Chapter 9
Still struggling to connect the dots: the cumbersome emergence of multi-level workers' participation

Aline Hoffmann

1. Introduction

Remember the old childhood game of 'connect the dots'? It is not until one draws a line between numbered dots arranged in a seemingly random swarm that a recognisable picture emerges. The solution to the puzzle lies in systematically and patiently finding the links between seemingly disparate points.

The challenge facing European industrial relations is much the same. For decades, we have been struggling to work out how to solve this puzzle of Europeanisation. Since the adoption of the Recast European Works Council (EWC) Directive in 2009, a new word has entered the discourse in European industrial relations in both policy-making and practice: 'articulation'. It refers to what is arguably the most significant innovation in the recast EWC Directive, namely a remarkably consistent recognition throughout the revised text that transnational information and consultation needs to be systematically linked to information and consultation at local and national levels. While the word 'articulation' is not actually used in the Recast EWC Directive, it has come to refer to the action or manner of joining or interrelating these complex processes and actors. The underlying metaphor is that of a hinge or a joint, a construction enabling two things to be joined in such a way as to permit movement of each which is nevertheless not entirely independent of the other.

This chapter will argue that we need not remain overwhelmed by the swarm of dots which is all too often all we can see when approaching industrial relations within multi-national organisations. On the contrary, understanding the fundamental logic of multilevel industrial relations enables us to connect the dots of policy and strategy; sure enough, if we follow the logic and are not deterred by seemingly backtracking or crossing lines as we draw them, we will see a coherent picture emerge.

2. What's wrong with this picture?

The policy discourse and practical experience with European Works Councils has for decades been fraught with disappointment. EWC members and trade unions complain that the system doesn't work, that employers don't comply. Employers complain that EWC legislation is impracticable and burdensome. Case study after case study fleshes out larger-scale empirical surveys; the picture that emerges is one of relatively few success stories amidst a mass of disappointing or at best neutral conclusions. Such cases of extremely active EWCs include the much-studied General Motors, whose restructuring over the past decades has been accompanied by the EWC acting in close concertation with national-level trade union and workplace representation. At Bosch, up to ten extraordinary meetings of the EWC's Select Committee per year have quietly become the norm to deal with ongoing transnational issues. Participants at a recent conference in Leuven were surprised to hear that addressing the multi-level aspects of the Alstom GE Merger involved a total of 94 meetings bringing together different constellations of players from all the different levels. As clear as the justifications for these cases seem, they are nonetheless exceptions that prove the rule that effective multi-level articulation of information and consultation is not taking place on a wider scale.

This chapter will argue that while there may be some significant policy shortcomings, the main reason for this patchy record lies in the lack of a robust and above all shared understanding of what multi-level industrial relations around MNCs could be, and how it could function.

Looking at what we know about reality in practice, the vast majority of EWCs do not seem to be engaging in genuinely transnational information and consultation. A recent survey of EWC coordinators (Voss 2016) found that while there have been some positive developments, the overall experience with EWCs remains one in which EWCs are involved too late if at all, are not given adequate information or resources, and generally expend a great deal of energy to be noticed at all. Alarmingly, the report finds that most EWCs are unable to fulfil their role in restructuring situations; if they are not able to rise to the occasion on an issue for which they are indisputably competent, then the prospect of EWCs serving as a linchpin in a multi-level transnational model of workers' participation is bleak indeed. It is not necessarily for lack of contact between the levels, however: a recent analysis of agreements (De Spiegelaere and Jagodzinski

2015) found that nearly three-quarters of all EWC agreements in force had specific arrangements whereby the EWC was to communicate the results of information and consultation procedures to the national or local level. Arguably, reporting outcomes back to domestic workforces is only a part of the process, as will be seen below.

A recent analysis of the perspectives of management on the development of EWCs (Waddington *et al.* 2016) also finds significant compliance gaps: despite provisions to the contrary, information and consultation as a rule only takes place in the implementation phase, and not in the strategic phase. More pertinently to the subject at hand, the report concludes that the 'generation of means to articulate between institutions of workers' participation and social dialogue' remains a policy challenge: 'If multi-level governance in industrial relations is the policy objective, then the means to articulate between existing institutions is the prerequisite.' (Waddington *et al.* 2016: 78)

This chapter argues that the means *are* provided to a greater extent than is generally acknowledged, but that it is the will and perhaps the understanding of the parties that are lacking.

Certainly, there are compliance and enforcement problems. It can be particularly difficult in times of organisational restructuring, for example, to find the political and legal resources to engage the employer and the courts in a battle of enforcing procedures.

However, part of the reason for the inadequacy of most EWCs to live up to expectations seems to lie in a fundamental misunderstanding of the intentions of the Directive. In many countries' industrial relations systems, and for many players, the exercise of information and consultation rights may be well-established at the local workplace level, especially as it almost immediately demonstrates its usefulness by informing local negotiations, but the EWC as a necessarily multi-level application of this process remains an unfamiliar and cumbersome instrument.

Before exploring whether the essential tools are present in the EWC Directive in order to come to terms with the realities of transnational decision-making in European multinational companies, let us take a look at the nature and logic of information and consultation in the cumulative body of EU legislation and its transposition, the so-called 'EU *acquis*' or '*acquis communautaire*'.

3. Industrial democracy in EU legislation

Firstly, it should be borne in mind that workers' involvement can draw on a long and varied history across the EU. The fundamental principle that democracy does not end at the factory gates or the office door has found expression in a myriad of different approaches and instruments across the EU Member States; while each country has infused workers' participation with its own particular cultural and political flavour, the overall principle remains the same: workers have a say in a wide range of issues that affect their work, their working conditions, and their employing companies as a whole.

Nor is this idea new at the European level: for over a quarter of a century, EU legislators have taken up this consensus and sought to piece together a pan-European system of comparable rights. The EWC Directive was the first piece of EU legislation that attempted to frame it as a transnational process.

In 1989, building upon a few early legislative innovations going back as far as the 1970s, Article 27 of the Community Charter of the Fundamental Social Rights of Workers first defined the essential rights 'to be informed and to be consulted within the undertaking' and 'to take part in the determination and improvement of the working conditions and working environment in the undertaking'. These principles were subsequently made legally binding as the Social Protocol to the 1992 Maastricht Treaty and relevant legislation accordingly references them.

The operationalisation of these principles is indeed work in progress, but it is still worth stopping to consider the current state of play with particular attention paid to the potential of combining – articulating – these principles across levels and national borders.

Company-level information and consultation processes are foreseen for the general development of the company and workforce; particularly in cases of restructuring and change, employees are to be consulted on ways to mitigate the impact, including training, job definitions, contractual relations, etc.

The precise rules vary somewhat across Member States' transposition, but as a general rule, the company must give the relevant information early enough and in a way that enables employees' representatives to

study the data and recognise its possible implications for employment and working conditions in the company. Crucially, consultation is to take place with the appropriate level of management. Workers' representatives must be able to meet with decision-makers, get responses to their questions and opinions, and receive an explanation of company thinking, with the aim of reaching agreement on decisions.

The importance which the EU *acquis* attaches to workers' involvement can be seen in the fact that where a company's decision is related to employment and employment conditions, there is a specific role foreseen for workers' representatives: next to the cross-cutting general information and consultation rights described above, employee representatives have the specific right to be informed about the introduction and use of temporary and agency work, as well as about the use of fixed-term labour in the company as far as possible. Employers are to keep workers' representatives informed about part-time work in the company, and provide up-to-date information about the availability of part-time and full-time positions.

Health and safety policy has direct implications for working conditions and workers' well-being. Since 1989, a series of EU laws has fleshed out the principles of workers' rights to information and consultation on workplace health and safety, thus ensuring that workers' representatives are fully informed about safety and health risks, including work-related stress or harassment and violence at work, and about preventive measures in each workstation and job. To this end, workers' health and safety representatives have the right to access all the information they need to fulfil their role, including risk assessments, information about preventive measures and reports from inspection and health and safety agencies. This involvement is not merely reactive: next to the right to present opinions in consultative processes, health and safety representatives also have the right to put forward proposals.

Next to these overall rights to information and consultation, EU law requires additional information, consultation and participation for vulnerable workers, such as pregnant women or breast-feeding mothers, or those in jobs with extra risks such as carrying heavy loads, working in front of computer screens, or exposure to carcinogens, chemicals, mechanical vibration, excessive noise, electromagnetic fields and artificial optical radiation, such as ultraviolet, infrared and laser beams. EU law also provides specific information and consultation rights for workers in

surface and underground mining and drilling industries, and for seafaring workers.

4. Workers' rights when companies restructure

One of the most far-reaching and immediate consequences of many company restructuring measures within multinationals is the threat of collective redundancies. In light of the consequences for entire communities and the fact that multinational companies often have a choice of where to lay off workers, EU law has responded by attempting to create a more level playing field across the EU by harmonising to a certain extent the rights conferred on employee representatives and the obligations imposed upon employers.

In effect, EU law on collective redundancies opens up many major opportunities for employee representatives to get their foot in the door early, rather than being condemned to wait and face the consequences of restructuring decisions. And thanks to EU law, these rights are more or less the same across the EU, meaning that no country is significantly less regulated, and that the rights can be more easily compared and combined strategically. In effect, the nucleus of a single European system of individual and collective employment rights exists.

First, there are important obligations on the part of the company to fully inform the workforce in order to enable workers' representatives to respond; this should include, in writing, the reasons, the number of workers normally employed and to be made redundant, and the period over which the redundancies will take place. Furthermore, employers must also forward these details in writing to the competent public authority, including the details of consultations with workers. To ensure transparency, workers' representatives are to receive a copy of this notification and are entitled to submit comments to the authority.

The importance of these sources of information should not be underestimated. First, the fact that the relevant information is provided transparently to the competent public authority represents an important test of the veracity of the information. Secondly, in the case of transnational restructuring, where employee representatives make the effort to check and cross-check this information across borders, various inconsistencies in the ways the matters are dealt with may be revealed.

Taken together, the information gleaned from this information phase is invaluable when preparing for local negotiations. The information asymmetries that plague much collective bargaining can thus be significantly reduced.

Moreover, EU law lays down that when considering collective redundancies, employers must immediately launch consultations with workers' representatives about ways of avoiding redundancies, reducing the number of workers affected, and mitigating the consequences through social measures, such as support for the deployment or retraining of redundant workers. Furthermore, these consultations are to be conducted with the aim of reaching an agreement, which effectively opens up an option to negotiate collectively on the subject. In many Member States, workers are explicitly entitled to call on the support of experts where the consultations are technically complex, which can go some way towards reducing the information asymmetries between the social partners.

Thanks to EU legislation, whenever businesses or parts of businesses are being transferred to a new owner, then potentially affected workers across the EU have comparable rights to information and consultation, well before any changes are enacted and in any event before employment or conditions of work are directly affected. Above all, these rights are combinable: exercised at both the local and the transnational level, they can be combined to yield a more comprehensive understanding of the matter at hand and the employees' interests which may be at stake.

All companies involved in the transfer of ownership must inform all respective workforce representatives about the date or proposed date of the transfer, the reasons or motivation for it, and must present the legal, economic and social implications for employees. The companies must also consult workers' representatives in good time about any plans they have for the future of the workforce, with the aim of getting their agreement. If the transfer of ownership is actually taking place for an entire multinational company, and all the local employee representatives are thus engaged in parallel in local-level information and consultation processes, should they not be pursuing transparency and comprehensiveness by enacting these processes at the transnational level at the same time?

What's more, EU law also ensures that employees' rights and the terms and conditions of their employment as laid down in employment

contracts and collective agreements do not automatically expire with the change of ownership. Instead, a minimum period of transition is foreseen. The transposition of these provisional arrangements may vary from member state to member state, but the rules serve to maintain the status quo for a provisional period in order to give the social partners the chance to adjust to the new situation. Employee representatives throughout the multinational can take advantage of this status freeze to coordinate with one another the information and consultation arrangements under the new owner.

5. Workers' rights in EU company law

Workers' rights are also laid down in EU company law, not just in employment law. For example, the Takeover Bids Directive regulates a company's obligations to disclose information about plans to take over another company. This legislation is designed to help protect the interests of stakeholders – of which the workforce is clearly one. The bidding company must publish an offer document which also lays out the prospective impact of the takeover on jobs, conditions of employment, and on the companies' locations. All documents must be promptly made available to workers and workers' representatives from all companies involved in the potential takeover. In addition, as stakeholders, the latter must be given an opportunity to express their views on the foreseeable impact of the takeover on employment. In effect, the workers' representatives enter into a sort of consultation with shareholders of the target company through a right to append opinion to the board's opinion. The company subject to the takeover must also publish its opinion of the bid and its prospective effect on employment and the future of the company, and must give this to the workers' representatives. If workers' representatives of the target company draw up their own opinion, this must then be appended to the official documents. Companies are also obliged to publish information on certain existing agreements regarding dismissals. What is striking about these rights, compared to many of the more internal and procedural information rights laid down in employment law, is that in many Member States the workers' representatives have the right of access to the full and official documentation required by the regulators. This dramatically increases the transparency and robustness of the information provided to the workers' representatives.

Taken together, these workers' rights and company obligations yield an impressive source of information – and indeed, potential influence. And yet, as found by a recent ETUI study of the application of the Takeover Bids Directive (Cremers and Vitols 2016), employee representatives seldom make full or even partial use of these rights. The research found, however, that the workforce is often informed too late for any action to have much effect, so there is clearly also a problem of compliance.

EU company law providing an optional framework under which companies can merge across national borders also lays down important information and consultation rights. As outlined above, employee representatives have the general right to be informed and consulted about a potential cross-border company merger. This is laid down in national law as a right for local employee representation, and as a rule, most EWC and Societas europaea Works Councils (SE-WC) agreements include mergers and acquisitions in the catalogue of topics on which transnational information and consultation is to take place (De Spiegelaere and Jagodzinski 2016).

The EU's Cross-Border Merger Directive contains involvement rights which are broadly similar to those laid down in the Takeover Bids Directive, and which thus also recognizes that the workforce is an important stakeholder in a company's future. Hence, the Cross-Border Merger Directive requires the managements of the merging companies to jointly draw up a merger plan laying down the complete terms of the proposed cross-border merger, including, where appropriate, arrangements for involving workers in the board-level governance of the merged company. The merging companies' managements must also compile a report explaining the legal and economic aspects of the merger and its implications for employees; this report is to be made available to the workforce or their representatives at least one month before each company holds its general meeting to approve the merger. The workers' representatives may also append their own opinion to the management report, to be distributed to the shareholders.

In light of the immense potential to link information and consultation at different levels of a multinational company about a measure as far-reaching as a merger or takeover, one might have expected many more EWCs and SE-WCs to have been active in this area. However, preliminary findings of a forthcoming ETUI study (Cremers and Vitols forthcoming) on the impact of workers' participation on the procedural aspects of cross-

border mergers suggest that these rights have not been extensively used so far either at local or transnational levels. While the potential sources of employee-side influence are slightly stronger in the Cross-Border Mergers Directive than in the Takeover Bids Directive, their usefulness is somewhat compromised by the fact that there are no penalties for false prognoses; for example, the merger plans almost invariably announce that there will be no effects on employment, yet experience repeatedly teaches us otherwise.

Nonetheless, in light of the potential strategic usefulness of these rights to early and comprehensive information and consultation of the workforce, and the potential influence gained by appending the employee side's assessment of the merger or takeover to the official documentation, this seems to be a field that would benefit from more attention by trade unions, EWCs and other employee representatives at both the national or the transnational levels of their activity.

6. How to connect the dots

EU legislation on European Works Councils (EWC) and the Representative Body foreseen in the *Societas Europaea* (SE-WC) provide for transnational information and consultation in multinational companies and represent one missing link in the construction of a genuinely cross-border system of worker participation geared towards the decision-making realities of multinational corporations. While the modalities of their operation may vary by company, EWCs and SE-WCs have the right to be informed and consulted about the possible implications of transnational measures planned by the company (De Spiegelaere and Jagodzinski 2015).

The original EWC Directive passed in 1994 was the culmination of nearly a quarter of a century of fruitless debate. Unable to overcome the impossibility of defining a one-size-fits-all model of European workers' rights to information, consultation and board-level employee representation, the 1994 Directive privileged negotiations conducted against the backdrop of a basic model of transnational information and consultation. The original 1994 Directive was thus much more about how the negotiations themselves were to be conducted than about the substance of information and consultation. Passed in 2001, the SE Directive also included provisions for transnational information and consultation which slightly improved the vaguer provisions in the 1994

EWC Directive. But it was not until the Recast EWC Directive was passed in 2009 that some of the more glaring omissions of the original EWC Directive were rectified. Major improvements included basic definitions about what transnational information and consultation was meant to be about, which the original EWC Directive had effectively ended up leaving subject to negotiations.

As laid out in Article 2 and elaborated upon in Recitals 21, 22, and 23, information provided to the employees' representatives must be sufficiently extensive and received in time in order to enable the latter to carry out an in-depth examination of possible consequences and prepare for consultations where appropriate. Furthermore, these consultations must take place at the appropriate managerial level, in the appropriate form, with the appropriate content and at the appropriate time so that the opinion of the EWC can be taken into account in company decision-making regarding the proposed measures. Finally, the transnational competence is also laid out quite clearly in Article 1, sentences 3 and 4, and contextualised in Recitals 12, 15 and 16 as going beyond a simple geographic explanation of 'at least two countries' affected; on the contrary, whether the EWC is to be informed and consulted depends on the nature and scope of the potential impact of a proposed measure as well as on the managerial level involved.

7. The EWC is a bridge, not a detour

The EWC is intended to pick up where national levels of information and consultation reach their limits. These limits are firstly reached in terms of the content of the matter under consideration: within multinational companies, many policies do not originate at local or even national level; they are thus likely to have a greater scope of possible implications that cannot be grasped at the local level alone. Secondly, limits are also reached in terms of competence: where decisions are taken beyond the sphere of local information and consultation, neither local nor the national management is in a position to deliver relevant and complete information and engage in meaningful consultation.

These facts were indeed not lost on the original architects of EWC legislation. Why do we have transnational information and consultation in the first place? The original 1994 EWC Directive, particularly its recitals which serve to justify the motivation and rationale for the EWC

legislation, already provided some of the answers; some of these were elaborated upon and specified in the later Recast EWC Directive of 2009.

Picking up a text already present in the 1994 EWC Directive, Recital 10 of the Recast EWC Directive identifies the key task at hand: the Europeanisation of companies must be matched by the Europeanisation of workers' participation:

> 'The functioning of the internal market involves a process of concentrations of undertakings, cross-border mergers, take-overs, joint ventures and, consequently, a transnationalisation of undertakings and groups of undertakings. If economic activities are to develop in a harmonious fashion, undertakings and groups of undertakings operating in two or more Member States must inform and consult the representatives of those of their employees who are affected by their decisions.' (EWC Recast Directive, Recital 10 and preamble to 1994 EWC Directive)

Both the original 1994 EWC Directive and the Recast EWC Directive clearly recognize the shortcomings of the existing information and consultation regimes when it comes to their effective application in a multinational setting, in which the locus of decision making may well be located beyond the reach of established national- or local-level information and consultation mechanisms and procedures. The risk is identified that different workforces will be treated differently depending on the country in which they work unless a coherent and unifying transnational approach is found:

> 'Procedures for informing and consulting employees as embodied in legislation or practice in the Member States are often not geared to the transnational structure of the entity which takes the decisions affecting those employees. This may lead to the unequal treatment of employees affected by decisions within one and the same undertaking or group of undertakings.' (EWC Recast Directive, Recital 11 and preamble to 1994 EWC Directive)

While the original 1994 EWC Directive somewhat lamely sought to 'ensure that the employees of Community-scale undertakings are **properly** informed and consulted when decisions which affect them are taken in a Member State other than that in which they are employed', Recital 12 of the Recast EWC Directive directly confronts this mismatch

between existing information and consultation rights at local or national level and workers' representatives access to the actual decision-making locus:

> 'Workers and their representatives must be guaranteed information and consultation at the relevant level of management and representation, according to the subject under discussion. To achieve this, the competence and scope of action of a European Works Council must be distinct from that of national representative bodies and must be limited to transnational matters.'

Recital 16 develops the idea of a hierarchical rather than a geographic understanding of competence, while still allowing for a geographical understanding of the spillover, intended or otherwise, of the consequences of a decision or measure: 'The transnational character of a matter should be determined by taking account of both the scope of its potential effects, and the level of management and representation that it involves.'

This hierarchical definition of the term '*transnational*' represents one of the single most important clarifications of the Recast Directive. After years of often fruitless debates in EWCs as to whether a measure affects more than one country and is thus a matter to be considered by the EWC, the Recast EWC directly confronts the realities of transnational company management: in a process of simultaneous centralization and decentralization of policy-making, key strategic decisions are taken by transnational management levels. It does not matter in which country this management is physically located, it matters only that they are hierarchically above those whose role is to implement, perhaps with some scope for local adaptation, those transnationally or centrally defined policies.

In essence then, the Directive is founded upon a highly functional understanding of multi-level information and consultation: one in which the rights to information and consultation are exercised at the precise and relevant locus of decision-making. This locus depends on the decision at hand and is distinct from other levels of information and consultation. Yet it is not only the hierarchical level of decision-making which matters, it is also the geographical scope of its potential impacts that define an issue as transnational or not. In this understanding of multi-level division of competence, each level of information and consultation operates in its own discrete sphere.

In this conception then, the EWC acts as a bridge between information and consultation at the local and national levels. It serves to collectively represent the European workforce in information and consultation processes, and, crucially, to enhance and strengthen the role of local employee representatives by giving them the resources to address the big picture.

8. Follow the decisions to make the connections

Operationalising its insight that transnational decision-making within transnational companies is a complex and multi-level process, the Recast EWC Directive goes to some length to describe the need to build links between information and consultation processes.

The insight into the hierarchical rather than geographical understanding of competence, as encapsulated in Recitals 15 and 16 of the Recast EWC Directive, is laid out clearly in Article 1(3) of the Recast EWC Directive. The information and consultation processes must be separate and distinct – yet they must be (better) linked. This is established in Recital 7, while Recital 21 sets out the task to not only bring the definitions of the concepts of information and consultation into line with more recent EU legislation, but also to permit 'suitable linkage between the national and transnational levels of dialogue'.

Recital 37 describes the essential framework for this interlinkage that the legislator had in mind, and Article 12 spells out the relationship between transnational information and consultation and other European and national-level legislation very clearly: information and consultation at the different levels are to be linked with due regard for the competences and spheres of action of each.

Interestingly, the original internal documents developed at the very beginning of the recasting process contained a more sophisticated prescription for this linkage: transnational information and consultation processes were clearly prioritised as a precondition for adequate information and consultation at national/local level. The latter were not to be considered complete until the transnational process had run its course.

By the time the documents were released into the social partner consultation process, however, this more ambitious approach, which

would have harnessed the obvious interdependence of multi-level information and consultation processes, had been replaced by a concept which only sought to privilege the launch of transnational information and consultation processes, but not their completion, as a prerequisite for the completion of local information and consultation.

Recognising the complexity and above all the company- and case-specificity of such linkage, the Directive does not seek to prescribe the process in any detail; rather, the parties negotiating the EWC agreement are charged with defining their own tailor-made arrangements. Recital 29 provides some context for the requirement in Article 6 (c) to define 'the functions and the procedure for information and consultation of the European Works Council and the arrangements for linking information and consultation of the European Works Council and national employee representation bodies in accordance with the principles [of subsidiarity] set out in Article 1(3).'

9. Cut the drama: transnationality is becoming the rule, not the exception

As explained above, the EWC Directive had to provide a solution to the old dilemma of defining structures for an infinite number of company structures and transnational scenarios. The solution found was to establish a coherent but strictly minimalistic fall-back model.

Here, at least one meeting of the EWC is foreseen as a matter of course; other meetings are to be held as needed – i.e. the advent of issues with possible transnational implications. It is here that the definitions play the critical role: by defining the transnational competence of the EWC, they provide the legitimation for any further meetings.

The language used in Article 1 e (3) of the Directive's Subsidiary Requirements unfortunately overdramatises what the Directive's conception of multi-level information and consultation, as laid out so clearly in its definitions of information, consultation and transnational competence, would lead us to expect normal practice to be.

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

> or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed.'

The term 'exceptional circumstances' refers to nothing more than that the minimalist 'rule' foreseen in the subsidiary requirements that the EWC shall meet at least once per year may be broken where transnational matters arise at a point in time outside that scheduled annual meeting. In fact, the equally dramatic-sounding 'extraordinary meeting' that has become a commonplace term in EWC and SE-WC agreements and hence in practice, never actually occurs in the text of the Directive.

Another result of this overdramatisation is that it seems to have been forgotten that EWCs and transnational information and consultation are about more than restructuring. To be sure, restructuring processes serve to focus attention most acutely on the possibly far-reaching impact of restructuring, not least of which is the loss or deterioration of employment. However, as argued above, the intentions of the Directive were clearly to recalibrate the machinery of information and consultation in a uniting Europe so that it is geared toward transnationality. Next to the wide-ranging definitions of information, consultation and the transnational competence of European Works Councils, the subsidiary requirements are also instructive about the intentions of the legislator. According to these, transnational information goes much further than restructuring and the cataclysmic consequences of transfers of production to include 'in particular [...] the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures [...] and collective redundancies.'

Of course, restructuring, transfers of production, cutbacks and closures, and collective redundancies receive special attention because of their potentially damaging and lasting impact on employment, but it is short-sighted to allow the impact of the Directive to be reduced to this. On the contrary, the very justification for the original EWC Directive, and the 2009 definitions of the transnational competence of the EWC and local- and national-level players to engage in information and consultation all point to a wider, more realistic interpretation of the role of transnational information and consultation.

10. The complex realities of multi-level company strategies

Let us now have another look at what is actually happening in multinational companies. Beginning with the obvious example of company restructuring where transnational management decides to transfer production or even just change the way it produces goods or delivers services across countries, the impact is rendered all the more complex where the production of goods or the delivery of services take place within an internal supply chain, in which different sites or parts of the company are suppliers or recipients of parts or services. In all events, such restructuring is likely to have direct consequences on the volume of incoming and outgoing products or services. There may also be different technical specifications. There may be parallel production or service providers within the company which will be impacted. Thus, next to its impact on the retention, creation or destruction of jobs in absolute terms, such restructuring can also be expected to hold implications for local job content and job classification. It may affect local working conditions and personnel relationships, particularly as they are operationalised in lines of reporting, supervision, evaluation and performance measurement. Clearly all of these changes lie directly within the mandates and rights of local employee representatives, in terms of both information and consultation procedures, as well as bargaining and negotiation.

Obviously, restructuring measures clearly create knock-on effects immediately felt by the workforce. However, transnational management also continually seeks to optimise procedures and policies in order to improve overall corporate performance. One strategic response of multinational companies is to standardise certain policies at the transnational level for implementation at national and local levels. Ongoing ETUI research (Dörrenbächer *et al.* 2016) has identified a range of cross-border standardisation strategies and trends in European MNCs. These include process standardisation in the areas of compliance, human resource management and IT strategies, particularly with respect to 'big data' and the increasing digitalisation of production and services. A renewed focus on lean production strategies is similarly leading to cross-border standardisation approaches, while the impact of outsourcing is also found to play an important role.

What are the likely cross-border implications of such standardisation processes that concern EWCs and local employee representatives and

trade unions? If for example a company decides, for reasons of efficiency and control, to centralise certain so-called 'back office' functions such as IT and the IT helpdesk, payroll, or finance and controlling, then this will have an impact on the work of employee representatives at the local level. Or perhaps the company intends to introduce a new management software directly linking Human Resources Management data, such as working time and performance indicators, with financial indicators in an attempt to better quantify the use of human resources as part of overall resource and cost structures. Next to their potential impact on jobs in absolute terms, both of these examples have obvious implications for the protection of personnel data and privacy. With the advent of 'big data', the prevailing principle that data may only be used for the purpose for which it is collected no longer holds: through the digitalisation of virtually all internal company processes, data is being collected all along the way more or less automatically. It should be recalled that across the EU, employee representatives play an essential role in monitoring the collection and use of personnel data, particularly when that data can be used to monitor employees' performance and behaviour. Where companies have implemented cross-border IT standardisation, this data is collected locally, but stored and possibly analysed elsewhere. It is thus removed from the reach of local employee representatives. Some EWCs have only just begun to try to address this issue, seeking to regain access to transnational decision-making in order to better fulfil their monitoring role at the local level.

To take another example, the creation of cross-national teams may be an excellent means of harnessing resources, competences, and creativity across borders, but it complicates workers' participation immensely. Geared towards local management and reporting structures and indeed the physical presence of colleagues and supervisors, existing workers' participation structures are unable to cope with personnel relationships which extend beyond national borders. Lines of reporting (Who's my boss? Where's my boss?) are interrupted, which becomes a problem for employee representatives at the latest when conflicts arise about performance evaluation and appraisals, or disciplinary measures.

Returning to the vast range of issues on which employee representatives are to be informed and consulted at the local level, the case for better articulation of these processes is obvious. In the case of restructuring, the case is clear: it goes some way towards ensuring the transparency of the information and consultation procedures if all site representatives are

given the same information at the same time, especially since the affected workplaces may be in competition with each other for concessions and investment.

Take the example of health and safety regulation: Clearly, within multinational companies, any hazards are not uniquely present at each local workplace; rather, they are replicated across the company wherever the same work is being carried out. Yet presumably, the legally required information and consultation procedures are all centrally coordinated, but replicated in the same way at each local site without any coordination or exchange amongst the employee representatives across sites.

EWCs are able to engage proactively with the transnational dimensions of company policy. Would it not make more sense to join up the information and consultation processes by bundling them via the transnational EWC information and consultation procedures? Would it not create opportunities to exchange and even support the extension of best practice, to pool strengths and compensate for weaknesses? Would it not increase the transparency of the information and consultation procedures of all site representatives?

11. Articulation: form and sequence follow function

Much has been made in practice and academic debates of the need to properly sequence information and consultation processes. As Dorssemont and Kerckhofs have demonstrated, there is actually no clear solution: national laws and jurisprudence contradict one another about the 'correct' way to proceed (Eurofound 2015) if either level contests the prerogative of the other. Fortunately, in practice it may prove a bit easier to cope with when applying the articulation logic presented here: The form and sequence follow the function of information and consultation procedures at national and transnational levels. In other words, each level has its own particular angle on the information and consultation procedure.

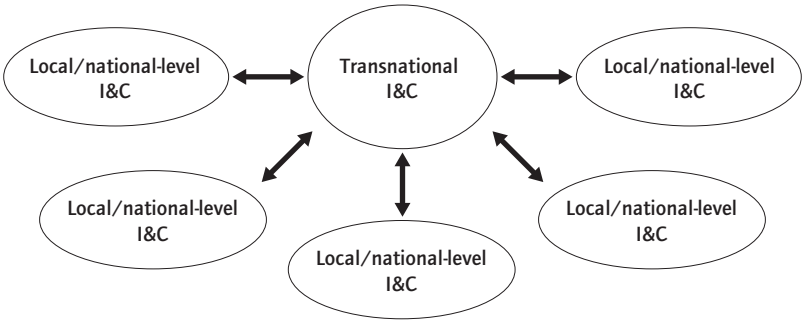
If we start with the issue or measure itself and consider its possible impacts, then it may be easier to identify which players need which information at what stage in the decision-making process in order to satisfy their information and consultation needs at transnational, national, and local levels.

Local information and consultation may be deeply rooted in its national context, for example if the matter at hand touches upon the application of national laws or collective agreements; however, the transnational context will be essential in order to better assess the motivations and consequences of the measure. Equally, the transnational information and consultation processes need to be informed by national/local specificities.

Each level has own rights, informational needs and justifications. They may overlap or coincide, they may address distinct aspects of the same issue, but they are not independent of one another: on the contrary, they are closely interdependent. It is only when information and consultation is conducted iteratively, for example first at the transnational level, then the national/local level, then back at the transnational level, that the needs of each level can be met. And, crucially, if the process is iterative, alternating between levels, then the whole question of sequence, or who is informed first, become moot.

Figure 1 **Multilevel information and consultation**

The process is iterative until the information and consultation (I&C) needs are met:



If every level plays its role, then sequence does not matter.

Source: own elaboration.

12. Conclusions: connecting the dots means combining and alternating complementary information and consultation rights

As demonstrated above, the actual rights to information and consultation at the different levels are essentially the same. The key lies in combining the exercise of these rights with the insights gained through their exercise at local, national and transnational levels.

The challenges faced by employee representatives operating within the multi-level environment of transnational organisations are not new: they have been there all along. This chapter has argued that the tools to approach these challenges are largely provided in the accumulated original EWC Directive and its Recast, as well as by drawing on the wide range of EU legislation ensuring information and consultation rights for employees and their representatives.

For decades, the debate around the EWC Directives and practice has focused on the shortcomings of the legislation, its implementation in national law, and the difficulties of breathing life into these laws in actual practice. But perhaps practice has been too much held back by a limited interpretation of what the EWC Directives have actually delivered.

By starting with an integrated approach to information and consultation at all levels, the steps to follow can be reliably guided by the dynamics of the issue at hand. The rudiments of the rights are there at local level and are roughly comparable. The key is to apply them at the different levels intelligently, solidaristically, strategically and pragmatically.

It is key to identify those parts of the 'narrative' of EWC practice and the Directive which effectively hold back progress. Chief among these misconceptions is the focus on a single annual meeting as the sole expression of an EWC's existence. On the contrary: the annual meeting is useful to establish a robust and reliable context in which employee representatives can grasp the transnational dynamics of the issue they experience and negotiate about locally. But the real work of the EWC takes place between the annual or semi-annual meetings: it is in insisting on timely, written and comprehensive information about planned transnational changes in strategy or organisation. Depending on the potential consequences of the issue at hand, it is about the EWC or its select committee and representatives of the affected sites rising to the

occasion and insisting on a meeting or a written procedure for the purposes of information and consultation which is appropriate to address *any* transnational issues as they arise.

There is one major caveat, however. In the realities of transnational organisations, there are often at least three levels; between the local sites and the transnational EWC level, there may be a regional, a divisional or a national level of company organisation, which may or may not have the respective information and consultation institutions in place. It is here, between the activities of the local employee representation and the transnational employee representation, that we often lack the structures to adequately communicate between levels.

Information and consultation across levels in a multinational company is a process, not a one-off event. EWC work takes place all year long, in between plenary meetings. It is time to defuse the drama and the exceptionality of the EWC fulfilling its role, which is to be that of a bridge, not a detour.

As the EWC Recast Directive makes abundantly clear, transnational information and consultation in the EWC – and by extension in SE works councils – does not hover above the other information and consultation institutions and processes; rather, it must be dynamically and flexibly linked to them. Only then can each player and each institution at each level play its role to the fullest, informed by the insights gained from information and consultation at the other levels. Only then can workers' participation be brought to bear on the complexities and vagaries of transnational company policy and strategy. Only then can a coherent picture emerge out of the mess of numbered dots on the page.

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