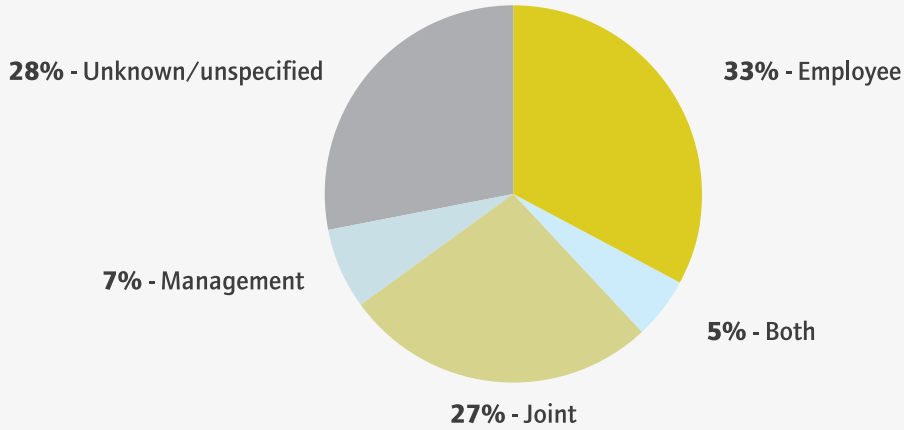


20-35% of EWCs have no explicitly agreed rules regarding chair, agenda-setting or minutes

About two thirds of EWCs have clear rules about who writes and who approves the minutes of their meetings. These minutes are the official transcripts of EWC proceedings and decisions made. Insofar as they shape further EWC activities, their importance should not be underestimated. Writing the minutes is generally a management responsibility, while their approval is, in half of EWCs, done jointly.

5.4. Reporting on outcomes of information and consultation

Figure 25 Reporting back – who is responsible?

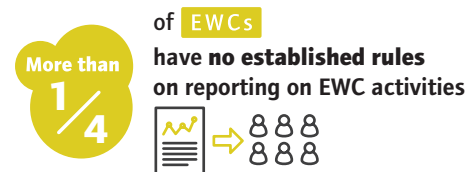
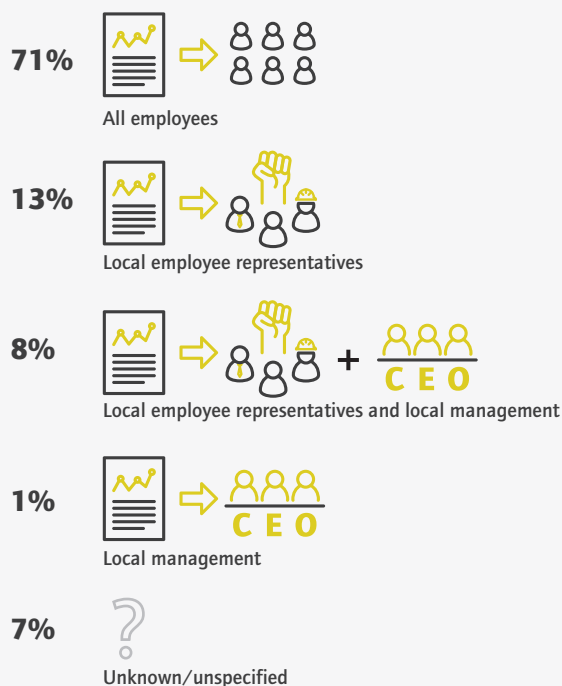


One of the goals of the EWC Recast Directive was to achieve better articulation between EWCs and other (national) forms of worker representation. To this end, the communication and information-sharing between EWC representatives, national representatives and shop-floor workers is an aspect requiring attention. In the Recast Directive this ‘duty to report’ on the part of employee representatives is stated more clearly. In a majority of EWCs (72%) the agreements mention this duty, meaning that in the remaining 28% no mention is made of who is responsible for reporting back to whom. It must be stressed, however, that the fact that no reporting is mentioned in the EWC agreement

does not mean that such feedback is not provided to workers at all; in practice, individual EWC members often disseminate information about EWC operations via national works councils and trade union structures without a formal accord.

Of EWC agreements mentioning responsibility for reporting back, most assign this task to the employee representatives. In 5% of EWCs both management and employee representatives are required to report back; in 27% reporting back is a joint effort and in one in ten EWCs it is the sole responsibility of management.

Figure 26 Reporting back - to whom

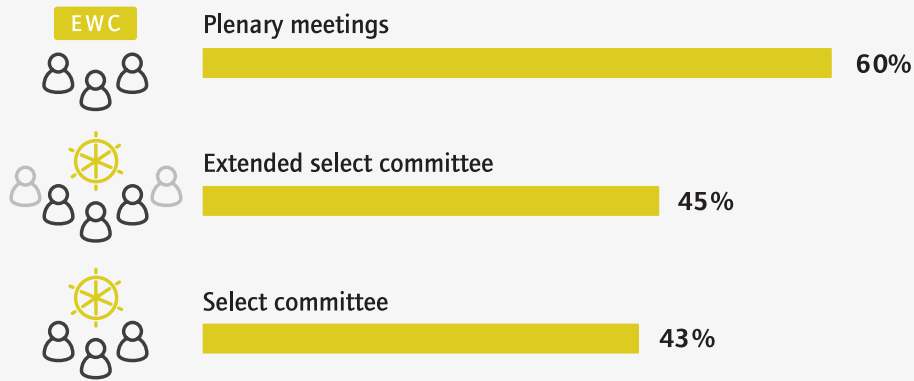


It is equally important to look at the recipient side of the reporting process, i.e. who is to be reported to. Of the EWCs mentioning the task of reporting back, the overall majority (71%) specify that the entire workforce needs to be addressed. Some EWCs, however, focus only on reporting back to national representatives or representative bodies, regarding it as the task of these latter to disseminate the information further to the workforce. In a very few cases (1%) the reporting is directed to the local managers.

All in all, the above figures show that a vast majority of EWC agreements already contain arrangements in line with the new requirement of the Recast Directive. At the same time, however, all EWCs should conduct a critical check on whether the mention of responsibility to report back to workers is accompanied by adequate means to perform this task such as access to all sites, appropriate means of communication, translation facilities, and workable rules on confidentiality.

5.5. Extraordinary meetings

Figure 27 Types of additional meetings



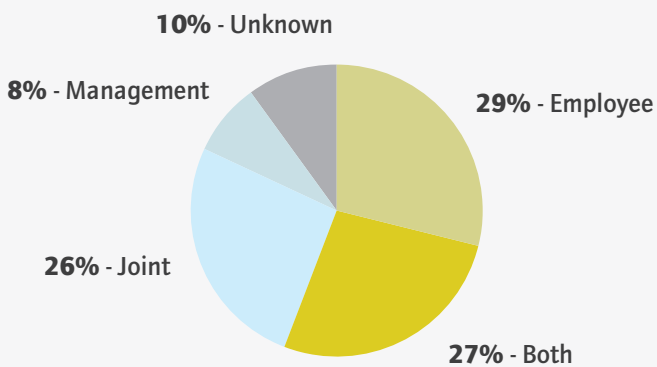
In addition to the planned (usually annual) EWC meetings, the Directive foresees the possibility of organising additional meetings in so-called ‘extraordinary circumstances’. When companies plan large reorganisations, transfers of plants, collective redundancies, radical strategy changes and such like, the EWC is entitled to a timely transnational information and consultation process.

86% of all EWC agreements contain provision for some form of additional meeting to be held under specific circumstances. While, in a majority of EWCs, such additional meetings are plenary, alternative forms are frequently also

proposed such as a meeting of the Select Committee (43%) or the Select Committee plus the representatives of the affected countries as also stipulated in the subsidiary requirements. Teleconferences are sometimes also suggested as a way to quickly inform and consult employee representatives on some types of issue.

In 86% of all EWCs some form of extraordinary meetings is foreseen

Figure 28 Initiative for additional meetings in exceptional circumstances



Organising additional meetings is not always easy. The definition ‘exceptional circumstances’ is frequently rather vague. Moreover, in 35% of EWCs, an explicit agreement of management is needed before an additional meeting can be called. In one quarter of EWCs both employees and management can call for additional meetings and in another quarter additional meeting are called by the employees. Yet even in such cases an implicit agreement of management is frequently necessary before an additional meeting can actually be convened.

In 35% of EWCs explicit agreement on the part of management is needed before an additional meeting can be convened



6. Facilities and resources

6. Facilities and resources

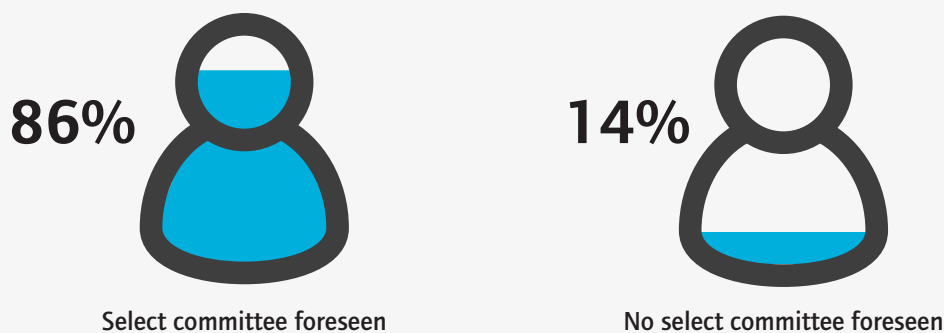
For an EWC to function both smoothly and effectively, a range of sufficient and appropriate facilities and resources are required. These may be material (e.g. rooms in which to hold EWC meetings, translation and interpretation), financial (e.g. a budget), institutional (e.g. legal guarantees to challenge management's decisions on, for example, confidentiality, disputes, etc.) or organisational (e.g. presence of Select Committee or working sub-groups).

Such facilities and resources can greatly impact the overall EWC functioning. For instance a smaller select committee can be set up to smooth the work organisation during and in between annual EWC sessions and, particularly, in case of exceptional

circumstances. Training can be provided for EWC members to develop their capacities and understanding of complex company-related matters. Translation and interpretation facilities should be foreseen to improve communication among members. The EWC may be explicitly allowed to visit the company's premises to meet and exchange information with the workforce. Access to expertise and experts allowing in-depth analysis of specific questions may be arranged to raise the quality of the EWC consultation process. And, of course, the relevant expenses have to be covered by the company.

6.1. Select committee

Figure 29 Presence of a Select Committee



One of the most common and obvious organisational facilities to boost EWC operation is a select committee. This body, composed of EWC members, generally has the task of organising and coordinating EWC activities on both a regular and an ad hoc basis. More than four out of five EWC agreements contain provision for the establishment of such a body. Although the organisation of a select committee naturally depends very much on the size of the EWC, even among small EWCs (< 10 members) more than 70% have a select committee.

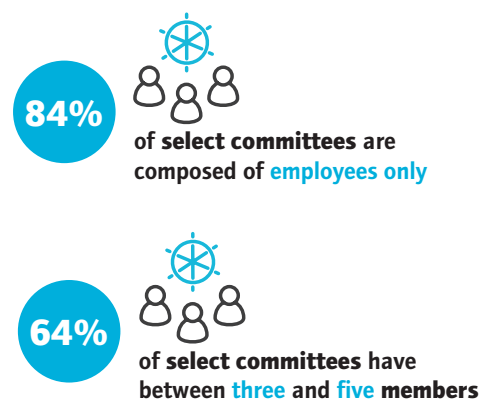
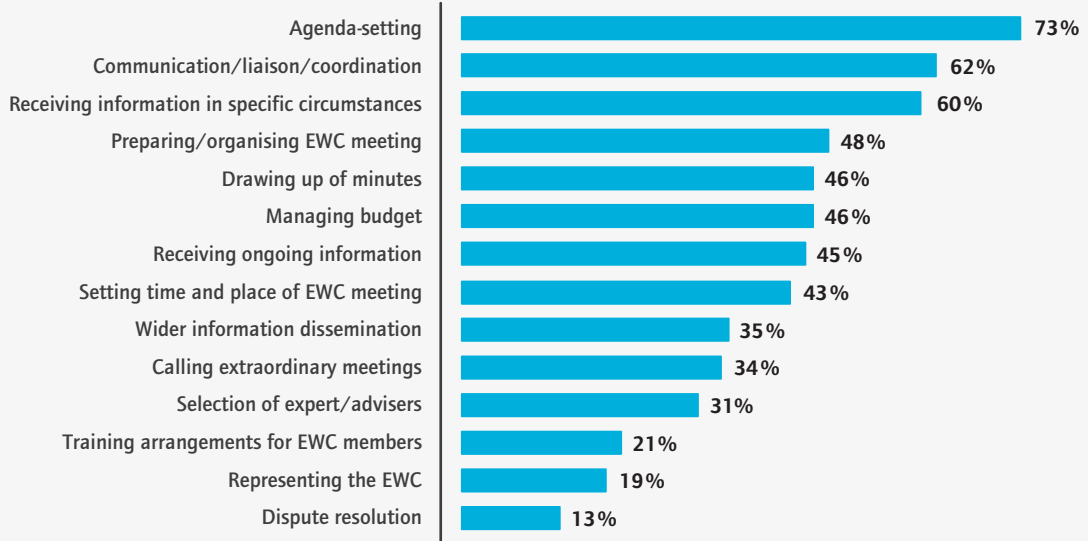


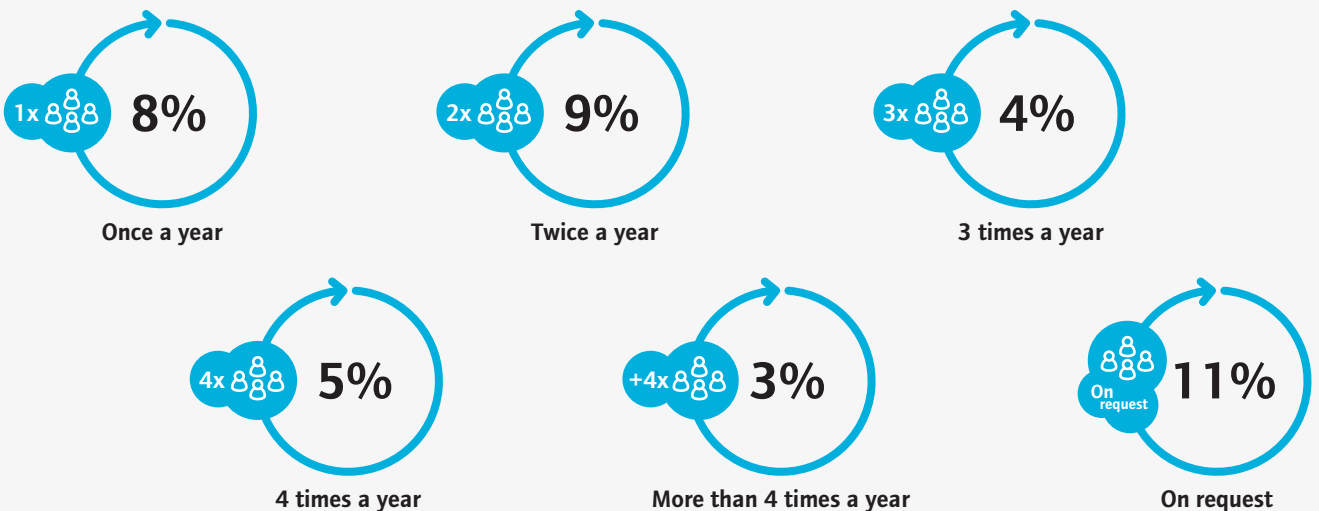
Figure 30 Select committee competences



The majority of select committees have competences regarding agenda-setting (73%), coordinating EWC activities (62%) or receiving information in specific circumstances (66%). Less frequent competences of select committees relate to the resolution of disputes, the selection of experts, arrangement of training sessions for EWC members and representing the EWC in general.

Obviously, the primary task of the select committee is to smooth the EWC’s work and take charge of various organisational aspects. Less frequently, select committees play a more extensive and strategic role in terms of receiving and communicating information, convening additional meetings or selecting experts and training sessions for EWC members.

Figure 31 Minimum guaranteed select committee meetings

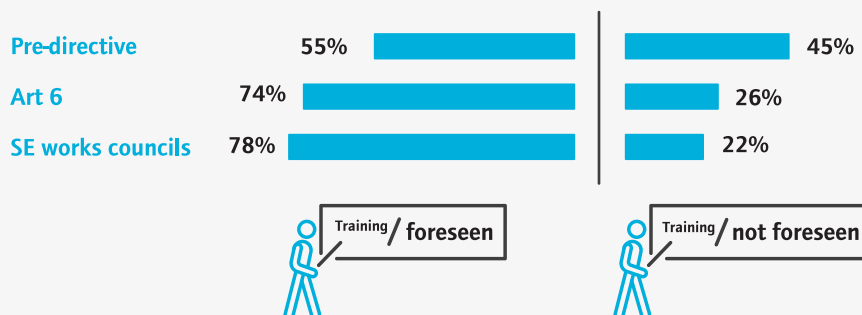


Frequent meetings of the select committee are important for building strong, trust-based relations among representatives. The frequency of meetings with or without management is in most cases unknown or unspecified (59%) in agreements. In 11% of cases, the frequency of meetings remains unspecified but they may be convened at the simple request of the representatives.


In cases where frequency is laid down, most select committees hold at least one or two meetings a year. Only 12% of select committees benefit from provision to meet three or more times a year. A frequency of one or two select committee meetings is often referred to as a minimum, with the possibility of further meetings if required.

6.2. Training

Figure 32 Training provision foreseen

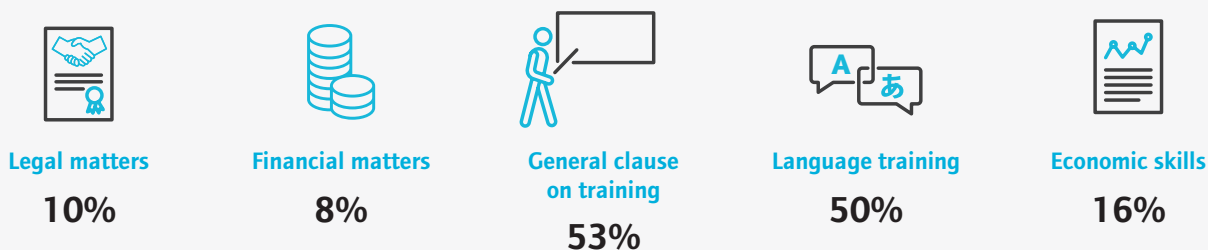


 **One in three** EWC agreements contain no provision for a right to training

More than  **half** of all EWCs foresee some kind of language training

EWC members' competences and expertise contribute strongly to the quality of EWC operation and performance. Nevertheless, topics and information dealt with in the EWC can be highly complex and most worker representatives thus require some training. In the Recast EWC Directive the right to training without loss of pay is clearly stated. But how frequently are training provisions encountered within the entire population of EWCs? Two in three EWCs have agreements which explicitly specify the right of the EWC member to receive training in their capacity as EWC employee representative. EWCs established in larger companies are more likely to have such training provided, as are EWCs fully covered by the Directive (art 6) and SE WCs.

Figure 33 Type of training foreseen for EWCs with provision for training of members



Regarding the content of training, in EWCs where there is such provision the reference is most frequently in the form of a general clause concerning a 'right to training' (53%), but 50% of EWCs provide also for the right to language education as a specific form of training. EWC agreements rarely contain explicit provision for training on other subjects (such as economic skills, financial or legal matters).

6.3. Languages

EWCs are international bodies where employee representatives from different countries come together. In such a setting, translation and simultaneous interpretation services are frequently necessary to enable the participants to hold effective discussions. In most EWCs therefore, interpretation services are foreseen in all relevant languages (46%) or in the languages requested by the EWCs members (27%). In a minority of cases,

simultaneous interpretation in a restricted list of languages is provided (10%). In 14% of EWCs, no specification is found concerning which languages should be covered by interpretation facilities. Concerning translation of texts under discussion, the findings are relatively similar and one in four EWCs have no explicit mention of the languages into which documents should be translated.

More than **3/4** of EWCs have access to good language facilities (translation and/or interpretation)

In more than **1/4** of EWCs provision for translation or simultaneous interpretation services is limited to certain languages or left unspecified

6.4. Access to premises

Figure 34 Access to premises



For a well-functioning employee representation, the representatives need to communicate with the workers they represent. An important tool in this regard is the right to visit the company premises. Such visits allow sharing of information about the outcomes of EWC work, collecting input on workers' interests and making EWC work tangible for employees.

This right was implicitly recognised by the Recast EWC Directive as a means of supporting articulation between various levels of worker representation. This right is explicitly mentioned in

only 18% of the EWC agreements. While this right, where it is mentioned, is generally extended to all company sites, in 4% of all EWC bodies it is nevertheless limited to the home country establishments.

Only **18%** of EWCs have a clear right to visit the company premises

6.5. Expenses / Budget

95% of EWC agreements contain some mention of basic expenses to be covered. These generally include travel costs, secretarial work and communication facilities.

↳ **74%** have a general clause on cost-coverage supplemented by specific mention of some forms of costs.

↳ **26%** have only a limited list of specific costs covered by the company.



According to EWC directives all costs (material, financial, but also time devoted by EWC members to performing their duties) of EWC operation are to be covered by the company. There are, however, different ways to put this requirement into practice. First of all, the EWCs can have specific or general cost-coverage

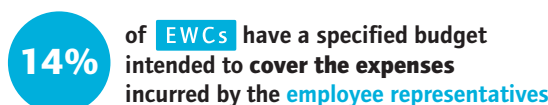
clauses. Of all EWCs which mention the covered costs, 74% have a general statement of cost coverage, supplemented by some specific mentions of various costs covered. The remaining 26% have only a limited list of expenses covered.

Figure 35 **Covered costs of EWCs explicitly mentioning that some costs can be covered***



With regard to the specified costs, the vast majority (82%) provide some kind of time facilities to attend and/or prepare the EWC work. In some EWCs, the time-off for EWC activities (outside plenary meetings) is clearly defined. In such cases a distinction is made between normal members and members of the select committee. In 59% of EWCs with a clause on expenses, preparatory or debriefing meetings are also explicitly covered. Furthermore, in one in three EWCs, one expert is paid for by the company while in an additional one in three the company pays the expenses of more than one expert.

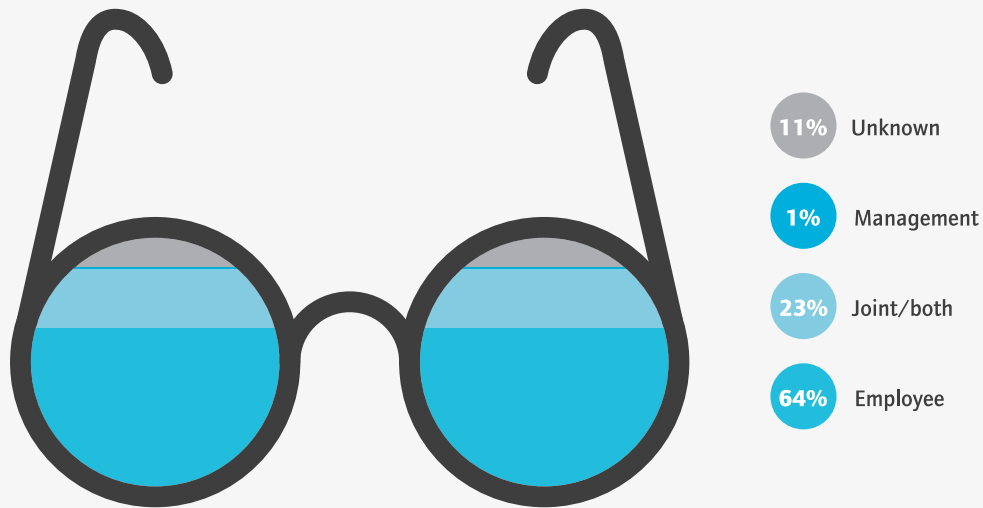
Yet EWCs that have to apply for management agreement on every single expense will be hampered in their functioning. EWCs that enjoy a degree of autonomy in this regard will be better able to adapt their operations to changing demands and to take on a proactive role. 14% of EWCs are allocated an annual budget intended to cover all costs of EWC organisation. Whereas such a budget might provide the EWCs with some flexibility in spending, an insufficiently large budget might also prevent them from organising sufficient meetings. Depending on the budget level, such an arrangement can thus be a curse or a blessing.



*In this figure (fig. 35) 'Technical' includes travel, accommodation, communication facilities and secretarial work. 'Time facilities' includes time to attend and/or prepare plenary, and/or select committee meetings.

6.6. Experts

Figure 36 Selection of experts



EWC employee representatives can request external expertise to support them in performing their tasks and meeting their responsibilities. In 92% of EWCs some kind of system of external expert support is foreseen. In most EWCs it is not specified who such experts might be but:



- in 40% of EWCs representatives of the European Trade Union Federations can join the EWC;
- in 25% of EWCs, national trade union or works council representatives can join the EWC.

Experts from European Trade Union Federations, national trade unions or works councils do not only help the EWC in technical discussions but generally improve the communication and coordination of the European with the national-level activities.

Selection of experts in EWCs is mostly a competence of the employee representatives alone, or requiring in some cases the agreement of management. Only rarely is it the management that selects the experts who are to assist the employee representatives.

7. SE work councils and EWCs compared

7. SE work councils and EWCs compared

In 2001, in the context of the increasing internationalisation of companies in Europe, the EU introduced a new legal form for companies, the Societas Europaea (SE). In parallel, in order to promote workers' rights, the SE Statute was complemented with a framework for employee participation in the SE. The SE framework for workers' involvement comprises information and consultation rights almost identical to those laid down for EWCs, albeit complemented in this case with participation rights that allow employee representatives to sit on the managerial or supervisory boards of SEs. One of the most important differences between the EWC and SE legislation is the fact that while the establishment of an EWC is voluntary, requiring an initiative by one of the parties (workers or management), an SE cannot (in certain circumstances) be legally registered without an agreement on employee participation. Thus, the regulation on workers' participation in SEs, while inspired by the EWC regulation, went beyond it in several ways which were, in turn, a source of inspiration for the EWC Recast Directive.

At the present time (ETUI database, June 2015), 102 SE works councils (99 SE works councils and 3 SE information and consultation procedures) are up and running. In what follows, we compare the characteristics of these SE works councils with the 'traditional' EWCs regulated by the original directive.

102

of all SE WCs
are currently up and running

As with EWCs, a large proportion (about 34%) of the SE WCs have been set up in the metal sector. Meanwhile, whereas only 17% of EWCs are established in the services sector, this sector accounts for over 40% of SE WCs. Other sectors with a considerable number of SE WCs are chemicals and construction.

41%

of all SE WCs
are established in the services
sector compared to 17% of all EWCs

Due to the impact of the 'before-and-after' principle on worker involvement, more than 80% of the companies with an SE WC are located (headquartered) in Germany. Among companies with an EWC this share amounts only to 13%. Alongside Germany, 8% of the SE WCs are established in firms headquartered in France. In general, companies with SE WCs are smaller (< 5000 employees) and less internationalised (active in less than 5 countries) than companies having an EWC.

80%

of all SE WCs
are established in companies
headquartered in Germany

Compared to EWCs, SE works councils are characterised by less diversity in their range of individual features. They accordingly tend to look alike. A large majority of SE works councils (69%) opted for an employee-only composition. While the composition is unknown in about 22% of cases, among the remainder only one in ten explicitly choose a joint composition. This distribution of the SE works council model can be related to the fact that most SE works councils are established in firms with German headquarters where employee-only composition traditionally predominates, in contrast to French companies which – just as in the case of EWCs – prefer joint bodies.

Furthermore, the SE works councils have more advanced procedural competences. More than 55% of these bodies (in comparison with 11% of EWCs) have a role that goes beyond mere information, consultation and giving of opinions. As such, individual SE works councils are by agreement entitled to 'give opinion/comment', 'initiate projects', 'make recommendations', engage in 'negotiations', and aim to 'reach consensus' far more frequently than are EWCs. Similarly with regard to the fields of competence, the SE works councils generally have more extensive competences regarding employment issues (transfer of activities, collective redundancies) than do traditional EWCs. On the other hand, when it comes to health and safety or environmental protection, traditional EWCs have competences in these areas more frequently than do SE works councils.

In terms of support and facilities, SE WCs generally have more access to training (78% vs. 65%) and members' access to premises is made explicit much more frequently than in normal EWCs (51% vs. 15%). SE WCs also meet more often, as more than half (57%) of them have at least two meetings a year compared to 23% of EWCs.

Almost



SE WCs

provide training to
the employee representatives



SE WCs

provide access to the company
premises to the representatives

All these figures show that SE works councils, in many respects, represent an advance over EWCs. This should come as no surprise in that the SE works councils is a more recent institution and was, from the beginning, subject to more robust fallback provisions. Moreover, some SE works councils were set up based on experience from – or were directly transformed from – existing EWCs and were thus in a position to benefit from accumulated knowledge of opportunities, challenges and possible problems. When it comes to the organisation of plenary meetings, however, SE works councils are, somewhat surprisingly, subject to significantly less specification than EWCs. In more than half of SE works councils the matters of who chairs the meetings, who sets the agenda, and who drafts and approves the meeting minutes are left unspecified.

We conclude that SE works councils are very similar bodies to other EWCs. They do stand out as being more extensive than the average in terms of competences (both procedural and substantive), numbers of meetings and facilities for employee representatives such as training and guaranteed access to premises. In their essential characteristics, however, SE works councils may be said to resemble EWCs in virtually every respect.

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